

	<b>INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY</b>	
	<b>Chapter 2:</b> Administration of Child Welfare	<b>Effective Date:</b> June 1, 2021
	<b>Section 12:</b> Administration of the Indian Child Welfare Act (ICWA)	<b>Version:</b> 8

**POLICY OVERVIEW**

The Indian Child Welfare Act (ICWA) of 1978 was enacted by Congress to ensure that agencies meet the cultural needs of Indian children and to protect the continued existence and integrity of Indian tribes. ICWA provides heightened protection for Indian families, and it gives the Indian child's parent or custodian and the tribe the right to intervene or request transfer to their tribal court in any state proceedings involving an Indian child.

**PROCEDURE**

The Indiana Department of Child Services (DCS) shall take measures to ensure any child who is a member or eligible for membership of a federally recognized Indian tribe is afforded all rights under ICWA. DCS will comply with all rules, regulations, and laws governing ICWA. DCS will make an active effort to identify those children and families subject to the Act and apply active efforts when developing interventions, providing services, engaging the family, and in all aspects of DCS involvement.

DCS will begin utilizing active efforts immediately upon learning of the possible formal or informal involvement with an Indian child. DCS will make ongoing efforts to determine if a child is a member of an Indian tribe or eligible for membership in an Indian tribe. Active efforts will continue throughout DCS involvement with the child and family.

Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent 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 are to be tailored to the facts and circumstances of the case and may include, for example:

1. Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
2. Identifying appropriate services and helping the parent to overcome barriers, including actively assisting the parent in obtaining such services;
3. 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 Child and Family Team (CFT) Meetings, permanency planning, and resolution of placement issues;
4. 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 parent;

5. Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;
6. Taking steps to keep siblings together whenever possible;
7. Supporting regular visits between the child and the child's parent or Indian custodian 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;
8. Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parent or, when appropriate, the child's family, in utilizing and accessing those resources;
9. Monitoring progress and participation in services;
10. Considering alternative ways to address the needs of the Indian child's parent and, where appropriate, the family, if the optimum services do not exist or are not available;
11. Providing post-reunification services and monitoring.

DCS is subject to and complies with the provisions of ICWA for a child who is a member or eligible for membership of any federally recognized tribe. The Pokagon Band of Potawatomi Indians maintains tribal land in Indiana. See 2.B Tool: Disposition of CA/N Reports Involving an Indian Child of the Pokagon Band of Potawatomi Indians for information specific to disposition of reports involving a member of this tribe.

DCS will notify the child's parent, Indian custodian, and Indian tribe when there is an action pending regarding parental rights involving a child who is, or is believed to be, a member or eligible for membership in an Indian tribe. DCS will also send a copy of the notice to the appropriate Area Director of the Bureau of Indian Affairs (BIA).

DCS will provide notification of each court proceeding to the child's parent, Indian custodian, and Indian tribe. All notices will be sent by registered or certified mail, return receipt requested, and DCS will not make a foster care placement or hold a Termination of Parental Rights (TPR) proceeding until at least **10 calendar days** after receipt of notice by the parent, Indian custodian, and the tribe or the United States (U.S.) Secretary of the Interior. The parent, Indian custodian, and the tribe may, upon request, be granted up to an additional **20 calendar days** to prepare for the proceeding.

**Exception:** If there is an imminent risk of physical harm, DCS may detain an Indian child in order to prevent imminent physical damage or harm to the child but must provide the notifications addressed above. Once the emergency no longer exists and the child is no longer at risk of imminent physical harm, the child must be returned home. This temporary custody timeframe without a hearing shall only last 30 calendar days. The emergency removal process does not authorize DCS to remove a child from a reservation where a tribe exercises exclusive jurisdiction (see the Guidelines for Implementing the Indian Child Welfare Act).

If a consent for Voluntary TPR or adoption is withdrawn, with court approval, the Indian child shall be immediately returned to the parent or Indian custodian. After a final Decree of Adoption is entered, based on a voluntary consent, the parent may petition the court to vacate the adoption decree based on fraud or duress. Upon a finding that consent was obtained through fraud or duress, the court shall vacate the adoption decree and return the child to the parent; however, no adoption that has been in effect for at least two (2) years may be challenged on

this basis. A consent given prior to or within 10 calendar days after the birth of the Indian child is not valid. If a final Decree of Adoption is ever vacated, set aside, or the adoptive parents voluntarily consent to termination of their parental rights, the Indian child shall be returned to the biological parent or prior Indian custodian unless the court determines returning the child is not in the best interest of the child.

**Note:** In all of these situations when the child is immediately returned home, if all of the reasons for removal are still present and removal is necessary to prevent imminent physical damage or harm to the child, then the child should be immediately detained again and a detention hearing that meets ICWA requirements must be held.

Preference for placement of an Indian child must be given in the following order to:

1. A member of the 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, which has a program suitable to meet the Indian child's needs.

**Note:** Foster care placement may not be ordered in proceedings involving an ICWA child in the absence of a determination, supported by clear and convincing evidence (including testimony of Qualified Expert Witnesses [QEW]) 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.

DCS will follow established procedures for the transfer of responsibility for the placement and care of a child to a Tribal Title IV-E agency or Indian Tribe with a Title IV-E agreement (see 2.A Tool: Procedure for Transfer of a Child to a Tribe or Tribal Agency).

Applicability of ICWA depends upon whether the proceedings in question (e.g., Child in Need of Services [CHINS], Detention, or TPR) involve an "Indian child" within the definition utilized in 25 U.S.C. §1903(4). To promote early identification of ICWA applicability and to ensure compliance with ICWA requirements, DCS shall use due diligence to determine whether ICWA procedures may apply to the case by inquiring whether there is a reason to believe the child is an Indian child:

1. Prior to any initial removal from the parents;
2. At any detention hearing;
3. Prior to any change in foster care placement;
4. Prior to any adoptive placement;
5. At review hearings and at permanency hearings; and
6. Prior to the filing of any TPR petition.

In the event that a tribe does not formally intervene in a DCS case, DCS is still subject to the provisions of ICWA. The tribe has the right to intervene at any time during the course of DCS involvement.

The Family Case Manager (FCM) will:

1. Ask the child (if age appropriate) and family if the child and/or family are of Indian heritage or if the child is eligible for membership in an Indian tribe during the initial contact, prior to a change in foster care placement, and prior to any adoptive placement;

2. Obtain information from the child (if age appropriate) and family regarding the tribe if the parent or Indian custodian indicates tribal membership or if there is reason to believe the child is eligible for membership of an Indian tribe;
3. Complete the Indian Status Identification and genogram if the child is involved in any current legal actions;
4. Document the tribal identity of the child in the case management system, by selecting the Indian Tribe from the list;
5. Complete the required verification of tribal membership or eligibility by selecting the type of verification, uploading a copy of the verification, and providing the date of verification in the case management system. If the family does not have verification of tribal membership, select pending verification;
6. Provide the Indian Status Identification and genogram to the FCM Supervisor for review and forward to the DCS Staff Attorney before proceeding with the steps below;
7. Verify the tribal identity of the child in the case management system after tribal confirmation. If the tribal confirmation is different from what was originally reported, correct the tribal verification in the case management system along with the date of verification;
8. Complete a referral to the International and Cultural Affairs (ICA) liaison for state tracking purposes and to assist with any ICWA related questions or concerns (see the Focused Needs and International and Cultural Affairs [ICA] webpage);
9. Continue to review the Indian Status Identification with the family throughout the life of the case;
10. Provide relatives with written notice of the removal using form Notice to Relatives within 30 calendar days of the removal (see policy 4.28 Involuntary Removals);
11. Inform the International and Cultural Affairs Liaison when an Indian child's tribal membership is determined; and
12. Document all actions taken in the case management system.

The FCM Supervisor will:

1. Ensure the FCM asks each child and family member about membership in an Indian tribe or eligibility for membership;
2. Ensure the Indian Status Identification and genogram are completed prior to forwarding to the DCS Staff Attorney; and
3. Assist the FCM to ensure adherence to ICWA.

The DCS Staff Attorney will:

1. Review the Indian Status Identification upon receipt to ensure it is complete;
2. Obtain the address for the ICWA Designated Tribal Agents for Service of Notice on the U.S. Department of the Interior- Indian Affairs webpage;
3. Notify the Indian tribe immediately of the pending proceeding in Indiana involving an Indian child;
4. Complete and send the ICWA Notification (a template may be found on Quest) by certified mail, with return receipt requested, to the Indian child's parents or custodian and the tribe;
5. Send copies of the notification, via mail, to the Midwest Regional Director of BIA and the U.S. Secretary of the Interior. If contact information cannot be found for the child's parent, Indian custodian, or Indian tribe, and there is reason to believe the child is an Indian child, the ICWA Notification must be sent by registered or certified mail, with return receipt requested, to the Midwest Regional Director of the BIA (see the U.S. Department of the Interior- Indian Affairs webpage for more information). The BIA will not

make a determination of tribal membership, but may be able to identify tribes for DCS to contact;

**Note:** Any hearings regarding placement, including prospective placement, may not be held until **10 calendar days** after the latest receipt by the parent, custodian, tribe, and Midwest Regional Director of the BIA.

6. Notify the FCM of the child's tribal eligibility following confirmation from the Indian tribe; and
7. Notify, in writing, all tribes which received notice of the child custody proceeding once an Indian tribe has been designated as the child's Indian tribe. File a copy of the document with the court and send to all parties to the proceeding and each person or governmental agency that received notice of the proceeding. Notices should also be sent in voluntary proceedings.

## LEGAL REFERENCES

- [25 U.S.C. §1903\(4\): Definitions: "Indian Child"](#)
- [25 U.S.C. §1911: Indian tribe jurisdiction over Indian child custody proceedings](#)
- [25 U.S.C. § 1912 \(e\): Pending Court Proceedings: Foster Care Placement Orders; Evidence; Determination of Damage to Child](#)
- [25 U.S.C. §1913: Parental rights; voluntary termination](#)
- [25 U.S.C. §1915: Placement of Indian children](#)
- [25 U.S.C. §1916: Return of custody](#)
- [25 U.S.C. §1922: Emergency removal or placement of child; termination; appropriate action](#)
- [42 U.S.C. §671 \(a\) 15: State plan for foster care and adoption assistance: Requisite features of State plan](#)
- [43 USC §1602\(c\): Definitions: "Native village"](#)
- [25 C.F.R §23: Indian Child Welfare Act](#)
- [25 C.F.R. §23.2: Definitions](#)
- [25 C.F.R. §23.11: Notice](#)
- [25 C.F.R. §23.113: What are the standards for emergency proceedings involving an Indian child?](#)

## RELEVANT INFORMATION

### **Definitions**

#### Active Efforts

In relation to ICWA, active efforts are affirmative, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with the child's family.

#### Adoptive placement

An adoptive placement is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

#### Foster Care Placement

A foster care placement is any action removing a child from the child's parent or Indian custodian for temporary placement in a foster home, institution, or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand,

although parental rights have not been terminated (see Guidelines for Implementing the Indian Child Welfare Act).

### Indian Child

An Indian child is any unmarried person who is under 18 years of age and is either:

1. A member of an Indian tribe; or
2. Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

### Indian Tribe

An Indian tribe is any tribe, band, nation, or other organized group or community of Indians who are U.S. Secretary of the Interior because of their status as Indians, including any Alaska Native villages.

### Pre-adoptive Placement

A pre-adoptive placement is the temporary placement of an Indian child in a foster home or institution after TPR, but prior to or in lieu of an adoptive placement.

### Qualified Expert Witness (QEW)

A QEW is an individual who is able to testify as to whether the Indian child's continued custody by the parents is likely to result in serious emotional or physical damage to the Indian child and should be qualified to testify to the prevailing social and cultural standards of the Indian child's tribe.

### Termination of Parental Rights (TPR)

TPR is any action resulting in the termination of the parent-child relationship.

### **Forms and Tools**

- [2.A Tool: Procedure for Transfer of a Child to a Tribe or Tribal Agency](#)
- [2.B Tool: Disposition of CA/N Reports Involving an Indian Child of the Pokagon Band of Potawatomi Indians](#)
- [Bureau of Indian Affairs \(BIA\) Active Efforts Reference Sheet](#)
- [Focused Needs and International and Cultural Affairs \(ICA\)](#)
- [Guidelines for Implementing the Indian Child Welfare Act](#)
- [ICWA Notification- Legal document](#)
- [Indian Status Identification Form \(SF 55407\)](#)
- [International and Cultural Affairs mailbox](#)
- [Midwest Regional Office of Bureau of Indian Affairs](#)
- [Notice to Relatives \(SF 55211\)](#)
- [Pokagon Band Family Services Supervisor](#)
- [US Department of the Interior- Indian Affairs](#)

### **Related Policies**

- [4.28 Removals from Parents, Guardians, or Custodians](#)