



Administrative Policies and Procedures: 16.24

Subject:	Children of Native American Heritage
Authority:	TCA 37-5-106, Indian Child Welfare Act of 1978 (25 USC 1901-1923);
Standards:	COA: CPS 4.03; CPS 5.02; CPS 11.03; CPS 14.04; CPS 14.04; FC 6.04
Application:	To All Department of Children's Services Employees

Policy Statement:

The Department of Children's Services shall comply with all rules, regulations and laws governing the Indian Child Welfare Act of 1978 (ICWA) and make a diligent effort to identify those children/youth and families subject to the Act.

Purpose:

To ensure that all DCS services affecting children identified as Native American are conducted in compliance to the federal guidelines outlined by ICWA. The goal of the ICWA is to strengthen and preserve Native American families and culture.

Procedures:

A. ICWA overview	<p>ICWA sets minimum standards for any child of Native American heritage involved in a child protective services case, adoption, guardianships, termination of parental rights action, runaway/truancy matters, or voluntary placement of children who are unmarried and under the age of eighteen (18).</p> <p>The ICWA requires that cases involving Native American children be heard in tribal courts if possible, and permits a child's tribe to be involved in state court proceedings. It requires testimony from expert witnesses who are familiar with Native American culture before a child can be removed from his/her home. If a child is removed, either for foster care or adoption, the law requires that Native American children be placed with extended family members, other tribal members, or other Native American families. The state of Tennessee is within the Eastern Region jurisdiction of the Bureau of Indian Affairs.</p>
B. Responsibilities of Family Service Worker	<ol style="list-style-type: none"> 1. During the first initial contact with the child/family, if there is reason to believe that a child or family is Native American heritage, verification of the child/family's status must be confirmed from the Bureau of Indian Affairs and affiliated tribe (see <u>Confirmation of Native American Heritage.</u>) 2. The child/family and significant others, as appropriate, and with the consent of the family, are advised of ongoing progress, and will participate in service planning as appropriate. The assessment must be completed whether or not a child/family is registered with a tribe. 3. All actions initiated with an ICWA case must be in collaboration with and

	<p>under the guidance of Central Office Legal Counsel or appropriate Regional Legal Counsel.</p>
<p>C. Determination of Native American child's tribe</p>	<ol style="list-style-type: none"> 1. If it is believed or confirmed that the child or parents are Native American but the tribe or registration information is <u>not</u> known, tribal affiliation must be determined. The family services worker must contact the Bureau of Indian Affairs for assistance (see <u>Determination of Tribal Affiliation</u>) and must be done in collaboration with the appropriate Regional Legal Counsel and the family. (Not all tribes fall under the Indian Child Welfare Act). 2. Tennessee is in the Eastern Region of the Bureau of Indian Affairs and the contact information for assistance is listed below: <p style="text-align: center;"> Bureau of Indian Affairs Eastern Region 545 Marriott Drive, Suite 700 Nashville, TN 37214 Phone: (615) 564-6700 Fax: (615) 564-6701 </p> 3. The Bureau will instruct on the process and further procedures to be followed to determine the Native American child/family's tribe or affiliation. 4. If the case involves a child/family outside of the Eastern Region jurisdiction of the Bureau of Indian Affairs, contact the above Bureau or the appropriate Regional Legal Counsel for assistance.
<p>D. Confirmation of tribal affiliation</p>	<ol style="list-style-type: none"> 1. If notice is received that the child falls under ICWA, a determination must be made to see if the child/family is under the jurisdiction of ICWA and the involvement of the tribe in planning for the child(ren). It is anticipated that the Bureau will require the following information for tribal notification: <ol style="list-style-type: none"> a) Identifying information, i.e., parent(s) names and birth dates, grandparent's names, child(ren)'s names and birth date; address and telephone number; b) Proof of affiliation (i.e., registration or band number) or any other identifying information, if available; c) Reason for current court action (i.e., adjudication hearing; petition; complaint or other document by which the proceeding was initiated); d) A statement of the right of the biological parents or Native American custodians and the Native American child's tribe to intervene in the proceeding; e) Name of attorney; f) Location, mailing address and telephone number of the Court; g) A statement of the right of the parents or Native American custodians or the Native American child's tribe to petition the Court to transfer the proceeding to the Native American child's tribal Court; and h) Confidentiality statement.

	<p>2. The tribe must be notified by registered letter with return receipt requested.</p>
<p>E. Time limits and extensions</p>	<p>The time limits listed below are minimum time periods required by the Act. The Court may grant more time to prepare where State law permits.</p> <ol style="list-style-type: none"> 1. A tribe, parent or Native American custodian entitled to notice of a child custody proceeding has a right, upon request, to be granted an additional twenty (20) days from the date upon which notice was received to prepare for participation in the proceeding. 2. The proceeding may not begin until all of the following dates have passed: <ol style="list-style-type: none"> a) Ten days (10) after the parent or Native American custodian (or Secretary where the parent or Native American custodian is unknown to the petitioner) has received notice; b) Ten days (10) after the parent or Native American child's tribe (or the Secretary if the Native American child's tribe is unknown to the petitioner) has received notice; c) Thirty days (30) after the parent or Native American custodian has received notice if the parent or Native American custodian has requested an additional twenty (20) days to prepare for the proceeding; and d) Thirty (30) days after the Native American child's tribe has received notice if the Native American child's tribe has requested an additional twenty (20) days to prepare for the proceeding.
<p>F. Emergency removal of a Native American child</p>	<ol style="list-style-type: none"> 1. Whenever a confirmed Native American child is removed from physical custody of the child's parent or Native American custodians pursuant to the emergency removal or custody provisions of State law, DCS shall immediately confirm the address and tribe, if available, of the child. 2. When a Court order authorizing continued emergency physical custody, the petition for that order shall be accompanied by an affidavit containing the following information: <ol style="list-style-type: none"> a) The name, age and last known address of the Native American child. b) The name and address of the child's parents and Native American custodians, if any. If such persons are unknown, a detailed explanation of what efforts have been made to locate them shall be included. c) Facts necessary to determine the residence of the Native American child and whether the residence is on a Native American reservation. If the residence is believed to be on a Native American reservation, the name of the reservation shall be listed. d) The tribal affiliation of the child, parents and/or Native American custodians. e) A specific and detailed account of the circumstances that lead to emergency removal of the child.

	<ul style="list-style-type: none"> f) If the child is believed to reside on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to transfer the child to the tribe's jurisdiction. g) A statement of the specific actions that have been taken to assist the parents or Native American custodians so the child may safely be returned to their custody. <ol style="list-style-type: none"> 3. If the Native American child is not returned to the parents or Native American custodians or jurisdiction is not transferred to the tribe, DCS must promptly commence a State Court proceeding for foster care placement. 4. If the child resides on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, such placement must terminate as soon as the imminent physical damage or harm to the child which resulted in the emergency removal no longer exists or as soon as the tribe exercises jurisdiction over the case- whichever is earlier. 5. Absent extraordinary circumstances, temporary emergency custody shall not be continued for more than ninety (90) days without a determination to the Court, supported by clear and convincing evidence and the testimony of at least one qualified expert witness, that custody of the child by the parent or Native American custodian is likely to result in serious emotional or physical damage to the child.
<p>G. Foster care or pre-adoptive placement</p>	<p>In any foster care or pre-adoptive placement of a Native American child:</p> <ol style="list-style-type: none"> 1. The child must be placed in the least restrictive setting which: <ul style="list-style-type: none"> a) Most approximates a family; b) The child's special needs are met; and c) Is in reasonable proximity to the child's home. 2. Preference must be given in the following order, absent without good cause to the contrary, to placement with: <ul style="list-style-type: none"> a) A member of the Native American child's extended family; b) A foster home, licensed, approved or specified by the Native American child's tribe, whether on or off the reservation; c) An Native American foster home licensed or approved by an authorized non-Native American licensing authority; or d) An institution for children approved by a Native American tribe or operated by a Native American organization which has a program suitable to meet the child's needs. 3. The Native American child's tribe may establish a different order of preference by resolution, and that order of preference shall be followed as long as the criteria above are met.

<p>H. Adoptive placement of a Native American child</p>	<ol style="list-style-type: none"> 1. In any adoptive placement of a Native American child under State law, preference must be given (in the order listed below) to placement of the child with: <ol style="list-style-type: none"> a) A member of the Native American child's extended family; b) Other members of the Native American child's tribe; or c) Other Native American families, including families of single parents. 2. The Native American child's tribe may establish a different order of preference by resolution. That order of preference must be followed so long as the placement is the least restrictive setting appropriate to the child's needs. 3. Unless a consenting parent voices a desire for anonymity, the Court or agency shall notify the child's extended family and the Native American child's tribe that their members will be given preference in the adoption decision.
<p>I. Native American child adjudicated delinquent</p>	<p>A Court proceeding involving placement of a child based upon a delinquent act, which if committed by an adult would be deemed a crime, is <u>not covered under ICWA.</u></p>
<p>J. Most requested Native American tribes for TN</p>	<p>Listed below are the most requested Native American tribes for the state of Tennessee. Information regarding other tribes can be accessed at: List of ICWA Tribal Agents or the Bureau of Indian Affairs may be contacted for more information.</p> <p><u>Eastern Region:</u></p> <ol style="list-style-type: none"> 1. Eastern Band of Cherokee Indians P.O. Box 507 Cherokee, North Carolina 28719 Phone: (828) 497-6092 Fax: (828) 497-3322 2. Mississippi Band of Choctaw Indians P.O. Box 6050 Choctaw, Mississippi 39350 Phone: (601) 650-1741 Fax: (601) 656-8817 <p><u>Eastern Oklahoma Region:</u></p> <ol style="list-style-type: none"> 3. Cherokee Nation of Oklahoma Attn: Registration Department P.O. Box 948 Tahlequah, Oklahoma 74465 Phone: (918) 456-0671

K. Access to reports	Both DCS and the Native American child's tribe involved in a foster care placement or termination of parental rights proceeding under State law involving a Native American child, has the right to examine all reports or other documents filed with the Court upon which any decision to such action may be based. No decision of the Court shall be based on any report or other document not filed with the Court.
L. Maintenance of ICWA case records	DCS shall establish a single location where all records of every foster care, pre-adoptive placement and adoptive placement of Native American children by the Courts will be available within seven (7) days of a request by a Native American child's tribe or the Secretary. The records shall contain, at a minimum, the petition or complaint, all substantive orders entered in the proceeding, and the complete record of the placement determination.
M. Documentation	All diligent efforts made to identify children/families of American Native heritage must be documented in the applicable current child welfare information applications and case recordings.

Forms:	None
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Collateral documents:	<p><u>Bureau of Indian Affairs: Guidelines for State Courts; Indian Child Custody Proceedings</u></p> <p><u>List of ICWA Tribal Agents</u></p> <p><u>Confirmation of Native American Heritage</u></p> <p><u>Determination of Tribal Affiliation</u></p>
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Glossary:	
Indian Child Welfare Act of 1978 (ICWA):	Federal legislation aimed at protecting the best interests of American Indian children and promoting the stability and security of American Indian tribes and families. (P.L. 95-608) (ICWA Glossary)
Indian Child's (Native American) Tribe:	As defined in ICWA, the Indian tribe in which a child is a member or is eligible for membership or in the case of an Indian child who is a member or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts. (ICWA Glossary)

<p><i>Indian Child (Native American):</i></p>	<p>As defined in the Indian Child Welfare Act (ICWA), "Any unmarried person who is under the age of eighteen (18) and is either (a) a member of an Indian tribe or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." For purposes of compliance with ICWA, the definition provided in the Act shall apply. For purposes of access to services and resources, other more inclusive definitions may apply (e.g. Indian Education Act, tribal definitions, etc.). (ICWA Glossary)</p>
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