

SENATE BILL 485

By Bowling

AN ACT to amend Tennessee Code Annotated, Title 36
and Title 37, relative to Indian child welfare.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 37, Chapter 2, is amended by adding
the following new part:

37-2-701. Part definitions.

As used in this part:

(1) "Adoptive placement" means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption, but does not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one (1) of the parents;

(2) "Child custody proceeding" means and includes foster care placement, termination of parental rights, preadoptive placement, and adoptive placement;

(3) "Commissioner" means the commissioner of children's services;

(4) "Extended family member" means:

(A) As defined by the law or custom of the Indian child's tribe; or

(B) In the absence of such law or custom described in subdivision

(4)(A), a person who has reached eighteen (18) years of age and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(5) "Foster care placement":

(A) Means any action removing an Indian child from the child's parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated; and

(B) Does not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one (1) of the parents;

(6) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a regional corporation as defined in 43 U.S.C. § 1606;

(7) "Indian child" means any unmarried person who is under eighteen (18) years of age and is either:

(A) A member of an Indian tribe; or

(B) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(8) "Indian child's tribe" means:

(A) The Indian tribe in which an Indian child is a member or eligible for membership; or

(B) In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts;

(9) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom

temporary physical care, custody, and control has been transferred by the parent of such child;

(10) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(11) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the United States secretary of the interior because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. § 1602(c);

(12) "Parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom, but does not include the unwed father where paternity has not been acknowledged or established;

(13) "Preadoptive placement" means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement, but does not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one (1) of the parents;

(14) "Reservation" means Indian country as defined in 18 U.S.C. § 1151 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(15) "Termination of parental rights" means any action resulting in the termination of the parent-child relationship but does not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one (1) of the parents; and

(16) "Tribal court" means a court with jurisdiction over child custody proceedings and that is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe that is vested with authority over child custody proceedings.

37-2-702. Declaration of policy.

The general assembly declares that it is the policy of this state to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes that will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

37-2-703. Indian tribe jurisdiction over Indian child custody proceedings.

(a) An Indian tribe has jurisdiction exclusive as to any state over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the state by existing federal law. Where an Indian child is a ward of a tribal court, the Indian tribe retains exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) In any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon

the petition of either parent or the Indian custodian or the Indian child's tribe; provided, that such transfer is subject to declination by the tribal court of such tribe.

(c) In any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe have a right to intervene at any point in the proceeding.

(d) The United States, every state, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

37-2-704. Pending court proceedings.

(a) In any involuntary proceeding in a state court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice must be given to the commissioner of children's services in like manner, who has fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. A foster care placement or termination of parental rights proceeding must not be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the commissioner; provided, that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days to prepare for such proceeding.

(b) In any case in which the court determines indigency, the parent or Indian custodian has the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where state law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the commissioner upon appointment of counsel, and the commissioner, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds of the department.

(c) Each party to a foster care placement or termination of parental rights proceeding under state law involving an Indian child has the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) A court shall not order a foster care placement in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) A court shall not order a termination of parental rights in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child

by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

37-2-705. Parental rights; voluntary termination.

(a) Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent is not valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten (10) days after, birth of the Indian child is not valid.

(b) Any parent or Indian custodian may withdraw consent to a foster care placement under state law at any time and, upon such withdrawal, the child must be returned to the parent or Indian custodian.

(c) In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child must be returned to the parent.

(d) After the entry of a final decree of adoption of an Indian child in any state court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. An adoption that has been

effective for at least two (2) years must not be invalidated under this subsection (d) unless otherwise permitted under state law.

37-2-706. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations.

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under state law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated §§ 37-2-703 – 37-2-705.

37-2-707. Placement of Indian children.

(a) In any adoptive placement of an Indian child under state law, a preference must be given, in the absence of good cause to the contrary, to a placement with:

- (1) A member of the child's extended family;
- (2) Other members of the Indian child's tribe; or
- (3) Other Indian families.

(b) Any child accepted for foster care or preadoptive placement must be placed in the least restrictive setting that most approximates a family and in which the child's special needs, if any, may be met. The child must also be placed within reasonable proximity to the child's home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference must be given, in the absence of good cause to the contrary, to a placement with:

- (1) A member of the Indian child's extended family;
- (2) A foster home licensed, approved, or specified by the Indian child's tribe;

(3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(4) An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

(c) In the case of a placement under subsection (a) or (b), if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b). Where appropriate, the preference of the Indian child or parent must be considered; provided, that where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) The standards to be applied in meeting the preference requirements of this section must be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) A record of each such placement, under state law, of an Indian child must be maintained by the state in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record must be made available at any time upon the request of the commissioner of children's services or the Indian child's tribe.

37-2-708. Return of custody.

(a) Notwithstanding state law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological

parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to § 37-2-704, that such return of custody is not in the best interests of the child.

(b) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement must be in accordance with this part, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

37-2-709. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court.

Upon application by an Indian individual who has reached eighteen (18) years of age and who was the subject of an adoptive placement, the court that entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

37-2-710. Agreements between this state and Indian tribes.

(a) This state and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements that may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements that provide for concurrent jurisdiction between the state and Indian tribes.

(b) Such agreements may be revoked by either party upon written notice of one hundred eighty (180) days to the other party. Such revocation does not affect any action

or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

37-2-711. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception.

Where any petitioner in an Indian child custody proceeding before a state court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to the child's parent or Indian custodian unless returning the child to the parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

37-2-712. Higher state or federal standard applicable to protect rights of parent or Indian custodian of Indian child.

In any case where state or federal law applicable to a child custody proceeding under state or federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this part, the court shall apply the state or federal standard.

37-2-713. Emergency removal or placement of child; termination; appropriate action.

This part does not prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from the child's parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable state law, in order to prevent imminent physical damage or harm to the child. The state authority, official, or agency involved shall ensure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage

or harm to the child and shall expeditiously initiate a child custody proceeding subject to this part, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

37-2-714. Information availability to and disclosure by commissioner.

(a) Any state court entering a final decree or order in any Indian child adoptive placement after July 1, 2025, shall provide the commissioner of children's services with a copy of such decree or order together with such other information as may be necessary to show:

- (1) The name and tribal affiliation of the child;
- (2) The names and addresses of the biological parents;
- (3) The names and addresses of the adoptive parents; and
- (4) The identity of any agency having files or information relating to such adoptive placement.

(b) Where the court records contain an affidavit of the biological parent or parents that the parent's identity remain confidential, the court shall include such affidavit with the other information. The commissioner shall ensure that the confidentiality of such information is maintained and such information is not open for inspection by members of the public.

(c) Upon the request of the adopted Indian child who is eighteen (18) years of age or older, the adoptive or foster parents of an Indian child, or an Indian tribe, the commissioner shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the commissioner shall certify to the Indian child's tribe, where the

information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

37-2-715. Rules.

The commissioner of children's services is authorized to promulgate rules to effectuate this part. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

37-2-716. Severability.

If any provision of this part or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the part that can be given effect without the invalid provision or application, and to that end, the provisions of this part are severable.

SECTION 2. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. This act takes effect July 1, 2025, the public welfare requiring it.