INDIAN CHILD WELFARE POLICIES AND PROCEDURES

15. Indian Child Welfare Act (ICWA) Notice

Original Date: September 12, 2016
Revised Date: July 1, 2024
Sunset Review Date: July 31, 2028
Approved by: Tleena Ives, Office of Tribal Relations Director

Purpose

The purpose of this policy is to provide guidance on the process of providing ICWA notice when there is reason to know children are or maybe Indian children. The Department of Children, Youth, and Families (DCYF) uses this process to verify whether children are recognized as Indian children and they and their families are involved in:

- Dependency fact-finding
- Guardianships
- Termination of parental rights (TPRs)

Scope

This policy applies to Division of Children, Youth, and Family Services (DCYF) employees.

Laws

Chapter 13.38 RCW	Indian Child Welfare Act
25 USC § 1901–1923	Indian Child Welfare

Policy

1. DCYF must provide ICWA Notice for dependency fact-finding, guardianships, and termination of parental rights (TPRs) proceedings when there is reason to know children are or may be Indian children.
2. Caseworkers or active efforts specialists and the Indian Child Welfare (ICW) Legal Unit must coordinate with the Office of the Attorney General or local prosecuting attorney in providing ICWA notice to the tribes, parents or Indian custodians, and the Bureau of Indian Affairs (BIA).

Procedures

1. When providing ICWA Notice, caseworkers or active efforts specialists must:
    a. Follow the requirements for notifying and collaborating with the tribes in policies:
        i. Dependency Cases
        ii. Guardianships
        iii. TPR
        iv. Reason to Know
        v. Active Efforts and Tribal Collaboration
    b. Complete the:
        i. Family Ancestry Chart (FAC) DCYF 04-220 form, if one hasn't been completed.

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ii. ICWA Notice Referral DCYF 09-103 form including the following information:
    A. Name of each child identified in the petition.
    B. Case name and number.
    C. Legal cause number for each child.
    D. Name of the assistant attorney general (AAG) assigned to the case.

c. Send the completed ICWA Notice Referral DCYF 09-103 form to the ICW Legal Unit within:
    i. Four calendar days of either:
        A. Initial shelter care hearings.
        B. Learning there is a new reason to know the child is or may be Indian children.
    ii. Fourteen calendar days of sending guardianship or TPR referrals to the AAG.

d. Email the ICW Legal Unit and the AAG with any new information learned about the family within four calendar days of receiving the information. Information may include, reason to know the children are or may be Indian children, established paternity, changes in family constellation, etc.

2. When preparing the ICWA notice documents for the AAG:
    a. ICW Legal Unit supervisors must upon receipt of ICWA Notice Referral DCYF 09-103 form from caseworkers:
        i. Review the referral and either:
            A. Email confirmation of the receipt of the completed form to the referring caseworker.
            B. Request more information from the referring caseworker for incomplete forms.
        ii. Assign the referral to an ICW legal specialist within two calendar days.
        iii. Document:
            A. Completed and accepted requests on the ICW legal log.
            B. Incomplete requests in FamLink.
    b. ICW legal specialists must complete the following within two calendar days of being assigned ICWA Notice referrals:
        i. Review the Family Ancestry Charts DCYF 04-220 forms in FamLink for each child.
        ii. Conduct familial searches.
        iii. Add any learned familial or tribal information to the Family Ancestry Chart DCYF 04-220 in FamLink.
        iv. Email the names of additional federally recognized tribes identified from the search to referring caseworkers or active efforts specialists and document the information in FamLink, when applicable.
        v. Provide the following to the AAGs and caseworkers or active efforts specialists to send with the Indian Child Welfare Act Notice (BIAN) JU 03.0900 form:
            A. Tribal Response to ICWA Notice DCYF 09-538 forms
            B. Family Ancestry Charts
            C. Federally Recognized Tribes - ICW Legal Coversheet DCYF 09-138

3. After the ICWA notice is sent by the AAGs to tribes and the BIA:
    a. ICW legal specialists must:
        i. Resend the Tribal Response to ICWA Notice DCYF 09-538 form to each tribe that hasn't provided a response to the initial Tribal Response to ICWA Notice DCYF 09-538 form:
            A. Sixty calendar days after the hearings indicated in the Indian Child Welfare Act Notice (BIAN) JU 03.0900 form.

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B. One hundred and twenty calendar days after the hearings indicated in the Indian Child Welfare Act Notice (BIAN) JU 03.0900 form.

ii. Update Family Ancestry Charts DCYF 04-220 forms in FamLink when additional information is received from the assigned caseworker.

iii. Email the caseworkers or active efforts specialists when a tribe has responded to the Tribal Response to ICWA Notice DCYF 09-538 form that the child is a member or eligible for membership in the tribe and document this information in a FamLink case note.

iv. Document all tribal responses on the children's ICW tab in FamLink.

v. Upload responses to the Tribal Response to ICWA Notice DCYF 09-538 form into FamLink as "ICW Legal" within three calendar days of receipt from the tribes.

b. Caseworkers or designees must:

i. Obtain and upload the following as "ICW Legal" or place in them in the hard cases:

A. Indian Child Welfare Act Notice (BIAN) JU 03.0900 form sent to tribes, parents or Indian custodians, and the BIA.

B. Cover letters, if applicable.

C. Certified mail receipt, return receipts requested.

ii. Send the court's finding of ICWA determination to the ICW Legal Unit, via email within three calendar days. This does not have to be a court order but a statement that the court determined that the children:

A. Are Indian children.

B. Are not Indian children.

c. Supervisors must:

i. Verify with the caseworker or active efforts specialist sent the ICWA Notice Referral DCYF 09-103 form to the ICW Legal Unit during monthly clinical supervision case reviews.

ii. Document the conversation about the status of ICWA Notice in their monthly clinical supervision notes.

Forms

Family Ancestry Chart DCYF 04-220
Federally Recognized Tribes - ICW Legal coversheet DCYF 09-138 (located on the Forms repository of the DCYF intranet)
ICWA Notice Referral DCYF 09-103 (located on the Forms repository of the DCYF intranet)
Indian Child Welfare Act Notice (BIAN) JU 03.0900
Tribal Response to ICWA Notice DCYF 09-538

Resources

25 CFR Part 23 – Indian Child Welfare Act
Child Protective Services (CPS) and Family Assessment Response (FAR) policy
Dependency Cases policy
Guardianships policy
Termination of Parental Rights policy
Reason to Know policy

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FamLink File Upload Quick Help Guide (located on the Knowledge Web on the DCYF CA intranet)
FamLink ICW Quick Help Guide (located on the Knowledge Web on the DCYF CA intranet)
Federal Register - Names and addresses of ICWA designated agents

Relative Search link (located on the Intake/CPS Find People page of the DCYF CA Intranet)

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