

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.13b Change in foster care placement.

Sec. 13b.

(1) If a child under the court's jurisdiction under section 2(b) of this chapter, or under MCI jurisdiction, control, or supervision, is placed in foster care, the agency must not change the child's placement before complying with the requirements of this section, except when any of the following circumstances apply:

(a) The person providing the foster care requests or agrees to the change.

(b) A contracted social services agency of a federally recognized tribal government is providing primary case management.

(c) Even if the person providing the foster care placement objects to a proposed change in placement, when 1 of the following applies:

(i) The court orders the child returned home.

(ii) The change in placement is less than 30 days after the child's initial removal from the child's home.

(iii) The court orders the child to be moved.

(iv) 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.

(v) 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 chapter XIIB.

(vi) The change in placement is in accordance with other provisions of this section.

(2) Except as provided in subsections (1) and (7), before a change in foster care placement takes effect, the agency must do all of the following:

(a) Notify the foster care review board, under the state court administrative office, of any proposed change in placement. Notice under this subdivision may be given by ordinary mail or by electronic means as agreed by the department and the state court administrative office.

(b) Notify the foster parents of the intended change in placement and inform them that, if they disagree with the decision, they may appeal within 3 days to a foster care review board. A foster parent may appeal orally, but must submit the appeal in writing immediately following the oral appeal. The agency shall provide the foster parents with the address and telephone number of a foster care review board with jurisdiction over the child.

(c) Maintain the current placement for not less than the time for appeal to the foster care review board and if a foster parent appeals, until the foster care review board determination.

(d) Notify the court with jurisdiction over the child, notify the child's tribe, as applicable, and notify the child's lawyer guardian ad litem of the proposed change in placement. Notice to the court under this subdivision may be given by ordinary mail or by electronic means as agreed by the department and the court that has jurisdiction over the child. The notice provided under this subdivision does not affect the department's placement discretion and shall include all of the following information:

(i) The reason for the change in placement.

(ii) The number of times the child's placement has been changed.

(iii) Whether or not the child will be required to change schools.

(iv) Whether or not the change will separate or reunite siblings or affect sibling visitation.

(v) If the child is an Indian child the notice shall include the following additional information:

(A) A statement that the child is an Indian child.

(B) A list of active efforts the agency took to place the child in compliance with section 23 of chapter XIIB, including how the placement meets the standards provided in section 23(8) of chapter XIIB.

(3) Upon receipt of an appeal from foster parents under subsection (2) or (7), the foster care review board shall investigate the proposed change in foster care placement within 7 days and shall report its findings and recommendations about the proposed placement change, including whether or not the foster care review board determines that the placement change is in the child's best interests, within 3 days after completion of the investigation to the court or, if the child is under MCI jurisdiction, control, or supervision, the MCI superintendent, to the foster care parents, to the parents, to the child's tribe, if applicable, and to the agency. If the child is an Indian child the report shall include the following additional information:

(a) A statement that the child is an Indian child.

(b) A list of active efforts the agency took to place the child in compliance with section 23 of chapter XIIB.

(4) If the child is an Indian child, the Indian child's tribe must be invited to participate in the investigation and the foster care review board must follow the best interests of the child standards and procedures identified in section 5 of chapter XIIB. If after investigation the foster care review board determines that the move is in the child's best interests, the agency may move the child.

(5) If after investigation the foster care review board determines that the move is not in the child's best interest, the agency shall maintain the current placement until a finding and order by the court or, if the child is under MCI jurisdiction, control, or supervision, a decision by the MCI superintendent. The agency shall not return a child to a placement from which the child was removed under subsection (7) unless the court orders that placement's restoration under subsection (6) or the MCI superintendent approves that placement's restoration under this subsection. The foster care review board shall notify the court, or if the child is under MCI jurisdiction, control, or supervision, the MCI superintendent, about the board's and agency's disagreement. The court shall set a hearing date and provide notice to the foster parents, each interested party, and the prosecuting attorney if the prosecuting attorney has appeared in the case. The court shall set the hearing no sooner than 7 and no later than 14 days after receipt of the notice from the foster care review board. The rules of evidence do not apply to a hearing required by this subsection. Within 14 days after notification under this subsection, the MCI superintendent shall make a decision regarding the child's placement and shall inform each interested party what the decision is.

(6) After hearing testimony from the agency and any other interested party, including the Indian child's tribe, and considering any other evidence bearing upon the proposed change in placement, the court shall order the continuation or restoration of the placement unless the court finds that the proposed change in placement is in the child's best interests.

(7) If the agency has reasonable cause to believe that 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 may change the child's foster care placement without complying with subsection (1) or (2)(b) or (c). The agency shall include in the child's file documentation of its justification for action under this subsection. If a foster parent objects to the removal of a child under this subsection, the foster parent may appeal to the foster care review board within 3 days after the child's removal. The foster parent may appeal orally, but must submit the appeal in writing immediately following the oral appeal.

(8) At the time of or immediately following a child's removal under subsection (7), the agency shall inform the foster parents about the removal and that, if they disagree with the decision, they may appeal within 3 days to a foster care review board in the manner provided in subsection (7). The agency shall provide the foster parents with the address and telephone number of a foster care review board with jurisdiction over the child.

(9) If an Indian child, not already removed from foster care review board consideration by subsection (1)(b) or (c)(v), under the court's jurisdiction under section 2(b) of this chapter, or under MCI jurisdiction, control, or supervision, is placed in foster care, the agency or MCI must 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, where applicable, must do all the following:

(a) Except as provided by subsection (1)(c)(i), (1)(c)(iii), or (7), the agency or MCI, where applicable, must notify an Indian child's tribe at least 3 days before any proposed placement change of an Indian child. Notification under this subdivision may be given by ordinary mail and email to the designated Indian child welfare act agent with receipt 3 days before the beginning of the foster care review board investigation.

(b) At the time of or immediately following an Indian child's removal under subsection (7), the agency or MCI must inform the Indian child's tribe of the child's placement.

(c) The agency, foster care review board, and MCI must comply with section 23 of chapter XIIB for any placement change, including a placement following a removal under subsection (7).

(10) As used in this section, "Indian child" and "Indian child's tribe" mean those terms as defined in section 3 of chapter XIIB.

History: Add. 1997, Act 163, Eff. July 1, 1998 ;-- Am. 2000, Act 46, Imd. Eff. Mar. 27, 2000 ;-- Am. 2004, Act 475, Imd. Eff. Dec. 28, 2004 ;-- Am. 2008, Act 201, Imd. Eff. July 11, 2008 ;-- Am. 2024, Act 73, Imd. Eff. July 8, 2024

Popular Name: Probate Code

Popular Name: Juvenile Code