INDIAN CHILD WELFARE POLICIES AND PROCEDURES

9. Termination of Parental Rights Court Proceedings

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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) when guardianship has been ruled out and Termination of Parental Rights (TPR) petition is being considered, discussed, identified, or requested in cases where there is reason to know children are or may be Indian children.

Scope

This policy applies to caseworkers.

Laws

Chapter 13.34 RCW	Juvenile Court Act–Dependency and Termination of Parent-Child Relationship
Chapter 13.38 RCW	Indian Child Welfare Act
25 U.S.C. § 1901-1923	Indian Child Welfare Act

Policy

When there is reason to know children are or may be Indian children and a termination of parental rights is being considered, at the shared planning meeting (SPM) caseworkers must:

1. Collaborate with known tribes before making legal decisions about the case and provide them with the information necessary to participate in the legal hearings.
2. Coordinate with the assistant attorney general (AAG) to comply with state and federal ICWAs at TPR hearings, including, but not limited to:
    a. Providing ICWA Notice.
    b. Discussing the evidence for findings related to Indian child welfare (ICW), e.g. standards for removal, active efforts, and Qualified Expert Witness (QEW) testimony.
3. Always treat children as Indian children, unless, and until the court has made findings about the child's Indian tribe determining they do not meet the definition of an Indian child.
4. Inform the courts at any point in the court proceedings if there is new information indicating there is reason to know a child is or may be an Indian child.

Procedures

1. Prior to Filing TPR
   When there is reason to know children are or may be Indian children and a TPR petition is being considered caseworkers must:
    a. Follow policies:
        i. Chapter 18. Active Efforts and Tribal Collaboration

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ii. Chapter 26. Transferring Cases to Tribal Court if the tribe wants to file a case in tribal court or transfer the dependency case.

b. Ask children, families, and tribes the following about each child:
   i. Are they a member or eligible for tribal membership?
   ii. Whether they are domiciled on or lives on a reservation or tribal lands and intends to stay.
   iii. Are they a ward of a tribal court?

c. If children:
   ii. Don't meet the criteria in Procedures Section 1.b., file the TPR per the Child Welfare TPR-Compelling Reasons policy.
   iii. Are verified as an Indian child:
      A. Consult with their supervisor and AAG before filing the TPR.
      B. Follow the Child Welfare TPR-Compelling Reasons policy if the determination is made to proceed with TPR.
      C. Contact tribes in which the child is a member or eligible for membership to ask if either they wish to:
         I. File a case in tribal court.
         II. Transfer the case to tribal court.

d. Review the permanency recommendations of Local Indian Welfare Advisory Committee (LICWAC) meetings, if applicable.

e. Facilitate a shared planning meeting (SPM) with known tribes and collaborate with tribes to determine the:
   i. Most appropriate permanent plan for the child.
   ii. Prospective adoptive placement, if known, is appropriate.

f. Consult with their supervisor and AAG before filing a TPR petition if the tribe isn't in agreement with adoption.

2. When filing a TPR petition, caseworkers must:
   a. Follow the:
      i. Child Welfare Filing a Petition to Terminate Parental Rights policy, unless parents voluntarily relinquish their parental rights.
      ii. Qualified Expert Witness (QEW) policy to identify a QEW.
      iii. Requesting Court Findings About Whether A Child Is An Indian Child In Guardianship and Termination of Parental Rights Cases policy and provide information to the court as soon as practicable when children are verified as Indian children.
   b. Collaborate with the AAG to verify the case meets legal sufficiency for TPR. If the case doesn't meet legal sufficiency, discuss with the supervisor.
   c. Discuss with the AAG and the court:
      i. The residence or domicile of the child and their parents or Indian custodians for jurisdiction purposes.
      ii. Active efforts made to prevent the break-up of the Indian family and reasons why those efforts are considered unsuccessful.
      iii. The causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the child.

3. Caseworkers must follow the Child Welfare Documentation policy for all ICW communications and activities.

Forms

Indian Child Welfare Act Notice (BIAN) JU 03.0900

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Petition for Termination of Parent-Child Relationship JU 04.0100
Shared Planning Meeting DCYF 14-474

Resources

25 CFR Part 23 Bureau of Indian Affairs Indian Child Welfare Act Proceedings
Chapter 13. Reason to Know policy
Chapter 15. Indian Child Welfare Act (ICWA) Notice to Tribes policy
Chapter 18. Active Efforts and Tribal Collaboration policy
Chapter 19. Qualified Expert Witness policy
Chapter 21. Providing Confidential Records to Tribes policy
Chapter 26. Transferring Cases to Tribal Courts
Child Welfare Documentation policy
Child Welfare Voluntary Placement Agreement policy
Child Welfare Filing a Petition to Terminate Parental Rights policy
Child Welfare Shared Planning policy
Child Welfare TPR-Compelling Reasons policy
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 Intake Referral and After-Hours Tribal Staff Contact Information
Washington State Tribal Indian Child Welfare Social Services Directors and Staff Contact Information

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