INDIAN CHILD WELFARE POLICIES AND PROCEDURES

26. Transferring Cases to Tribal Court

Original Date: September 1, 1991
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Approved by: Frank Ordway, Chief of Staff

Purpose

The purpose of this policy is to provide guidance on how to transfer dependency, 13.36 guardianship, or termination of parental rights cases to tribal court when the children are Indian children and the case transfers are either:

- Requested by the tribes.
- Accepted by the tribes after they are requested by the parents or children.

Scope

This policy applies to caseworkers.

Laws

RCW 13.38.080	Transfer of jurisdiction
25 USC § 1911	Indian tribe jurisdiction over Indian child custody proceedings

Policy

1. When children are Indian children and there is a request at any point in the case to transfer a dependency, chapter 13.36 RCW guardianship, or termination of parental rights case, caseworkers must:
    a. Collaborate with the:
        i. Known tribes, parents, and the Assistant Attorney General (AAG) to facilitate the case transferring to tribal court.
        ii. Children, when developmentally appropriate,
    b. Document all Indian Child Welfare (ICW) related activities in FamLink.

Procedures

When a request is received to transfer an Indian child's case to tribal court, caseworkers must:

1. Contact the:
    a. The tribe to verify the child is a member or eligible for membership in the tribe to which the case would be transferred. If they:
        i. Are a member or eligible for membership, continue with the transfer process.
        ii. If they are not a member or eligible for membership, consult with the AAG if the tribe continues to request transfer.
2. Coordinate with the:
    a. Tribe to confirm their position on a case transfer and assist as needed if the transfer was requested by the child or parent.
    b. AAG if the tribe requests the transfer and send the tribe:
        i. Motion for Order Transferring Jurisdiction to Tribal Court, JU 11.0900
        ii. Order re Transferring Jurisdiction to Tribal Court, JU 11.0920

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3. Complete the following after receiving the state court order transferring jurisdiction from the AAG:
    a. Offer to schedule and facilitate a transfer case staffing with the tribe.
    b. Follow the Chapter 19. Providing Confidential Records to Tribes policy and collaborate with the Discovery Unit or designee to provide the tribe with all case documentation as soon as possible.
    c. Once the tribal court accepts jurisdiction, either:
        i. Close the case.
        ii. Open as a tribal payment only case.
4. Documentation
    a. Document all ICW activities, e.g., contact with and notifications and information provided to the tribes, by creating a FamLink case notes and selecting "Tribal Contact under the Activities" tab.
    b. Upload ICW records into FamLink.
    c. Upload legal-related records into FamLink as Type: ICW Legal.

Forms

Tribal Court's Order Accepting/Declining Jurisdiction, JU 11.0960
Motion for Order Transferring Jurisdiction to Tribal Court, JU 11.0900
Order re Transferring Jurisdiction to Tribal Court, JU 11.0920
Shared Planning Meeting DCYF 14-474

Resources

25 CFR Part 23 Bureau of Indian Affairs ICWA
25 C.F.R. §§ 23.115-119 How are transfers for transfer of proceedings made
Chapter 19. Providing Confidential Records to Tribes policy
Federal Register
Parents' Guide to CPS DSHS 22-484
Washington State Tribes Intake and After Hours Field Response Contact Information
Washington State Federally Recognized Indian Tribes: Tribal Social Services Directors and Tribal Lead Social Worker

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