

SPECIALIZED CHILD WELFARE SUBJECT MATTER

Native American Families

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Policy

There are federally recognized tribes in Connecticut, as well as in surrounding states. At the outset of any case, the Social Worker shall inquire whether there is any possibility of Native American heritage and shall document the response in the electronic record.

Federally recognized Native American tribes have certain rights separate and distinct from the rights of the parents, including the right to intervene in child protection cases that involve Indian children.

The Social Worker shall immediately consult with the Area Office attorney or Assistant Attorney General if informed that it is possible that a family has Native American heritage so that proper legal notice can be provided to the tribe.

It is the tribe's role, and not the Department's, to determine whether a child meets the tribe's eligibility criteria.

Legal Basis

The Indian Child Welfare Act (ICWA) is a federal law enacted in 1978 in response to the disproportionate number of children removed from Native American families and tribes. Its purpose is to protect the best interests of Native American children and to promote the stability and security of Native American tribes and families.

Legal Reference: 25 U.S.C. 1901 et seq. and ICWA regulations: 25 CFR part 23.

Qualifications for Protection Under ICWA

In order for a Native American family and/or tribe to qualify for the protections afforded under ICWA, the child who is the subject of a court petition must be:

- An unmarried person;
- under age 18; and either:
 - a member or citizen of an Indian Tribe; or
 - eligible for membership or citizenship in an Indian Tribe and is the biological child of a member/citizen of an Indian Tribe

Note: The provisions of this section do not apply in cases in which the associated tribe is not federally recognized.

Cases Covered by ICWA

ICWA applies to the following types of court cases:

- neglect and other similar issues which may result in foster care;
- termination of parental rights;
- guardianships; and
- adoptions.

Note: ICWA applies in these cases even if the parents are consenting to out-of-home placement.

ICWA does not apply to the divorce or custody actions.

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Determining if the child is an Indian Child

The Social Worker shall make diligent efforts to identify if a child is a member of a tribe or may be eligible for membership in a tribe.

The Social Worker shall inquire of each parent, and the child if applicable, as to their Native American Ancestry.

Sometimes, the child or parent may not be certain of their citizenship status in an Indian Tribe but may indicate they are somehow affiliated with a Tribe or group of Tribes. In these circumstances, the Social Worker shall ask the parent and, potentially, extended family what Tribe or Tribal ancestral group the parent may be affiliated with. If a specific Tribe is indicated, notice shall be sent in accordance with this policy.

If DCF is unsure that it has contacted all the relevant Tribes, or needs other assistance in identifying the appropriate Tribes, DCF shall contact the BIA Regional Office for direction.

Note: If during the pendency of the case, DCF obtains new information which suggests the child may be tribal eligible, notice shall be immediately provided as required below.

Notice to the Tribe

It is recommended that in addition to the formal notice, the Social Worker contact by telephone and/or email, the Tribal ICWA agent, as listed in BIA's most recent list of designated Tribal agents for service of ICWA notice (available on www.bia.gov and published annually in the Federal Register).

For any child who the Department knows is an Indian Child or for whom DCF has information that gives reason to believe the child may be Tribal eligible, DCF shall provide written notice when:

- filing Neglect/Uncared for Petitions, and
- filing Termination of Parental Rights Petitions.

The notice requires certain information specified by federal law. The Social Worker shall consult with the Legal Division on the appropriate format.

The required notice shall be sent by registered or certified mail with return receipt requested to the applicable federally-recognized tribe(s) itself. A copy of the notice shall be sent via registered or certified mail with return receipt requested to:

- each parent;
 - any Native American person who is custodian of the child; and
 - Eastern Regional Director, BIA, 545 Marriott Drive, Suite 700, Nashville TN 37214.
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Jurisdiction

Federally recognized tribes have exclusive jurisdiction over children who reside on the tribal reservation. Neither the Department nor the juvenile court has any jurisdiction over children who reside on the reservation of a federally recognized tribe unless specifically agreed to by the tribe.

In cases in which an Indian child does not reside on the reservation of a federally recognized tribe, the juvenile court may exercise jurisdiction subject to a transfer to a tribal court.

A request from a tribe or Native American party to transfer a case to tribal court must be granted by the Juvenile Court unless:

- a parent objects;
- the tribal court declines to accept jurisdiction; or
- the court finds good cause not to transfer.
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Good cause exists when:

- the tribe has no court;
- the proceeding is in an advanced stage and the party requesting the transfer delayed making the request after receiving the required notice;
- presentation of evidence in tribal court would cause undue hardship to the parties or witnesses;
- the child who is the subject of the litigation is over twelve (12) years of age and objects to the transfer; or
- the child who is the subject of the litigation is over five (5) years of age, has had little contact with the tribe, and his or her parents are unavailable.

Note: The DCF has existing agreements with the Mashantucket Pequot Tribal Nation and the Mohegan Tribe.

Burdens of Proof

For neglect cases, the Department must prove the following:

- the child has been neglected by clear and convincing evidence (as opposed to a fair preponderance of evidence); and
- continued custody of the child by the parent or Native American custodian is likely to result in serious emotional or physical damage to child.

In all cases, the Department must present expert testimony from someone knowledgeable about tribal customs. Poverty, alcohol abuse, or non-conforming behaviors are not grounds for the removal of a Native American child from his or her home.

In all cases, the court must be satisfied that active efforts were made to provide remedial services and rehabilitative programs to prevent the breakup of the family and that such efforts were unsuccessful.

See ICWA regulations: 25 CFR part 23 for information as to the definition of Active Efforts.

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Burdens of Proof

In cases of consensual out-of-home placement or consensual termination the following applies:

- the consent must be executed in the presence of a judge;
- the judge must issue a certificate stating that certain criteria have been met;
- the parent or custodian may withdraw the consent at any time prior to a final decree of termination; and
- an adoption may be vacated within two years on the grounds of fraud or duress.

In cases where a Native American child is placed out of home, federal law requires that the following preferred placements be utilized, in this order, whenever possible:

- extended family members;
- a foster home approved by the tribe;
- a licensed Native American foster home; or
- an approved Native American institution.

In determining which preferred placement is appropriate, the Department and the court must consider the following criteria:

- the proposed placement is the least restrictive setting;
- the proposed placement is within reasonable proximity to the child's home;
- the child's special needs;
- preference of the parents; and
- parent's request for anonymity.

Note: ICWA permits the federally recognized tribe to establish a different preference order at its discretion. All other exceptions must be for good cause.

Adoptions of Indian Children

Any State court or DCF, must furnish a copy of the final adoption decree or order within 30 days to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW., Mail Stop 4513 MIB, Washington, DC 20240, along with the following information, in an envelope marked "Confidential":

- birth name and birthdate of the Indian child, and Tribal affiliation and name of the Indian child after adoption;
- names and addresses of the biological parents;
- names and addresses of the adoptive parents;
- name and contact information for any agency having files or information relating to the adoption;
- any affidavit signed by the biological parent or parents asking that their identity remain confidential; and
- Any information relating to Tribal membership or eligibility for Tribal membership of the adopted child.

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Adoptions of Indian Children (continued)

If an Indian child has been adopted, the court must notify, by registered or certified mail with return receipt requested, the child's biological parent or prior Indian custodian and the Indian child's Tribe whenever:

- a final decree of adoption of the Indian child has been vacated or set aside; or
- the adoptive parent has voluntarily consented to the termination of his or her parental rights to the child.

In the particular circumstances where an adoption is vacated or set aside, or the adoptive parent voluntarily consents to TPR, the statute provides certain rights to the biological parent or prior Indian custodian.

Upon application by an Indian Child who has reached age 18 who was the subject of an adoptive placement, the court that entered the final decree of adoption must inform such individual of the Tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights, which may include Tribal membership, resulting from the individual's Tribal relationship.

BIA is adding information to its website (www.bia.gov) to assist adult adoptees who are looking to reconnect with their Tribes.
