

Chapter 15

REPORTS AND SERVICES INVOLVING AMERICAN INDIAN CHILDREN

15-1. Purpose. This operating procedure describes the requirements for identifying, documenting, and reporting actions relating to American Indian and Alaskan Native children. When working with a family who is American Indian, the Indian Child Welfare Act and federal regulations must be followed. This operating procedure provides the processes to be used by child protective investigators and case managers.

15-2. Scope. This operating procedure is applicable to all regions and to all child protective investigations, in-home and out-of-home care case management, and legal staff involved in shelter, placement, and case planning for children.

15-3. References. Policy and procedure regarding federal mandates relating to the Indian Child Welfare Act of 1978, 25 United States Code (U.S.C.) 1901 et seq. (Public Law 95-608) are as follows:

- a. 45 Code of Federal Regulations (CFR) Parts 1355 and 1356, Tribal Child Welfare.
- b. 25 CFR § 23, Indian Child Welfare Act Federal Regulations.
- c. Section [39.0137](#), Florida Statutes (F.S.).
- d. Section [39.012](#), F.S.
- e. Section [39.0121](#), F.S.
- f. Chapter [65C-28](#), Florida Administrative Code (F.A.C.).
- g. Chapter [65C-29](#), F.A.C.
- h. Chapter [65C-30](#), F.A.C.

15-4. Definitions. For the purposes of this operating procedure, the following definitions shall apply:

a. Active Efforts. Means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child custody proceeding, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To maximize to the 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 tribe and should be conducted in partnership with the Indian child, Indian child's parents, extended family, Indian custodians, and tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include examples listed under the definition of "active efforts" in 25 CFR § 23.2.

b. Child Custody Proceedings. Means and includes any actions that may culminate in one of the following outcomes:

- (1) Foster-care placement;
- (2) Termination of parental rights;
- (3) Guardianship;

(4) Pre-adoptive placement (includes conversion from foster care to adoptive placement);

(5) Adoptive placement; and,

(6) Custody or Continued custody.

c. Indian Child. Means any unmarried person who is under age 18 and is either a member of a federally recognized Indian tribe or is eligible for membership in an Indian tribe.

d. Indian Child Welfare Act (ICWA). (25 U.S.C. 1901 et seq.) Means the federal act which governs all dependency actions and certain private proceedings involving American Indian or Alaskan Native children who meet the federal criteria for the protections of the Indian Child Welfare Act. These protections apply to voluntary and involuntary placements, but do not apply to divorce proceedings as long as one or the other parent is awarded custody of the child. The Indian Child Welfare Act does not apply to placements resulting from actions committed by a child that would constitute a crime if committed by an adult but do apply to status offenses which are offenses that would not be considered criminal if committed by an adult and are prohibited only because of a person's status as a minor (e.g., truancy, incorrigibility).

e. Indian Custodian. Means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

f. Indian Foster Home. Means a foster home where one or more of the licensed or approved foster parents is an Indian as defined in 25 U.S.C. § 1903(3).

g. Indian Tribe. Means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to American Indians by the Secretary of the United States Department of the Interior, Bureau of Indian Affairs, because of their status as Indians, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688, 689), 43 U.S.C. § 1602(c).

h. Involuntary Proceedings. Means a child-custody proceeding in which the parent does not consent of his or her free will to the foster-care, pre-adoptive, or adoptive placement or termination of parental rights, or in which the parent consents to the foster-care, pre-adoptive, or adoptive placement under threat of removal of the child by a State court or agency.

i. Parent. Means any biological parent or parents of an American Indian child or any American Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the putative father of a child born outside of marriage if paternity has not been acknowledged or established.

j. Reservation. Means American Indian lands, described in federal law as Indian country, and defined as such in 18 U.S.C. § 1151, and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any American Indian tribe or individual or held by any American Indian tribe or individual subject to a restriction by the United States against alienation.

k. Tribal Membership. Usage of a blood quantum generally one-fourth Native American blood and/or tribal membership to recognize an individual as Native American however, each tribe has its own set of requirements.

I. Upon Demand. Means that the parent or Indian custodian can regain custody simply upon verbal request, without any formalities or contingencies.

m. Voluntary Proceedings. Means a child-custody proceeding that is not an involuntary proceeding, such as a proceeding for foster-care, pre-adoptive, or adoptive placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.

15-5. Federal Policy. It is the policy of this nation as set forth in the Indian Child Welfare Act to protect the best interests of American Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

15-6. Involuntary Proceedings.

a. The Department has no authority or jurisdiction on an Indian reservation to remove children unless the Department coordinates with and receives consent from the tribe who has authority and jurisdiction for such removal. The Department does have the authority to respond in circumstances in which the American Indian child does not live on a reservation. However, immediate contact must be made with the Designated Tribal Agent for Service of Notice named in the current Federal Register for the tribe with which the child is enrolled, is a member, or in which the child is eligible for enrollment or membership, consistent with the criteria established by ICWA.

b. Pursuant to Rule [65C-28.013](#), F.A.C., child protective investigators, at the onset of each investigation, must determine a child's eligibility for the protections of the Indian Child Welfare Act which includes completion of form CF-FSP 5323 and document their findings by uploading in the Florida Safe Families Network (FSFN). In situations in which the information is not complete at the time of the Case Transfer Conference or the transfer of the case to ongoing case management, it is the responsibility of the case manager to further explore and complete active efforts to obtain and document the child's status under ICWA.

c. Upon receipt of a report alleging the abuse, neglect, or abandonment of an Indian child, regardless of the location of the child's residence, the Indian tribe must be notified telephonically and the Regional or State Indian Child Welfare Act Specialist must be contacted for information on any agreements that may exist within the state or the region between the Indian tribe and Department. The Regional Indian Child Welfare Act Specialist shall implement a tracking system in order to maintain a record of ICWA cases and to ensure that protocol is followed.

d. The child protective investigator or case manager must ensure that the court is made aware at any point if there is reason to believe that a child is an Indian child. The child must be treated as an Indian child with all of the protections of ICWA applied until the court determines that the child is not an Indian child. Reason to know includes the following factors:

(1) Anyone, including the child, informs the court that the child is an Indian child, or there is information indicating the child is an Indian child.

(2) The domicile or residence of the child or parent/Indian custodian is on a reservation or in an Alaska Native village.

(3) The child is, or has been, a ward of tribal court.

(4) Either parent or the child possesses an identification indicating tribal membership.

e. While court involvement, including emergency removal of Indian children living off the reservation, is permissible, the child's Indian parents, custodians and the tribe must be notified immediately and in writing of the removal or court actions. If the child's tribe is unknown, the Eastern Regional office of the Bureau of Indian Affairs must be contacted to determine the child's tribal enrollment or membership and if the protections of ICWA apply. The notice to the tribe must be in writing. The letter of inquiry and notification to the tribe must be sent to the tribe's Designated Tribal Agent for Service of Notice named in the current Federal Register and must be sent registered or certified mail, return receipt requested. All notifications are provided by Children's Legal Services (CLS). This letter is intended to determine the tribe's interest in assuming jurisdiction, filing a motion to intervene, and/or participating in the case planning activities for the child. If the tribe does not respond to the written notification, Department staff should continue to communicate with the tribe until the tribe either accepts jurisdiction or declines to accept jurisdiction. If the tribe does not assume jurisdiction of the case, the tribe must continue to receive notice of all hearings and staffing's and be kept informed of significant changes in the status of the case. The tribe has the right to assert jurisdiction at any time. Tribes must be given the opportunity to be heard at proceedings involving the child. The formal ICWA notice form can be located at <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/ois/pdf/idc2-060070.pdf>.

f. Active efforts during involuntary proceedings rise above the level of reasonable efforts and require more intensive casework which includes involvement from the family, extended family, tribe, and Indian social services agencies. The court must determine that active efforts have been made prior to the removal of a child or prior to the termination of a parent's parental rights. Active efforts must also be made to prevent the breakup of an Indian family and must have been documented unsuccessful. Active efforts also must consist of the following:

(1) Identifying culturally appropriate services and assisting the parent or Indian custodian in overcoming barriers.

(2) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the child and family.

(3) Employing all available and culturally appropriate family preservation strategies and using available remedial and rehabilitative services provided by the child's tribe.

g. If the tribe assumes legal jurisdiction, the tribe must be provided all Department file information (excluding the reporter's name) and the child must be released to the tribe. If a shelter hearing has been held, the Department's attorney must schedule an emergency shelter review hearing regarding the transfer of jurisdiction to the tribe. The child protective investigator may be called as a witness in tribal court just as he or she would in a state court. The Department's case must be closed as "no jurisdiction." Indian children may also be entitled to other Departmental services such as economic services or a referral to the Child Protection Team even though the tribe has assumed jurisdiction.

15-7. Placement.

a. If the child's tribe does not assume legal jurisdiction the child protective investigator, case manager, and the court are required to place the child according to the tribe's established placement preference. If the Tribe has not established an order of preference, then the placement preference specified in ICWA must be followed. The placement preferences include:

(1) A member of the child's extended family.

(2) Other members of the Indian child's tribe.

(3) Other Indian families.

b. The case manager or child protective investigator must gather the following information to present to the court if they did not follow the outlined placement preferences:

(1) The request of one or both of the Indian child's parents;

(2) The request of the child, if the child is of sufficient age and capacity to understand the decision;

(3) The presence of a sibling attachment that can only be maintained through a particular placement;

(4) The extraordinary physical, mental, or emotional needs of the Indian child; and,

(5) The unavailability of a suitable preferred placement after a diligent search was unsuccessful.

c. Further, in any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

d. The standard for approval for out-of-home placement must be Indian community standards, not Department licensing standards. Placement in a Department licensed placement can only be made if an Indian community placement is not available. Child protective investigators and case managers must document every effort made and the outcome of the efforts to place the child in an Indian community.

15-8. Designated Tribal Agent for Service of Notice. The Designated Tribal Agent for Service of Notice is the individual or individuals named in the Federal Register as being the official contact designated by the tribe for notification and legal service in compliance with ICWA. Contact with this person is required for legal sufficiency. The Designated Tribal Agents for Service of Notice can be located at <http://www.bia.gov/WhoWeAre/BIA/OIS/HumanServices/index.htm>.

15-9. Voluntary Foster Care. Placements must be explained in court as a judge must determine that the American Indian parents understand the nature of their consent. The parents can withdraw their consent at any time and the Department must return the child(ren) to the parents. If the child remains in voluntary foster care and the circuit court maintains jurisdiction, the Department must hold judicial reviews in accordance with state law until the child is released.

15-10. Out-of-Home Care Placement Orders. No out-of-home care placement may be ordered in the absence of a determination, supported by clear and convincing evidence, including the testimony of a qualified expert witness 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. Qualified expert witnesses may have expertise in multiple areas of practice related to child welfare; however, in cases involving American Indian children, testimony must also be heard from an expert witness qualified to testify on the specific parenting and cultural practices of the child's tribe. Placements of children in out-of-home care must be in accordance with the order of placement defined by ICWA.

15-11. Transfer of Placement and Care Responsibility. When transferring the responsibility of placement and care of an Indian child to a tribal Title IV-E agency or a tribe with a Title IV-E agreement, the child's eligibility under Title IV-E and Medicaid shall not be affected.

a. Revenue Maximization staff will ensure the child's eligibility for Title IV-E is completed in FSFN, pursuant to CFOP 170-15, [Chapter 4](#).

b. The child protective investigator or case manager will be responsible for ensuring the following documentation is received by the tribe:

(1) All judicial determinations starting with the shelter order. The judicial determinations should address that continuation in the home from which the child was removed would be contrary to the welfare of the child and that active efforts have been made to prevent the child's removal from their home, to reunify the child and family, and to make and finalize an alternate permanent placement with the child and family if reunification cannot be accomplished.

(2) Eligibility determination and related documentation including other benefits for which the child is eligible or potentially eligible.

(3) Information and documentation of the child's placements. This includes a copy of the foster home or group home license.

(4) Case Plans which may include copies of health and educational record.

15-12. Parental Rights Termination Orders. No termination of parental rights may be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses in the parenting and cultural practices of the child's tribe, 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.

15-13. Adoption. When an Indian child is subject to an adoption, the extended family has first priority. The second and third priority goes to the child's tribe and to members of other Indian families, respectively. Tribal order of placement preference shall, if established by tribal resolution, govern the priority of placement.

15-14. ICWA Procedure. Child protective investigators and case managers must follow the Procedure for Initial Indian Child Welfare Act Determination at Intake and Investigation, Appendix C to this operating procedure. All actions involving compliance with ICWA must be documented in FSFN.

15-15. Training.

a. Child protective investigators and their supervisors with the Department, who are designated to investigate allegations involving families under ICWA shall participate in the ICWA training.

b. Case managers with CBCs responsible for providing ongoing services involving families under the Indian Child Welfare Act shall participate in ICWA training.