

§3943. Definitions

As used in this Act, unless the context otherwise indicates, the following terms have the following meanings. [PL 2023, c. 359, §5 (NEW).]

1. Active efforts. "Active efforts" means affirmative, active, thorough and timely efforts tailored to the facts and circumstances of the case and intended primarily to maintain or reunite an Indian child with that child's family. When an agency is involved in the Indian child custody proceeding, active efforts must include assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians and tribe. Active efforts may include:

A. Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal; [PL 2023, c. 359, §5 (NEW).]

B. Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services; [PL 2023, c. 359, §5 (NEW).]

C. Identifying, notifying and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning and resolution of placement issues; [PL 2023, c. 359, §5 (NEW).]

D. Conducting or causing to be conducted a diligent search for the Indian child's extended family members and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents; [PL 2023, c. 359, §5 (NEW).]

E. Offering and implementing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the Indian child's tribe; [PL 2023, c. 359, §5 (NEW).]

F. Taking steps to keep siblings together whenever possible; [PL 2023, c. 359, §5 (NEW).]

G. Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety and welfare of the child; [PL 2023, c. 359, §5 (NEW).]

H. Identifying community resources including housing, financial, transportation, mental health, substance abuse and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources; [PL 2023, c. 359, §5 (NEW).]

I. Monitoring progress and participation in services; [PL 2023, c. 359, §5 (NEW).]

J. Considering alternative ways to address the needs of the Indian child's parents and, when appropriate, the family, if the optimum services do not exist or are not available; and [PL 2023, c. 359, §5 (NEW).]

K. Providing post-reunification services and monitoring. [PL 2023, c. 359, §5 (NEW).]
[PL 2023, c. 359, §5 (NEW).]

2. Adoptive placement. "Adoptive placement" means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.
[PL 2023, c. 359, §5 (NEW).]

3. Domicile. "Domicile" means:

A. For a parent or Indian custodian, the place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere; and [PL 2023, c. 359, §5 (NEW).]

B. For an Indian child, the domicile of the Indian child's parents or Indian custodian or guardian or, in the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's custodial parent. [PL 2023, c. 359, §5 (NEW).]

[PL 2023, c. 359, §5 (NEW).]

4. Emergency proceeding. "Emergency proceeding" means a court action that involves the emergency removal or emergency placement of an Indian child, including those pursuant to section 4034 or Title 18-C, Article 5. "Emergency proceeding" does not include a court action involving an emergency award of custody of the Indian child to one of the parents including, but not limited to, an emergency parental rights and responsibilities order or a protection from abuse proceeding. [PL 2023, c. 359, §5 (NEW).]

5. Extended family member. "Extended family member" means a person who is defined as a member of an Indian child's extended family by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached 18 years of age and who is the Indian child's grandparent, aunt or uncle, sibling, sibling-in-law, niece or nephew, first or second cousin or stepparent. [PL 2023, c. 359, §5 (NEW).]

6. Foster care placement. "Foster care placement" means the removal of an Indian child from the home of the child's parent or Indian custodian for temporary placement in a foster home, qualified residential treatment program, residential care center for Indian children and youth, or shelter care facility, in the home of a relative other than a parent or Indian custodian, or in the home of a guardian or conservator, from which placement the parent or Indian custodian cannot have the child returned upon demand. "Foster care placement" does not include an adoptive placement, a preadoptive placement, an emergency removal or the detention of an Indian child. [PL 2023, c. 359, §5 (NEW).]

7. Indian. "Indian" means a person who is a member or citizen of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 43 United States Code, Section 1606. Only an Indian tribe may determine its membership or citizenship, including eligibility for membership or citizenship. [PL 2023, c. 359, §5 (NEW).]

8. Indian child. "Indian child" means an unmarried person who is under 18 years of age and is a member or citizen of an Indian tribe or is eligible for membership in or citizenship of an Indian tribe and is the biological child of a member or citizen of an Indian tribe. [PL 2023, c. 359, §5 (NEW).]

9. Indian child custody proceeding. "Indian child custody proceeding" means a proceeding, other than an emergency proceeding, that may culminate in any of the following outcomes for or related to an Indian child:

- A. Adoptive placement; [PL 2023, c. 359, §5 (NEW).]
- B. Foster care placement; [PL 2023, c. 359, §5 (NEW).]
- C. Preadoptive placement; or [PL 2023, c. 359, §5 (NEW).]
- D. Termination of parental rights. [PL 2023, c. 359, §5 (NEW).]

An Indian child custody proceeding does not include a proceeding in tribal court or a proceeding that may culminate in an outcome for which placement is based upon an act by an Indian child that, if committed by an adult, would be considered a crime or a proceeding involving an award of custody to

one of the Indian child's parents, including, but not limited to, a divorce proceeding, a parental rights and responsibilities proceeding, a judicial separation proceeding, a protection from abuse proceeding or other domestic relations proceeding.

[PL 2023, c. 359, §5 (NEW).]

10. Indian child's tribe. "Indian child's tribe" means the Indian tribe in which an Indian child is a member or citizen, or eligible for membership or citizenship. In cases in which a child meets the definition of "Indian child" through more than one Indian tribe, the Indian tribes must be given an opportunity to agree on which tribe is the Indian tribe for purposes of this Act. If the Indian tribes are not able to come to an agreement, the court shall designate the Indian child's tribe for purposes of this Act based on which Indian tribe has more significant contacts with the Indian child.

[PL 2023, c. 359, §5 (NEW).]

11. Indian custodian. "Indian custodian" means an 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 the Indian child.

[PL 2023, c. 359, §5 (NEW).]

12. Indian organization. "Indian organization" means a group, association, partnership, corporation or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

[PL 2023, c. 359, §5 (NEW).]

13. Indian tribe. "Indian tribe" means an 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 an Alaska Native village as defined in 43 United States Code, Section 1602(c).

[PL 2023, c. 359, §5 (NEW).]

14. Involuntary Indian child custody proceeding. "Involuntary Indian child custody proceeding" means an Indian child custody proceeding or emergency proceeding in which:

A. The parent or Indian custodian does not consent of that parent's or Indian custodian's free will to the foster care placement, preadoptive placement, adoptive placement or termination of parental rights of or to an Indian child; or [PL 2023, c. 359, §5 (NEW).]

B. The parent or Indian custodian consents to the foster care placement, preadoptive placement or adoptive placement under threat of removal of the Indian child by a state court or agency. [PL 2023, c. 359, §5 (NEW).]

[PL 2023, c. 359, §5 (NEW).]

15. Parent. "Parent" means a biological parent or parents of an Indian child or an Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. "Parent" does not include an unwed father when paternity has not been acknowledged or established.

[PL 2023, c. 359, §5 (NEW).]

16. Preadoptive placement. "Preadoptive placement" means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but before or in lieu of adoptive placement.

[PL 2023, c. 359, §5 (NEW).]

17. Qualified expert witness. "Qualified expert witness" means a person who meets the requirements of section 3954.

[PL 2023, c. 359, §5 (NEW).]

18. Reservation. "Reservation" means Indian country, as defined in 18 United States Code, Section 1151, or any land not covered under that section to which title is either held by the United

States in trust for the benefit of an Indian tribe or Indian or held by an Indian tribe or Indian, subject to a restriction by the United States against alienation.

[PL 2023, c. 359, §5 (NEW).]

19. Termination of parental rights. "Termination of parental rights" means an action resulting in the termination of the parent-child relationship.

[PL 2023, c. 359, §5 (NEW).]

20. Tribal court. "Tribal court" means a court of an Indian tribe with jurisdiction over Indian child custody proceedings, including a federal court of Indian offenses, a court established and operated under the code or custom of an Indian tribe or any other administrative body of an Indian tribe that is vested with authority over Indian child custody proceedings.

[PL 2023, c. 359, §5 (NEW).]

21. Voluntary proceeding. "Voluntary proceeding" means an Indian child custody proceeding or emergency proceeding in which a parent or Indian custodian consents, of that person's free will and without the threat of removal by a state agency, to:

A. The foster care placement, preadoptive placement or adoptive placement of an Indian child; or
[PL 2023, c. 359, §5 (NEW).]

B. The termination of parental rights to an Indian child. [PL 2023, c. 359, §5 (NEW).]
[PL 2023, c. 359, §5 (NEW).]

SECTION HISTORY

PL 2023, c. 359, §5 (NEW).

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