INDIAN CHILD WELFARE POLICIES AND PROCEDURES

7. Dependency Cases

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Approved by: Frank Ordway, Chief of Staff

Purpose

The purpose of this policy is to provide guidance on how to comply with federal and state Indian Child Welfare Acts (ICWAs) prior to and during dependency cases when there is reason to know children are or may be Indian children.

Scope

This policy applies to caseworkers.

Laws

RCW 13.34.050	Court Order to take child into custody, when-Hearing
Chapter 13.38 RCW	Washington State Indian Child Welfare Act
25 USC § 1901-1923	Indian Child Welfare Act

Policy

When there is reason to know children are or may be Indian children, caseworkers must:

a. Provide the court information to determine:
   i. Jurisdiction.
   ii. If a child is or may be an Indian child.
b. Follow:
   i. Federal and state ICWAs when the:
      A. Child is younger than age 18.
      B. Youth is age 18 or older and consents to the tribal collaboration and they:
         I. Are in Department of Children, Youth, and Families (DCYF) placement and care authority.
         II. Wish to return to DCYF care and voluntarily receive independent living services.

Procedures

When there is reason to know children are or may be Indian children, caseworkers must:

1. Follow the policies:
   a. Active Efforts and Tribal Collaboration as soon as determining there will be ongoing agency involvement and collaborate with known tribes prior to legal decisions being made about the case to:
      i. Prevent children's removal or promote the timely reunification of Indian families.
      ii. Provide information necessary:
         A. To allow tribes to participate in case decisions and court hearings.

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B. Determine if a tribe intends to request transfer to tribal court or accept transfer if a parent or child requests it.
C. Effectively collaborate with tribes throughout the life of a case.

b. Child Welfare Family Team Decision Making Meetings and invite tribes to participate in critical decisions with the family regarding the removal of children from their home, placement stabilization and prevention, and reunification or placement into a permanent home.

2. Prior to filing dependency petitions:
   a. Follow the Voluntary Placement Agreement (VPA) policy if a VPA can be used instead court intervention.
   b. Coordinate with the supervisor and Assistant Attorney General (AAG) prior to legal decisions being made to:
      i. Determine if court intervention is needed, per the Child Welfare Dependency Petition Process policy.
      ii. Discuss the evidence for ICWA findings at the appropriate hearing, which may include:
         A. ICWA standards for removal and foster care placement
         B. Active efforts to prevent the break-up of the Indian family.
         C. Qualified expert witness (QEW) testimony.
   c. If determination is made to file a dependency petition and the child:
      i. Has an open case in tribal court, complete the following:
         A. Provide the tribe with case documentation.
         B. Complete the Child Protective Services (CPS) response.
         C. Close the case.
      ii. Doesn't have an open case in tribal court and the tribe:
         A. States it will file one, complete the following:
            I. Provide the tribe with the case records.
            II. Complete the CPS response.
            III. Close the DCYF case.
         B. Declines jurisdiction or the tribe hasn't responded to the caseworker's contacts during the CPS intervention, proceed with the case in state court.

3. When filing dependency petitions:
   a. Follow the Child Welfare Dependency Petition Process policy and include in the petition:
      i. Reasons:
         A. For the emergency placement, if applicable, that led to the child's removal in order to prevent imminent physical damage or harm.
         B. DCYF is seeking dependency and placement out of the home as part of the disposition, including the causal relationship between conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage or harm to the child.
      ii. A detailed description of active efforts:
         A. Made to prevent removal of the child and how they were unsuccessful.
         B. Currently being used to promote the reunification of the family, if the child has been removed.
      iii. Contacts with the known tribes to:
         A. Discuss whether the child should have been removed or a dependency petition filed.
         B. Collaborate on the CPS intervention.

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C. Determine:
I. Whether the:
i. Child is an Indian child.
ii. Tribes will participate or intervene in the case.
II. Jurisdiction and transfer.

iv. The basis for reason to know that the child is or may be an Indian child, including information about:
A. The child's, parents', or Indian custodians':
I. Tribal affiliations.
II. Residence or domicile.
B. Diligent efforts to verify whether children are Indian children.
C. Any responses from tribes about the child's membership or eligibility for membership and how and when the response was obtained.

v. Information about the child's placement and if:
A. It complies with the Placement Preferences policy.
B. Good cause exists to deviate from ICWA placement and tribal preferences.
C. It's an emergent placement and efforts to find or place them according to ICWA placement preferences were unsuccessful and current efforts to identify a placement is in line with the Placement Preferences policy

b. Contact the designated tribal agents for service of Indian Child Welfare Act (ICWA) notice for any known tribe by e-mail or phone to:
i. Alert them that a petition has been filed, and provide a general summary of its contents
ii. Provide them the:
A. Petition and date of the shelter care hearing.
B. Information necessary for them to participate, including but not limited to:
I. Name of the child.
II. Names of parents.
III. How the tribe can participate.

4. Prior to a Shelter Care:
a. Coordinate with the AAG attorney to present evidence and request the court make a finding as to whether:
i. The child is an Indian child or there is reason to know that the child is or may be an Indian child.
ii. Active efforts were:
A. Made to prevent removal of the child and were unsuccessful.
B. Initiated to promote conditions for the child's timely return home.
iii. The child's removal was or is necessary to prevent imminent physical damage or harm to the child.
iv. The child is currently placed according to ICWA placement preferences.
b. Follow the QEW policy to identify a QEW prior to the earliest 30-day shelter care hearing if possible. If obtaining a tribally designated or DCYF contracted QEW isn't possible prior to the 30-day shelter care hearing, be prepared to either:
i. Return the child home.
ii. Prove that returning the child would subject the child to substantial and immediate danger or threat of such danger.
c. Inform the AAG at any point prior to the fact-finding hearing, if the child's placement in shelter care is no longer necessary to prevent imminent physical harm to the child.

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5. Prior to the dependency fact-finding and disposition hearing:
    a. Facilitate a shared planning meeting (SPM) and document all information discussed with the child's tribe per the Active Efforts and Tribal Collaboration policy.
        i. How to best manage the family's case and engage with the tribe.
        ii. Determine the best permanent plan for the child.
    b. Collaborate with the AAG to:
        i. Identify a QEW as outlined in the QEW policy.
        ii. Verify they have the following QEW information for the 30-day or dependency fact-finding/disposition hearing:
            A. Efforts to identify a QEW.
            B. The name and contact information of the QEW.
        iii. Verify:
            A. A copy of the Indian Child Welfare Act Notice (BIAN) JU 03.0900 form in the dependency case was sent to:
                I. All known tribes and filed with the court, as outlined in ICWA Notice to Tribes policy.
                II. The Bureau of Indian Affairs by certified mail, return receipt requested and filed with the court.
            B. Tribes participating in the court hearings received discovery, as outlined in Providing Confidential Records to Tribes policy.
    c. Follow the court report policy and include information about:
            A. Diligent efforts to verify whether children are Indian children , as outlined in Tribal Inquiry and ICWA Notice to Tribes policies.
            B. Active efforts being made or that have been made to prevent the breakup of the Indian family, including services initiated to promote conditions for return home if the child has been placed out-of-the-home or DCYF is seeking out-of-home placement:
            C. Reasons why:
                I. Continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage or harm to the child.
                II. The causal relationship between the conditions in the home and imminent physical harm to the child.
            D. If the placement of the child complies with ICWA placement preferences or the tribal placement preferences if different from ICWA. If placement preferences don't comply, explain why good cause exists to deviate from those placement preferences outlined in the Placement Preferences policy.
            E. Any contact with the tribe and the tribe's position on the petition and disposition, if known.
6. Prior to review and permanency planning hearings:
    a. Ask the child, if developmentally appropriate, family, and tribe if they will request transfer of the case to tribal court. If so, follow Transferring Cases to Tribal Court policy.
    b. Coordinate with the AAG, if a tribe has intervened in the case, to verify the tribe is receiving discovery and other case information per confidentiality requirements in Providing Confidential Records to Tribes policy.
    c. Verify a LICWAC meeting has occurred, if applicable.
    d. Follow the court report policy and include any new information since the last review or permanency planning hearing about:

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i. Whether there is reason to know that the child is or may be an Indian child and all efforts made to verify the child's status as an Indian child.
ii. Active efforts to prevent the breakup of the family and services initiated to promote reunification of the child, as outlined in the Active Efforts and Tribal Collaboration policy.
iii. The child's placement, including if DCYF is seeking out-of-home placement and whether:
    A. It complies with ICWA placement and tribal preferences.
    B. Good cause exists to deviate from those placement preferences, as outlined in the Placement Preferences policy.
i. Recommendations of LICWAC meetings, if applicable.
ii. Efforts made to contact known tribes, to obtain their input on:
    A. Additional active efforts DCYF could make to prevent the break-up of the Indian family.
    B. The child's placement.
    C. Proposed changes to the current:
        I. Case plan
        II. Permanent plan
    ii. Information regarding responses to Inquiry received or Notice sent and received per Tribal Inquiry and ICWA Notice to Tribes policies.

7. Extended Foster Care (EFC) Program
    a. Follow the Child Welfare Extended Foster Care (EFC) Program policy if youth age 18 to 21 wish to enroll in the EFC program or are enrolled in the program.
    b. Obtain a signed Consent for Release of Information DCYF 14-012 form from eligible youth prior to tribal collaboration.
8. Documentation
    a. Follow the Child Welfare Documentation policy for all ICW related communication and activities by:
        i. Creating a FamLink case note.
        ii. Selecting "Tribal Contact" under the activities tab.
    b. Upload ICW:
        i. Records in FamLink.
        ii. Legal records in FamLink as Type: ICW Legal.

Forms

Consent for Release of Information DCYF 14-012
Dependency Petition JU 03.0100
Indian Child Welfare Act Notice JU 03.0900
Shared Planning Meeting DCYF 14-474

Resources

25 CFR Part 23 – Indian Child Welfare Act
Reason to Know policy
Tribal Inquiry policy
Indian Child Welfare Act (ICWA) Notice to Tribes policy
Active Efforts and Tribal Collaboration policy
Qualified Expert Witness policy
Placement Preferences policy
Providing Confidential Records to Tribes policy

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Child Welfare Case Plan policy
Child Welfare Court Report policy
Child Welfare Dependency Petition Process policy
Child Welfare Documentation policy
Child Welfare Voluntary Placement Agreement policy
Court Report Mapping Guide
FamLink Placement – Temporary Situation Quick Help Guide (located on the CA Knowledge Web)
FamLink Placement Correction Quick Help Guide (located on the CA Knowledge Web)
Washington State Tribal Indian Child Welfare Social Services Directors and Staff Contact Information
Washington State Intake Referral and After-Hours Tribal Staff Contact Information

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