Module 4: Handling Requests to Transfer Jurisdiction

Module 4: Handling Requests to Transfer Jurisdiction
- Procedures for Request
- Criteria
- Criteria – Good Cause to Deny Transfer
- Procedures for Transfer

This module is important to ensure that Tribes obtain jurisdiction upon request, as the Act provides, and that everyone knows what court will be handling the proceedings.

Module 4: Handling Requests to Transfer Jurisdiction
Procedures for Request

- Procedures for requests to transfer jurisdiction – applicable to:
  - Involuntary foster-care proceedings
  - Involuntary TPR proceedings
- Who may request a transfer to Tribal jurisdiction of a foster-care or TPR proceeding?
  - Either parent,
  - the Indian custodian, or
  - the Indian child's Tribe
- When may they request a transfer?
  - At any stage and at any time, orally on the record or in writing, in each foster-care or TPR proceeding

Module 4: Handling Requests to Transfer Jurisdiction
Procedures for Request

- Upon receipt of a transfer petition from the parent or Indian custodian:
  - The State court must ensure that the Tribal court is promptly notified in writing of the transfer petition
  - This notification may request a timely response regarding whether the Tribal court wishes to decline the transfer

Module 4: Handling Requests to Transfer Jurisdiction Criteria

- **Criteria for Review of a Transfer Petition**
  - State court **must** transfer the child-custody proceeding unless the court determines that transfer is not appropriate because one or more of the following criteria are met:
    - Either parent objects to such transfer;
    - The Tribal court declines the transfer; or
    - Good cause exists for denying the transfer

Module 4: Handling Requests to Transfer Jurisdiction
Criteria – Good Cause to Deny

- **Good Cause to Deny Transfer**
  - Reasons for the belief or assertion that good cause to deny transfer exists must be stated orally on the record or provided in writing on the record and to the parties to the child-custody proceeding
  - Any party to the child-custody proceeding must have the opportunity to provide the court with views on whether good cause exists
  - The basis for any State-court decision to deny transfer should be stated orally on the record or in a written order

Module 4: Handling Requests to Transfer Jurisdiction Criteria – Good Cause to Deny

- The court must not consider the following in determining whether there is good cause to deny transfer:
  - Whether the proceeding is at an advanced stage, if the Indian child's parent, Indian custodian, or Tribe did not receive notice of the child-custody proceeding until an advanced stage;
  - Whether there have been prior proceedings involving the child for which no petition to transfer was filed;
  - Whether transfer could affect the placement of the child;
  - The Indian child's cultural connections with the Tribe or its reservation; or
  - Socioeconomic conditions or any negative perception of Tribal or BIA social services or judicial systems

Module 4: Handling Requests to Transfer Jurisdiction Procedures for Transfer

- If the Tribal court accepts the transfer, the State court should:
  - Expeditiously provide the Tribal court with all records related to the proceeding, including, but not limited to, the pleadings and any court record; and
  - Work with the Tribal court to ensure that the transfer of the custody of the Indian child and of the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family

Module 4: Handling Requests to Transfer Jurisdiction
Key Points to Remember

- Either parent (or the Indian custodian) or the Tribe may request a foster-care or TPR proceeding be transferred to Tribal jurisdiction at any stage and at any time, orally on the record or in writing

- The court must transfer the proceeding unless:
  - Either parent objects to such transfer;
  - The Tribal court declines the transfer; or
  - Good cause exists for denying the transfer.

- There are limits on what can be considered "good cause" to deny transfer listed in the BIA rule
  - Transfer is a jurisdictional question, rather than a substantive one