

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY	
	Chapter 2: Administration of Child Welfare Section 12: Administration of the Indian Child Welfare Act	
	Effective Date: January 1, 2026	Version: 10

POLICY OVERVIEW

Indiana Child Welfare Act (ICWA) is a law made in 1978 to help protect Native American children and their families. It makes sure people who work with children respect Native traditions and try to keep Native families and tribes together. If a Native American child is in a court case, the child’s parents or tribe can help or ask to move the case to a tribal court. If a tribe takes care of the child, the Department of Child Services (DCS) will follow special steps to make sure things are done the right way.

POLICY STATEMENT

DCS makes sure that Native American children get the rights they have under the ICWA law. This includes children who are already part of a tribe or could join one. DCS follows all the rules of ICWA. DCS will help these children and their families by working to give them support, services, and ways to stay connected with their family.

ICWA is a law that helps Native American children. It is used in court cases like CHINS, Detention, or Termination of Parental Rights (TPR) when the child is a Native American, as defined by federal law. To follow this law, DCS works with the family to find out if the child is Native American and if ICWA should be used. DCS will look at different situations to decide if the law applies:

1. Prior to 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.

Even if a tribe does not officially intervene in a DCS case, DCS must follow ICWA laws. The tribe is allowed to intervene at any time while DCS is involved with the child and family.

When a Native American child is part of a custody case, DCS must help the child’s parents or caregivers follow their custody plan. This help is called “active efforts.” It means the support should match the tribe’s way of life and traditions. DCS should work closely with the tribe, the child, child’s family, and other important people in the child’s.

DCS follows all the rules of ICWA when helping a child who is a member of, or could become a member of, a federally recognized tribe. One of these tribes, the Pokagon Band of Potawatomi Indians, has tribal land in Indiana.

If there is a legal case about a Native American child's parental rights, DCS will let the child's parent, Indian caregiver, and tribe know. DCS will also send a copy of this notice to the right Area Director at the Bureau of Indian Affairs (BIA).

DCS must send notice of each court proceeding to the child's parent, Indian custodian, and Indian tribe. These notices will be sent by registered or certified mail, with a return receipt requested. DCS will not make a foster care placement or hold a 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. If requested, the parent, Indian custodian, or tribe may, be given up to an additional 20 calendar days to prepare for the proceeding.

Exception: If a Native American child's safety is in danger, DCS can step in to keep the child safe. But they must still send special notices to the child's parent, caregiver, and tribe, as described above. Once the danger is gone, the child must go back home. This emergency help can only last up to 30 days if there's no court hearing. DCS is not allowed to take a child from tribal land where the tribe is in charge.

If a parent or caregiver granted permission for adoption but later changes their mind, the child must go back to them, if the court agrees. If adoption has already been granted, the parent can ask the court to rescind the adoption decree if they feel they were tricked or pressured. If the court agrees, the child must go back to the parent. But this can only happen if the adoption is less than 2 years old.

Note: If the child goes back home, but the same dangers that caused the removal still exist, DCS must take action to protect the child again right away. In that case, a court hearing that follows ICWA rules must be held.

Also:

1. A consent signed before or within 10 days after the child's birth is not valid.
2. If the adoption ends for any reason, like the court cancels it or the adoptive parents give up their rights, the child must be returned to the biological parent or the Indian caregiver unless the court decides this would harm the child.

When placing a Native American child in foster care, the following order must be followed:

1. **First**, with a member of the child's extended family.
2. **Second**, in a foster home that the child's tribe has chosen.
3. **Third**, in a foster home for Native American children, approved by a licensed non-tribal group.
4. **Fourth**, in a group home or children's institution that is approved by a tribe or run by a Native organization and can meet the child's needs.

Note: A court cannot place a Native American child in foster care unless there is proof, such as expert testimony, that staying with the parent or Indian caregiver would likely cause serious emotional or physical harm to the child.

LEGAL REFERENCES

- [IC 31-9-2-58.4: "Indian child"](#)
- [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?](#)