

FOSTER CARE PLACEMENT DECISION REQUIREMENTS

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Senate Bill 498 (S-1) as reported from House committee

Sponsor: Sen. Jeff Irwin

House Committee: Families, Children and Seniors

Senate Committee: Housing and Human Services

Complete to 5-23-24

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 73 of 2024)

SUMMARY:

Senate Bill 498 would amend the juvenile code (Chapter XIIA of the Probate Code) to revise requirements related to certain foster child placement decisions involving an Indian child.

Child placement change exceptions

The code currently prohibits the agency from changing the placement of a child who is under the court's jurisdiction under the code, or under Michigan Children's Institute (MCI) jurisdiction, control, or supervision, and who is placed in foster care, *except* under one of the following circumstances:

- The person providing the foster care requests or agrees to the change.
- Even though the person providing the foster care objects to a proposed placement change, one of the following applies:
 - The court orders the child returned home.
 - The change in placement is less than 30 days after the child's initial removal from their home.
 - The change in placement is less than 90 days after the child's initial removal from their home, and the new placement is with a relative.
 - The change in placement is in accordance with other provisions of section 13b of the code (the section the bill would amend).

The bill instead would prohibit the agency from changing the placement of a child described above before complying with the requirements of section 13b of the code, *except* when any of the following circumstances apply:

- The person providing the foster care requests or agrees to the change.
- A contracted social services agency of a federally recognized tribal government is providing primary case management.
- Even if the person providing the foster care placement objects to a proposed change in placement, when one of the following applies:
 - The court orders the child returned home.
 - The change in placement is less than 30 days after the child's initial removal from their home.
 - The court orders the child to be moved.
 - The child is an MCI ward and the move is a result of the MCI superintendent's denial of consent to adoption by the caregiver.

- The child is an *Indian child* and the foster care placement or the proposed placement is within or to the placement preferences listed in section 23 of the Michigan Indian Family Preservation Act (Chapter XIIB of the Probate Code).¹
- The change in placement is in accordance with other provisions of section 13b.

Indian child would mean an unmarried person who is under the age of 18 and either is a member of an *Indian tribe* or is eligible for membership in an Indian tribe as determined by that Indian tribe.

Indian tribe means, as defined in the Michigan Indian Family Preservation Act, any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the U.S. Secretary of the Interior because of their status as Indians, including any Alaska native village as defined in section 1602(c) of the federal Alaska Native Claims Settlement Act.

Child placement changes

Except as described above, and except when the agency has reasonable cause to believe the child has suffered sexual abuse or nonaccidental physical injury or that there is substantial risk of harm to the child’s physical or emotional well-being, the code now requires the agency to do all of the following before a change in foster care placement takes effect:

- Notify the State Court Administrative Office (SCAO) of the change in placement.
- Notify the foster parents of the change in placement and provide them information regarding their right to appeal, during which the current placement is maintained.
- Notify the court with jurisdiction and the child’s lawyer guardian ad litem of the change in placement. This notice does not affect the placement discretion of the Department of Health and Human Services (DHHS) and must include all of the following:
 - The reason for the change in placement.
 - The number of times the child’s placement has been changed.
 - Whether the child will be required to change schools.
 - Whether the change will separate or reunite siblings or affect sibling visitation.

Under the bill, with the same exceptions, the agency would have to do all of the following before a change in foster care placement takes effect:

- Notify the foster care review board, under SCAO, of the change in placement.
- Notify the foster parents of the change in placement and provide them information regarding their right to appeal, during which the current placement is maintained.
- Notify the court with jurisdiction, the child’s tribe, as applicable, and the child’s lawyer guardian ad litem of the change in placement. This notice does not affect the placement discretion of the Department of Health and Human Services (DHHS) and must include all of the following:
 - The reason for the change in placement.
 - The number of times the child’s placement has been changed.
 - Whether the child will be required to change schools.
 - Whether the change will separate or reunite siblings or affect sibling visitation.
 - If the child is an Indian child, the following:
 - A statement that the child is an Indian child.

¹ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-712B-23>

- A list of active efforts the agency took to place the child in compliance with section 23 of the Michigan Indian Family Preservation Act, including how the placement meets the standards in section 23(8) of that act.

Appeal process

Under the code, if foster parents appeal a change in placement, the foster care review board must investigate the change within seven days and report its findings and recommendations within three days after completion of the investigation to all of the following:

- The court.
- If the child is under MCI jurisdiction, control, or supervision, the MCI superintendent.
- The foster care parents.
- The parents.
- The agency.

The bill would require the above findings and recommendations to include whether or not the foster care review board determines that the placement change is in the child's best interests.

The bill also would require the findings and recommendations to be reported to the child's tribe, if applicable, and, if the child is an Indian child, would require the report to include the following:

- A statement that the child is an Indian child.
- A list of active efforts the agency took to place the child in compliance with section 23 of the Michigan Indian Family Preservation Act.

In addition, if the child is an Indian child, the *Indian child's tribe* would have to be invited to participate in the investigation, and the foster care review board would have to follow the best interests of the child standards and procedures identified in section 5 of the Michigan Indian Family Preservation Act.²

Indian child's tribe would mean the Indian tribe in which an Indian child is a member or eligible for membership. In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian child's tribe would be the tribe with which the Indian child has the most significant contacts.

The bill would further provide that the Indian child's tribe is an interested party for purposes of a court hearing regarding a placement disagreement between the agency and the foster care review board.

Indian child foster care placement change

If an Indian child who is not already removed from foster care review board consideration as described above under "Child placement changes,"³ who is not under the court's jurisdiction under the juvenile code, and who is not under MCI jurisdiction, control, or supervision, is

² <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-712B-5>

³ Because a contracted social services agency of a federally recognized tribal government is providing primary case management or the child's foster care placement or the proposed placement is within or to the placement preferences listed in section 23 of chapter XIIB

placed in foster care, the agency or MCI could not change the child's placement or make a recommendation for placement change before notifying the Indian child's tribe, and before a change in an Indian child's foster care placement takes effect, the agency or MCI, as applicable, would have to do all of the following:

- Except when the court orders the child home or orders the child to be moved, and except when the agency has reasonable cause to believe the child has suffered sexual abuse or nonaccidental physical injury or that there is substantial risk of harm to the child's physical or emotional well-being, the agency or MCI, as applicable, would have to notify an Indian child's tribe at least three days before any proposed placement change of an Indian child. Notification could be given by ordinary mail and email to the designated Indian Child Welfare Act⁴ agent with receipt three days before the beginning of the foster care review board investigation.
- At the time of or immediately following an Indian child's removal because the agency has reasonable cause to believe the child has suffered sexual abuse or nonaccidental physical injury or that there is substantial risk of harm to the child's physical or emotional well-being, the agency or MCI would have to inform the child's tribe of the child's placement.
- The agency, foster care review board, and MCI would have to comply with section 23 of the Michigan Indian Family Preservation Act for any placement change, including a placement following a removal because the agency has reasonable cause to believe the child has suffered sexual abuse or nonaccidental physical injury or that there is substantial risk of harm to the child's physical or emotional well-being.

MCL 712A.13b

FISCAL IMPACT:

Senate Bill 498 would not have a significant fiscal impact on state expenditures for the Department of Health and Human Services or local units of government. The bill would align statute with current department policy.

POSITIONS:

Representatives of the following entities testified in support of the bill:

- Department of Health and Human Services (5-21-24)
- Bay Mills Indian Community (5-14-24)

The Sault Ste. Marie Tribe of Chippewa Indians indicated support for the bill. (5-14-24)

Legislative Analyst: E. Best
Fiscal Analyst: Sydney Brown

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

⁴ [https://www.courts.michigan.gov/administration/offices/child-welfare-services/indian-child-welfare-act-michigan-indian-family-preservation-act-\(icwamifpa\)/](https://www.courts.michigan.gov/administration/offices/child-welfare-services/indian-child-welfare-act-michigan-indian-family-preservation-act-(icwamifpa)/)