

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY	
	Chapter 2: Administration of Child Welfare	Effective Date: November 1, 2019
	Section 12: Indian Child Welfare Act (ICWA)	Version: 7

STATEMENTS OF PURPOSE

The Indiana Department of Child Services (DCS) shall take measures to ensure any child who is a member of a federally recognized Indian tribe is afforded all rights under the Indian Child Welfare Act (ICWA).

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. 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 all aspects of DCS involvement.

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). If DCS is unable to identify or locate the parent, Indian custodian, or the Indian tribe, DCS will send the ICWA notification to the appropriate Area Director of the BIA for assistance and the United States (U.S.) Secretary of the Interior (see www.bia.gov and [Procedure](#) for more information).

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 days** after receipt of notice by the parent, Indian custodian, and the tribe or the U.S. Secretary of the Interior. The parent, Indian custodian and the tribe may, upon request, be granted up to **20 additional days** to prepare for the proceeding (see [Procedure](#) for more information).

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 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](#) for more information and guidance.

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 (Child in Need of Services [CHINS], Detention, TPR, etc.) 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.

Code References

1. [25 U.S.C. §1903\(4\): Indian Child Welfare Definitions](#)
2. [25 U.S.C. §1911: Indian tribe jurisdiction over Indian child proceedings](#)
3. [25 U.S.C. § 1912 \(e\): Pending Court Proceedings](#)
4. [25 U.S.C. §1913: Parental rights; voluntary termination](#)
5. [25 U.S.C. §1915: Placement of Indian children](#)
6. [25 U.S.C. §1916: Return of custody](#)
7. [25 U.S.C. §1922: Emergency removal or placement of child; termination; appropriate action](#)
8. [43 U.S.C. 1602 \(c\)](#).
9. [25 C.F.R. §23.2: Definitions](#)
10. [25 C.F.R. §23.11: Notice](#)
11. [25 C.F.R. §23: ICWA Proceedings \(Final Rule\)](#)

PROCEDURE

The Family Case Manager (FCM) will:

1. During the initial contact, 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;
2. Engage child (if age appropriate) and the family to obtain information regarding the tribe if the parent or Indian custodian indicates he or she is a member of an Indian tribe or the child is eligible for membership, and complete the [Indian Status Identification \(SF 55407\)](#) and genogram if the child is involved in any current legal actions;
3. Document the tribal identity of the child in the case management system, by selecting the Indian Tribe from the list;
4. 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;
5. Provide the [Indian Status Identification \(SF 55407\)](#) and genogram to the FCM Supervisor for review and forward to the DCS Staff Attorney before proceeding with the steps below;
6. Document 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.
7. Complete a Permanency and Practice Support (PPS) referral in KidTraks to the International and Cultural Affairs (ICA) liaison for state tracking purposes and to assist with any ICWA related questions or concerns; and
8. Continue to review the [Indian Status Identification \(SF 55407\)](#) with the family throughout the life of the case.
9. Provide relatives with written notice of the removal using form [Notice to Relatives \(SF 55211\)](#) within 30 days of the removal. See policy [4.28 Involuntary Removals](#) for additional information.

The FCM Supervisor will:

1. Ensure the FCM asks each child and family member if he or she is a member of an Indian tribe or eligible for membership;
2. Ensure the [Indian Status Identification \(SF 55407\)](#) 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 \(SF 55407\)](#) upon receipt to ensure it is complete;
2. Obtain the address for ICWA Designated Tribal Agents for Service of Notice at www.bia.gov/WhoWeAre/BIA/OIS/HumanServices/IndianChildWelfareAct/index.htm
3. Notify the Indian tribe immediately that there is a 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 Bureau of Indian Affairs and the [U.S. Secretary of the Interior](#);

Note: 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 Bureau of Indian Affairs. The BIA **will not** make a determination of tribal membership, but may be able to identify tribes for DCS to contact. Any hearings regarding placement, including prospective placement, may not be held until **10 days** after the latest receipt by the parent, custodian, tribe, and Midwest Regional Director of the Bureau of Indian Affairs.

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 that document with the court, and send the document to each party to the proceeding and each person or governmental agency that received notice of the proceeding. Notices should also be sent in voluntary proceedings.

PRACTICE GUIDANCE

Guidelines for Implementing the Indian Child Welfare Act:

The FCM should engage every child (if age appropriate) and/or family in a discussion to determine if the child and/or family are of Indian heritage or if the child is eligible for membership in an Indian tribe. The BIA provides guidelines for State Courts and Child Welfare Agencies when implementing ICWA. See current [Guidelines for Implementing the Indian Child Welfare Act](#) for more information. The guidelines suggest that DCS should ask, in every child custody proceeding, "Is this child an Indian child?". Even if the child is not an enrolled member, DCS should also ask, "Is this child eligible for membership?". Whether or not a child is an Indian child, for purposes of ICWA, must be determined by the tribe of membership and federal law, and is not an arbitrary label assigned at the discretion of the parent. The tribe alone retains the responsibility to determine tribal membership. An Indian child does not have to be enrolled to be considered a member. See www.bia.gov for further information. If additional questions arise, you may contact the [Midwest Regional Office of Bureau of Indian Affairs](#).

FORMS AND TOOLS

1. [ICWA Notification](#) – Legal document
2. [Indian Status Identification Form \(SF 55407\)](#)
3. [Notice to Relatives \(SF 55211\)](#)
4. [2.A Tool: Procedure for Transfer of a Child to a Tribe or Tribal Agency](#)

RELATED INFORMATION

International and Cultural Affairs (ICA) Resources

ICA information is available on the [Permanency and Practice Support SharePoint](#). This information includes several helpful documents and information regarding all services provided by ICA. [The Permanency and Practice Support SharePoint](#) serves as a resource for FCMs and other DCS staff seeking information to help improve services to multicultural populations and families (e.g., immigrant; tribal; sensory-impaired; Lesbian, Gay, Bi-Sexual, Transgender, Questioning [LGBTQ]; and members of the military) by honoring the diversity of cultures and perspectives constituting the Indiana child welfare population. An email inbox is available to obtain guidance from an ICA liaison (Internationalandculturalaffairs@dcs.in.gov).

Indian Child Welfare Act (ICWA)

The Indian Child Welfare Act of 1978 was initially 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 of any state proceedings involving an Indian child.

Active Efforts

Active efforts are intended primarily to maintain and reunite an Indian child with his or her family or tribal community and constitute more than reasonable efforts as required by Title IV-E of the Social Security Act [[42 U.S.C. 671\(a\)\(15\)](#)]. [Active efforts](#) are: affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. [Active efforts](#) must be documented in detail in the child's record. [Active efforts](#) Quick Reference Sheet can be located at [Bureau of Indian Affairs \(BIA\) Active Efforts Reference Sheet](#).

Qualified Expert Witness (QEW)

The regulations stipulate that a [QEW](#) must be able to testify 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. The regulations also state that the Indian child's tribe may designate a QEW and that a state social worker assigned to the Indian child may not serve as a [QEW](#).

Pokagon Band of Potawatomi Indians

The Pokagon Band of Potawatomi Indians is a federally recognized tribe with headquarters in Michigan. The Pokagon members, and the Pokagon Band maintains sovereign land in Indiana within St. Joseph County. If a case involving an Indian child identifying as a member of the Pokagon Band of Potawatomi Indians comes to the attention of DCS, contact the [Pokagon Band Family Services Supervisor](#).

Indian Tribe Membership and Eligibility

If the child is a member of a tribe or eligible for membership in a tribe, the family, the Indian custodian, and the tribe have rights under ICWA. These rights apply to any child protection action, adoption, guardianship, TPR, runaway, or truancy matter regarding the involvement and/or placement of an Indian child (e.g., foster care placements, prospective adoptive placements, adoptive placements, voluntary and involuntary placements, transfers of placement, and placements due to failed adoptions). Below are definitions that apply to cases

involving a child who is a member of a U.S federally recognized tribe or eligible for membership in a U.S. federally recognized tribe:

1. "Foster care placement" is any action removing a child from his or her 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 [ICWA Guidelines 2016](#) for further information.
2. "Termination of parental rights" is any action resulting in the termination of the parent-child relationship.
3. "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;
4. "Adoptive placement" is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption;
5. "Indian Child" is any unmarried person who is under age 18 and is either:
 - a. A member of an Indian tribe; or
 - b. Eligible for membership in an Indian tribe **and** the biological child of a member of an Indian tribe.
6. "Indian Tribe" is any Indian tribe, band, nation, or other organized group or community of Indians who are U.S. federally 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 [43 U.S.C. 1602 \(c\)](#). In the case of an Indian child who is a member or eligible for membership in more than one (1) tribe, ICWA establishes that one (1) tribe must be designated as the "Indian child's tribe". See [ICWA Guidelines 2016](#) for further information.

ICWA Protection for Parents and Indian Custodians

ICWA provides several protections for parents or Indian custodians of an Indian child. These protections include the right to revoke voluntary consents to placements and adoptions at any time prior to a decree of voluntary termination or adoption, whichever occurs later. If a consent is withdrawn, the Indian child shall, with court approval, 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 in effect for at least two (2) years may be challenged on this basis. **A consent given prior to or within 10 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.