

# Indian Child Welfare Policies and Procedures

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## Preface and Acknowledgements

We want to express appreciation to the staff and tribal representatives who have participated over the last five years to revise our *Indian Child Welfare Policies and Procedures*, first issued in 1991. The 2016 revisions have been written to reflect the:

- Revised federal Indian Child Welfare regulations, effective December 12, 2016 •
- Amended Indian Child Welfare Washington Administrative Code, effective July 23, 2016
- Washington State Indian Child Welfare Act, passed in 2011
- New policy and procedure format, that includes links to resources for caseworkers to use in their everyday work
- New and updated FamLink functionality related to Indian Child Welfare

Four **new** chapters are also included that address policies and procedures for the following:

- Initial intake
- Inquiry and verification
- Payments for children in tribal care and custody; and
- Culturally competent case management when working with children and families of [Indian Ancestry](#) who are not subject to the state and federal Indian Child Welfare Acts.

Among the people who have been involved in the effort are:

Aimee Gone, *Office of Indian Policy*  
Betsy Tulee, *Muckleshoot Tribe*  
Bob Smith, *ICW headquarters program supervisor*  
Bob Ensley, *Federal Funding Manager headquarters*  
Brenda Francis–Thomas, *Office of Indian Policy*  
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Monique George, *Yakama Nation*  
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Nicole Muller, *Centralized Services Administrator headquarters*  
Nelly Mbajah, *Supervisor Permanency and Placement headquarters*  
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Shannon Freeman, *ICPC Program Manager headquarters*  
Shannon Thomas, *Kalispel Tribal Attorney*  
Stephanie Frazier, *CPS Program Manager headquarters*  
Sue Mapes, *Jamestown S'Klallam Tribe staff*  
Tanya Pankowski, *Jamestown S'Klallam Tribe*  
Tom Tremaine, *Kalispel Tribe*  
Vanessa Castle, *Makah Tribe staff*  
Wendy Thomas, *Kalispel Tribe staff*

Jennifer A. Strus, Assistant Secretary



## Introduction

When Children's Administration (CA) staff work with Indian children and their families, the agency staff must comply with the Indian Child Welfare Act, Washington State Indian Child Welfare Act, and with agreements made between the 29 federally recognized tribes of Washington and the State of Washington.

The *Indian Child Welfare (ICW)* policies and procedures apply to all child welfare actions, taken by CA (or any CA licensed, certified, or contracted agencies), involving children and families who are subject to the state and federal Indian Child Welfare Acts. An Indian child is defined as:

any unmarried and unemancipated person who is under age eighteen and is either (a) a member or citizen of an Indian tribe or (b) is eligible for membership or citizenship in an Indian tribe and is the biological child of a member/citizen of an Indian tribe (25 U.S.C. § 1903 (4); 25 C.F.R. § 23.2).

CA caseworker's must integrate the ICW policies and procedures into casework practice when assigned cases that involve an [Indian child](#). The CA caseworker must follow the *ICW Policies and Procedures* if conflict exists with the provisions of *CA Practices and Procedures* requirements.

Each CA local office must create, and the assigned CA caseworker must maintain, a client case file for each child and the child's family in accordance with the [CA Operations Manual, chapter 13000, sections 13100 through 13900](#). The case file must include an [Indian Child Welfare \(ICW\) section](#) that contains all ICWA documentation by date (chronological order) except legal documentation (filed in Section III).

A DCFS Regional Administrator or the DLR Administrator may waive certain policies and procedures that do not violate federal and state laws in accordance with the provisions of the [CA Operations Manual, chapter 2000, section 2320](#). Before granting waivers of these provisions, the Regional Administrator or DLR Administrator must consult on the need for, and decision to, provide a waiver with the affected tribes and Recognized American Indian Organizations.

## 1. Initial Intake (ICWA Procedures at initial contact)

**Approval:** Jennifer Strus, Assistant Secretary

**Original Date:** September 12, 2016

**Revised Date:** Not Applicable

**Policy Review:** June 30, 2020

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## **Purpose**

Children's Administration (CA) receives and processes reports of [child abuse and neglect](#), and calls seeking assistance for children and families who may be subject to the federal and state Indian Child Welfare Acts (ICWA). Early identification of possible affiliation with a federally recognized tribe ensures Indian families get access to resources and support services through their tribes as quickly as possible, and that CA is complying with federal and state ICWA.

## **Scope**

This policy applies to all CA staff.

## **Laws**

[R.C.W. 13.38](#) Washington State Indian Child Welfare Act (WICWA)

[25 U.S.C. § 1901 - 1923](#) The Federal Indian Child Welfare Act (ICWA)

[25 CFR Part 23](#) Bureau of Indian Affairs ICWA Regulations

## **Policy**

1. When CA receives an initial intake regarding allegations of child abuse and/or neglect, the intake worker and the local office CA caseworker must determine if there is reason to know that the child is or may be a member, or the biological child of a member and eligible for membership, in a federally recognized tribe.
2. CA Intake workers must follow CA Practices and Procedures Intake Process and Response policy as well as those outlined below.

## **Procedures**

1. The CA Intake worker requests information about affiliation with a federally recognized tribe (including asking about Indian heritage) from the caller making a report of child abuse or neglect.
2. The CA Intake worker completes the following activities on all intakes:

1. Documents the Indian heritage or federally recognized tribal information for all identified tribes in FamLink using the ICW tab in the intake tool.
2. Contacts the Washington state tribe(s) as a collateral contact prior to making an intake decision using the [Washington State Tribes Intake Referral and After Hours Contact Information](#).
3. Determines whether the allegation of child abuse or neglect should be screened in and will determine the type of CPS response (investigation or FAR); and the timeframe for response (either 24 or 72 hours). CA is required to follow state law and its own policies in responding to child abuse or neglect allegations.
4. Documents the contact or attempts to contact in the ICW tab within the CA intake tool.
5. Takes the following additional actions with After Hours intakes with emergent responses (24 hour response) when the child or family is associated with [Washington State federally recognized tribes](#) from the Intake Referral tab:
  1. Sends screened in intake information to the WA State tribe using the [Washington State Tribes Intake Referral and After Hours Contact Information](#).
  2. Select Washington tribe (defaults to federally recognized) from the **Agency Type** list
  3. Select the appropriate Washington state tribe from the **Agency Name** list
  4. Select the preferred method of delivery from the **Referral Method** list as identified by the tribe in the [Washington State Tribes Intake Referral and After Hours Contact Information](#) located in the action pane
  5. **CA Intake Report** appears by default from the Document list
  6. Select the Sent checkbox when the document has been sent and **enter the correct Date and Time sent** in the appropriate fields (once box is checked a date is required)
  7. Type a narrative **Reason for Referral** in the **Referral Information** text box (not required)
  8. Click **Save** button
  9. Click **Close**
6. Notifies the After Hours Supervisor of the emergent intake and the need for coordination with the tribe(s) using the [Washington State Tribes Intake Referral and After Hours Contact Information](#).
3. **After Hours Field Response Staff:**  
Will contact Washington state tribe(s) for coordination of response on the emergent intake, using the [Washington State Tribes Intake Referral and After Hours Contact Information](#).
4. **Local DCFS/DLR Office Staff:**
  1. Reviews intake screening decision on all intakes and refers to individual tribe [Memorandum of Understanding](#) with the Department if available.
  2. Sends CPS intakes (screened in and screened out) to WA State tribe(s) immediately per the process identified in e i. A-H above, if not previously provided.

3. Makes contact and coordinates with tribe(s) on CPS intakes screened-in for CA response, using the [Washington State Tribes Intake Referral and After Hours Contact Information](#).
4. Makes contact and coordinates with tribe(s) on Non-CPS intakes (Family Reconciliation Services) screened-in for CA response that involve an Indian child as the identified child (IC), using the [Washington State Tribes Intake Referral and After Hours Contact Information](#).

## Forms

- Intake Report DSHS 14-260 located on the CA intranet - ASD forms

## Resources

- FamLink Intake Quick Help Guide, located on the CA Knowledge web
- FamLink User Manual: Intake, located on CA Knowledge web
- CA ICW policies and procedures [Chapter 4 Disclosure of confidential records/Information to Tribes](#)
- Practice Guide to Intake located in the manuals section of the CA Intranet
- Screening and Response Assessment located in the manuals section of the CA Intranet
- [Washington State Tribes Intake Referral and After Hours Contact Information](#)
- [Washington State Tribes: Tribal Contact and Coordination Guidelines](#)

# 2. Tribal/State Agreements

**Approval:** Jennifer Strus, Assistant Secretary

**Original Date:** February, 2004

**Revised Date:** September 12, 2016

**Policy Review:** June 30, 2020

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## Purpose

The purpose of [tribal/state agreements](#), also referred to as [Memorandums of Understanding \(MOUs\)](#) is to clarify roles, and responsibilities and to enhance coordination and cooperation between the tribal governments of Washington state, federally recognized tribes and Children's Administration (CA) in providing appropriate child welfare services to Indian children.

## Scope

This policy applies to all CA staff.



## Laws

[25 U.S.C. § 1919 \(a\) \(b\)](#) Agreements between States and Indian tribes

[RCW 13.38.030](#) Washington State Indian Child Welfare Act (WICWA)

## Policy

1. Regional Administrators or the RA designee in consultation with CA headquarters have the authority to develop [Memoranda of Understanding \(MOUs\)](#) with tribes in their regions.
2. CA and WA state tribes use a mutually approved and agreed on MOU template developed by tribal leaders and CA.
  1. CA will review [signed MOUs](#) every two years to make sure the services are current and must discuss any changes needed with the tribe(s).
  2. CA and the tribe may mutually agree to modify the MOU at any time. Any modification may be reflected in an addendum and attached to the MOU.
3. CA caseworkers must immediately refer to and apply any MOU in effect when working with a child and/or family from that tribe.

## Procedures

1. To develop MOUs, CA designated staff partner with the tribal designee to draft the MOU and send the completed draft to CA headquarters ICW Program.
2. Prior to the agreement being finalized, the HQ ICW program manager sends the draft to the Assistant Attorney General, Executive Staff, and the DSHS Office of Indian Policy for review. The tribal designee may send the draft agreement to his or her legal counsel.
3. The CA designated staff collaborate with tribal designees on questions or concerns that arise in the review.
4. The tribal designee sends the MOU to his or her respective signing authority, i.e., tribal chair or tribal government council.
5. The CA designated staff send the MOU to the CA assistant secretary for approval.
6. The HQ ICW program manager posts the agreement on the [DSHS internet](#) and CA intranet when it is approved by the tribe and DSHS.

## Forms

- [Memoranda of Understanding template](#)

## Resources

- [Memoranda of Understanding background information](#)

# 3. Inquiry and Verification of Child's Indian Status

**Approval:** Jennifer Strus, Assistant Secretary

**Original Date:** September 12, 2016

**Revised Date:** Not Applicable

**Policy Review:** June 30, 2020

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## Purpose

Determining a child's Indian status must be made as soon as possible to serve the best interests of the [Indian child](#) and to protect the interests of the child's tribe [RCW 13.38.070\(2\)](#). CA caseworkers must identify and verify whether a child meets the definition of an Indian child early in the case to preserve the child's culture.

## Scope

This policy applies to Division of Children and Family Services staff.

## Laws

[RCW 13.38](#) Washington State Indian Child Welfare Act (WICWA)

[25 U.S.C. § 1901 - 1923](#) The Federal Indian Child Welfare Act (ICWA)

[25 CFR Part 23](#) Bureau of Indian Affairs ICWA Regulations

## Policy

1. Under the federal ICWA regulations, CA must use "due diligence" to "identify and work with all of the tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership)." CA must "treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition" of an Indian child. 25 CFR 23.107 (a), (b)
2. CA caseworkers must complete the [Indian Identity Request DSHS 09-761](#) at the initial visit with the parent(s)/Indian custodian on **all** screened in cases for each child, including those who have not been identified as victims.

3. When a child may have Indian ancestry and be affiliated with a federally recognized tribe, CA caseworkers will:
  1. Complete a [Family Ancestry Chart DSHS 04-220](#) and include:
    1. Full names of child's birth parents, grandparents, and great grandparents (as far back as possible).
    2. Mother's maiden name.
    3. Mother's married name(s).
    4. Any aliases used by individual(s) identified on the form.
  2. Send a [Native American Inquiry Referral \(NAIR\)](#) to the Native American Inquiry Unit:
    1. Within 10 working days of Indian ancestry identification for:
      1. all **new** cases.
      2. Cases with prior episodes when a tribe(s) responded but the family **has provided new information** which might change the tribe(s) response.
    2. After 18 months if a case is re-opened and a tribe(s) in prior episodes responded to the inquiry that the child was not a member or eligible for membership **and no new information has been provided** by the family.
4. Upon receipt of the referral, the NAIR unit will send to the identified tribe(s):
  1. First inquiry letter within 30 days from Indian ancestry identification.
  2. Second inquiry letters within 60 days from the initial inquiry. (Out-of-state tribes only require two inquiry attempts).
  3. Third inquiry letters 60 days from the second inquiry. (Sent only for Washington state federally recognized tribes).
5. The NAIR worker will contact the Portland Bureau of Indian Affairs (BIA) regional office when the identity of the child's tribe/s is unknown. Per 25 U.S.C § 23.111 (11) the address to use is: Portland Regional Director, Bureau of Indian Affairs, 911 NE 11th Ave, Portland, Oregon 97232.
6. CA caseworkers will continue outreach efforts to the identified federally recognized tribes after the NAIR unit sends all inquiry letters and no response has been received. Outreach includes:
  1. A minimum of one monthly contact to the tribe(s) and the Portland BIA (to request help in contacting the tribe) until the tribe responds.
  2. Follow-up with tribes who have not responded, even when one tribe responded the child is a member or eligible for membership. A child may have affiliation with more than one tribe and ICWA requires states to have this on the record.
7. Before a termination of parental rights trial, CA must request that the court make a finding on the record about whether there is reason to know the child is an Indian child and whether ICWA applies. CA must be prepared to present to the court all the evidence it has about a child's connection to a tribe. 25 C.F.R. § 23.107.
  1. If a tribe does not respond after 12 months to the CA caseworker's required attempts to determine if the child is a member or eligible for membership, the CA caseworker and supervisor will consult with the AAG and CA ICW headquarters to establish if CA applied due diligence in trying to obtain a response from a tribe.

2. If the AAG and CA ICW headquarters review the history of the CA caseworker's efforts to contact the tribe and determine that additional efforts must be made, the CA caseworker must make those efforts before presenting the matter to the court.
3. Even if the court determines on the record that there is **not** reason to know the child is an Indian child and that ICWA will not apply, a party who later comes forward with reason to know ICWA applies can request the court to hold that ICWA applies. [RCW 13.38.070\(3\)\(c\)](#)
8. If CA learns of new evidence during a case that gives reason to know the child is an Indian child (such as a tribe changing eligibility requirements over the course of a case and a child can now be determined to be a member or eligible for membership, or a tribe has recently received federal recognition), CA must bring new evidence to the court's attention. 25 C.F.R. § 23.107(a); [RCW 13.38.070\(4\)\(a\)](#)
9. CA caseworker will document all efforts taken to identify a child's Indian status in FamLink.

## Procedures

1. **Identifying and verifying a child's Indian status:**
  1. Generate the [Indian Identity Request DSHS 09-761](#) from create casework in FamLink and bring to the initial visit (some fields will pre-populate). Ask the child's parents, any person who has custody of the child or with whom the child resides, and any other person that can reasonably be expected to have information about the child's possible membership or eligibility for membership in a federally recognized tribe and upload the [Indian Identity Request DSHS 09-761](#) signed by the parent(s) in FamLink:
    1. Choose Document under File Upload.
    2. Select case and case participant and create.
    3. Under Document Details complete the following:
      1. Select Case as Category
      2. Select Indian Identity Request #09-761 as the Type
      3. Type the Child's name as the title
      4. Save the document, which will appear under file upload
  2. Complete a [Family Ancestry Chart DSHS 04-220](#) if the family identifies a tribe, even when the family states or provides documentation they are already a member (including an enrollment card).
  3. Complete a Native American Inquiry Referral (NAIR) per instructions on the ICW intranet and send to [CANativeAmericanInquiry@dshs.wa.gov](mailto:CANativeAmericanInquiry@dshs.wa.gov). And create a case note with Referral to Native American Inquiry Unit as the activity.
    1. The NAIR unit worker will:
      1. Send the [Inquiry to Indian Tribe DSHS 09-539](#) and [Family Ancestry Chart DSHS 04-220](#) to all identified tribes and:
        1. Record tribe's responses in FamLink.
        2. Forward the first completed inquiry letter and tribal response(s) to the primary CA caseworker to place in the ICW section in the current case file volume.

2. Send a second inquiry within 60 days to any tribe(s) who hasn't responded to the first inquiry and:
  1. Record tribe's response(s) in FamLink.
  2. Forward the completed second inquiry letter, Family Ancestry Chart and tribal responses to the primary CA caseworker to place in the ICW section in the case file.
3. Send third inquiry letter within 60 days to any Washington state federally recognized tribe who hasn't responded to the second inquiry and:
  1. Record tribe's response(s) in FamLink.
  2. Forward the completed third inquiry letter, Family Ancestry Chart and Tribal responses to the primary CA caseworker to place in the ICW section in the case file.
4. Upload in FamLink all responses from a federally recognized tribe(s) when responses are received prior to case closure that indicate a child is a member or eligible for membership:
  1. Choose Document under File Upload.
  2. Select case and case participant and create.
  3. Under Document Details complete the following:
    1. Select Case as Category
    2. Select Inquiry to Indian tribe DSHS 09-539 as the Type
    3. Type the Child's name as the title
    4. Save the document, which will appear under file upload
4. When parental rights have not been terminated, enrollment of a child is ultimately a decision between the tribe and the parents.
  1. Help the parents complete paperwork to enroll the child in the tribe **at the parents' request**.
  2. A worker **must not** sign paperwork to enroll a child in a tribe when parental rights have not been terminated.
5. Treat the case as non ICWA when all identified tribes respond and verify in writing that:
  1. The child is not a member
  2. The child is not the biological child of a member and not eligible for membership.

## 2. Non-ICWA Cases

1. The supervisor must verify the tribe(s) has responded that the child is not a member or the biological child of a member and eligible for membership.
2. The CA caseworker must provide a written statement documenting the tribe has declared a child is ineligible for membership to the court.
3. Change the ICWA coding to non-ICWA and none on the child's ICW management page in FamLink for each tribe who responds the child is not eligible.

4. Document in the comments section of the ICW management page when a tribe responds the child is not a member or eligible for membership, but is a descendant.
5. Develop a culturally appropriate case plan when the child does not meet the legal definition of an Indian child and the tribe responds the child is not a member or eligible for membership.
6. Immediately follow ICW policy and procedures if a tribe subsequently verifies a child is a member or eligible for tribal membership.

## Forms

- [Indian Identity Request DSHS 09-761](#)
- [Inquiry to Indian Tribe DSHS 09-539](#)
- [Family Ancestry Chart DSHS 04-220](#)

## Resources

- CA caseworkers may staff the case with LICWAC to confirm all inquiry and verification of child's Indian child status procedures have been completed.
- CA ICW policies and procedures [Chapter 12 - Casework Services for Children and Families of Non-Federally Recognized Tribes and Canadian First Nations](#)
- FamLink File Upload Quick Help Guide located on the CA Knowledge Web
- FamLink ICW Quick Help Guide located on the CA Knowledge Web
- [Federal Register - Names and addresses of designated Tribal agents](#)
- Native American Inquiry Referral protocol on the CA ICW intranet page
- Native American Inquiry Referral (NAIR) Flowchart on the CA ICW intranet page
- Relative Search link on the Intake/CPS Find People page of the CA Intranet

# 4. Disclosure of Confidential Records/Information to Tribes

**Approval:** Jennifer Strus, Assistant Secretary

**Original Date:** September 1, 1991

**Revised Date:** September 12, 2016

**Policy Review:** June 30, 2020

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## Purpose

To preserve and protect the confidentiality of children and families served by Children's Administration (CA).

## Scope

This policy applies to all CA staff.

## Laws

[RCW 13.50](#) Keeping and Release of Records by Juvenile Justice or Care Agencies

[RCW 74.04.060](#) Records, Confidential – Exceptions – Penalty

[25 U.S.C § 1951](#) Information availability and disclosure by Secretary of the Interior

[25 U.S.C § 1912 \(c\)](#) Pending Court Proceedings: Examination of reports or other documents

[25 CFR Part 23](#) Bureau of Indian Affairs ICWA Regulations

## Policy

The CA caseworker will:

1. Disclose **without** consent or release:
  1. The following information to a federally recognized tribe(s) when the child meets the definition of [Indian child](#) for the tribe requesting the records:
    1. Entry of an order, by a state, federal, or tribal court with jurisdiction over the parties and the subject matter, that requires or authorizes CA, child care and placement agencies, or CA contractors to disclose confidential information
    2. Intake information
    3. CPS Investigation Findings
    4. Requests for verification of a child's membership status with a tribe.
  2. The following information to non-federally recognized tribe(s), Canadian First Nations, or a federally recognized tribe(s) for children who do **not** meet the [Indian child](#) definition in two circumstances:
    1. When asking for assistance in locating a relative or other placement resource for the child, limit information disclosed about the child who is in out-of-home-placement to the following:
      1. The child's and parent's name.
      2. The child's gender and age
      3. The child's grade in school
      4. The child's special needs, if applicable
      5. Court name, hearing date and location.

2. When asking if the tribe can provide services or support to the child or family, limit information disclosed about the child who is in out-of-home-placement to the following:
  1. The child's and parent's name.
  2. The child's gender and age
3. A tribe must keep all information received confidential. 25 CFR 23.107(6)(d)
2. Disclose **with** consent or release:
  1. If CA works on a case involving a family affiliated with a [non-federally recognized tribe](#) or [Canadian First Nations](#), the CA caseworker must not violate confidentiality requirements. In these cases information, when **not limited** to 1 (b) (i) or 1 (b) (ii) above, can only be shared when:
    1. Provided a signed [Written Consent DSHS 14-012](#) or [Authorization DSHS 17-063](#) by the person who is the subject of the confidential information
    2. The tribe successfully intervenes in the court action by filing a motion for permissive intervention.
  2. If CA works on a case involving a family affiliated with a federally recognized tribe and the child does not meet the definition of Indian child, the CA caseworker must not violate confidentiality requirements. In these cases, information when **not limited** to 1 (b) (i) or 1 (b) (ii) above can only be shared when:
    1. Provided a signed [Written Consent DSHS 14-012](#) or [Authorization DSHS 17-063](#) by the person who is the subject of the confidential information
    2. The tribe successfully intervenes in the court action by filing a motion for permissive intervention.
3. Follow DSHS Administrative Records and Privacy Information Policy No. 5.01.
4. Follow Case Services [Confidentiality policy](#) when disclosing information about HIV Infection and Sexually Transmitted Diseases.
5. Follow CA Case Services [Adoption Confidentiality policy](#) and CA ICW policies and procedures [Chapter 8. ICW Adoption](#):
  1. For prospective adoptive parents.
  2. When receiving a request for case information from an adopted Indian individual.
6. Follow CA Operations Manual [Record Accuracy, Privacy and Disclosure policy](#) when receiving any disclosure request on a **closed** case.
7. File all releases in the ICW tab of the case file and document all contact(s) with the tribe(s) and activities in FamLink.
8. Send the requested information in envelopes marked "Confidential" a tribe must keep all information received confidential. 25 CFR 23.107(6)(d)

## Forms

- [Written Consent DSHS 14-012](#)
- [Authorization DSHS 17-063](#)



## Resources

- [Washington State Tribes and CA Memoranda of Understanding](#)
- The CA caseworker should consult with the Attorney General's Office or other DSHS legal representative if questions arise regarding confidentiality or disclosure of information.

# 5. Child Protective Services for Indian Children

**Approval:** Jennifer Strus, Assistant Secretary

**Original Date:** September 1, 1991

**Revised Date:** September 12, 2016

**Policy Review:** June 30, 2020

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## Purpose

Fulfill federal and state Indian Child Welfare laws which require [active efforts](#) to provide remedial services and rehabilitative programs designed to prevent the break-up of the Indian family. Active efforts include offering services that provide parents the help they need to keep their children safe.

## Laws

[RCW 13.38](#) Washington State Indian Child Welfare Act (WICWA)

[RCW 74.13.031\(3\)\(4\)](#) Duties of department – Child Welfare Services

[25 U.S.C. § 1912 \(d\)](#) Pending Court Proceedings: Remedial services and rehabilitative programs; preventive measures

[25 CFR Part 23](#) Bureau of Indian Affairs ICWA Regulations

## Scope

This policy applies to Children's Administration (CA) staff.

## Policy

The CA caseworker will:

1. Contact the tribal social services program or the Indian Child Welfare Act (ICWA) representative within **24 hours** of being assigned the intake.
2. Ensure the Washington state tribe received or receives a copy of the intake report DSHS 14-260 per the [Washington State Tribes Intake Referral and After Hours Contact Information](#) and document in the Intake Referral Tracking tab in FamLink:
  1. Select Washington tribe (defaults to federally recognized) from the **Agency Type** list
  2. Select the appropriate Washington state tribe from the **Agency Name** list
  3. Select the preferred method of delivery from the **Referral Method** list as identified by the tribe in the [Washington State Tribes Intake Referral and After Hours Contact Information](#) located in the action pane
  4. **CA Intake Report** appears by default from the Document list
  5. Select the Sent checkbox when the document has been sent and **enter the correct Date and Time sent** in the appropriate fields (once box is checked a date is required)
  6. Type a narrative **Reason for Referral** in the **Referral Information** text box (not required)
  7. Click **Save** button
  8. Click **Close**
3. Follow the tribe's [Memorandum of Understanding \(MOU\)](#), if applicable.
4. For families residing on the reservation, ask the tribe's designated social service or ICWA representative if the tribe will assume responsibility for the investigation or FAR intervention if the tribe and CA do not have an MOU.
5. Follow state and federal law if the family resides **on the reservation** and CA is requested to lead the CPS investigation.
  1. CA will provide notification in time for a tribal worker, as identified by the tribe, to have the opportunity to be present for investigations conducted on the reservation.
  2. However, in no case shall the absence or unavailability of a tribal caseworker excuse a CA caseworker from the responsibility to properly investigate allegations of child abuse or neglect according to CA policy and state law timelines.
6. Contact tribal police when the child abuse and neglect occurred on tribal lands. When there is no tribal police, contact the area Federal Bureau of Investigation (FBI) or local city or county law enforcement agency.
7. Conduct and complete a CPS investigation per CA Practices and Procedures [Investigative Standards policy](#) or CPS FAR intervention [Family Assessment Response policy](#) per state and federal law, for families who are affiliated with a Washington state federally recognized tribe, including families with a case in tribal court and that live **off the reservation**
  1. Collaboration and ongoing discussion with the tribe is expected in this process
  2. Refer to the tribe's [Memorandum of Understanding \(MOU\)](#) for possible additional guidance for CPS investigations for families who live **off the reservation**.

8. Complete [active efforts](#) on every case. For example, discuss with the tribe resources needed to meet the needs of the child, what services are available, etc.
9. Make active efforts to prevent or eliminate the need for removal of an [Indian child](#) from his or her parents' care.
  1. For a foster-care placement or termination of parental rights, the evidence must show a 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 particular child who is the subject of the child-custody proceeding.
  2. Without that causal relationship, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child. 25 CFR 23.121(c), (d).
10. Immediately inform the tribe of the child's removal if a child has been placed in protective custody.
11. Notify the tribe of the intent to provide services or to file a dependency petition, and **give the tribe** an opportunity to complete any of the following:
  1. File the petition in [Tribal Court](#).
  2. Take primary responsibility for providing services.
  3. Provide a placement resource.
12. Include tribal resources and supports when completing a Comprehensive Family Evaluation (CFE) and Case Plan to reduce or eliminate safety threats and increase the parent or caregiver's protective capacities to assure the child's safety and well-being. Follow CA Practices and Procedures [Family Assessment policy](#) and [Case Plan policy](#).
13. When the tribe or a tribally designated representative, requests case records of an [Indian Child](#) send information per CA ICW policies and procedures [Chapter 4 Disclosure of Confidential Records/Information to Tribes](#).
14. If a dependency petition is filed and the tribe has intervened follow Discovery procedure per direction of local Assistant Attorney General (AAG).
15. Contact the child's tribal social services program when requesting a Child Protective Team (CPT) Staffing in the order of following criteria:
  1. The tribe's CPT.
  2. A Local Indian Child Welfare Advisory Committee (LICWAC)/Child Protection Team (CPT) or other CPT designated by the tribe.
  3. A regular CPT with tribal or LICWAC participation, in person or by telephone.
16. Staff all cases involving Indian children with the tribal designee from the child's tribe.

## Procedures

1. Document all ICW activities by creating a FamLink case note and selecting Tribal Contact under the activities tab, and file all ICWA/ICW documents in the ICW section of the most recent physical case file.
2. Review the case file and confirm the membership verification process has been completed (see CA ICW policies and procedures [Chapter 3 Inquiry and verification](#)).

## Forms

- Intake Report DSHS 14-260 located on the CA intranet - ASD forms

## Resources

- Assistant Secretary memo: [Addendum to CA's role in CPS Investigations off Tribal Reservations](#)
- Assistant Secretary memo: [CA Authority and CA staff role in conducting Investigations Off Reservation \(in Washington State\)](#)
- FamLink Investigative Assessment Quick Help Guide located on the CA Knowledge Web
- [Washington State Tribes and CA Memoranda of Understanding](#)

# 6. Casework Activities for Court Proceedings

**Approval:** Jennifer Strus, Assistant Secretary

**Original Date:** September 1, 1991

**Revised Date:** September 12, 2016

**Sunset Review:** June 30, 2020

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## Purpose

Provide Children's Administration (CA) staff direction regarding what the best interest of an [Indian child](#) means and compliance with federal and state Indian Child Welfare Acts when out-of-home placement is needed to protect an Indian child.

## Scope

This policy applies to CA staff.

## Laws

[RCW 13.38](#) Washington State Indian Child Welfare Act (WICWA)

[RCW 13.34.050](#) Court Order to take child into custody, when – hearing

[RCW 13.34.055](#) Custody by law enforcement officer – Release from liability

[R.C.W. 13.38.130](#) Involuntary foster care placement, termination of parental rights – Determination – Qualified expert witness

[RCW 13.38.140](#) Emergency removal or placement of Indian child – Notice

[RCW 13.38.150](#) Consent to foster care placement or termination of parental rights - Withdrawal

[RCW 13.38.160](#) Improper removal of Indian child

[RCW 13.38.170](#) Removal of Indian child from adoptive or foster care placement

[25 U.S.C. § 1901 - 1923](#) The Federal Indian Child Welfare Act (ICWA)

[25 CFR Part 23](#) Bureau of Indian Affairs ICWA Regulations

## Policy

### 1. **Placing an Indian child in out-of-home care**

The CA caseworker will:

1. Ensure [active efforts](#) for services and programs [25 U.S.C.1912(d)] were made, in partnership with the Indian child's tribe (when available), prior to any out-of-home placement except in emergent situations.
2. Follow the requirements in any [memorandum of understanding](#) in place with a Washington state tribe.
3. Follow CA ICW policies and procedures [Chapter 3 Inquiry and Verification](#) to determine the [child's tribe per federal and state ICWA](#), if not already completed.
4. If placement is necessary, immediately contact the tribe to determine if the [Indian child](#) is a ward of a tribal court, domiciled, or a resident on an Indian reservation, and discuss the situation with the assigned AAG to determine tribal or state court jurisdiction.
  1. If the Indian child is a ward of a tribal court, confirm that the tribe wishes to retain jurisdiction.
  2. If the Indian child is not a ward of the tribal court but resides or is domiciled on the reservation, determine if the tribe wants to assert jurisdiction. If a tribe asserts jurisdiction, provide the tribe with the case information.
  3. If the Indian child is not a ward of the tribal court and does not reside and is not [domiciled](#) on the reservation, take legal steps to arrange placement according to the emergent or non-emergent needs of the child.
5. Contact the tribe within one business day of placement if it was not possible to verify jurisdiction with a tribe(s) prior to the placement, and if the state retains jurisdiction continue to meaningfully involve the tribe if the child is an [Indian child](#).

6. Follow CA ICW policies and procedures [Chapter 10 Local Indian Child Welfare Advisory Committee \(LICWAC\)](#).
7. If out-of-home placement is needed, choose one of the following legal options:
  1. **Voluntary Placement Agreement (VPA)**
    1. Use a [VPA](#) only for a short-term out-of-home placement. Before creating a VPA determine:
      1. The child is **not** currently a ward of a tribal court.
      2. The child is **at least ten calendar days old**.
    2. Draft and file a petition for an ICWA VPA in coordination with the local AAG or prosecuting attorney.
      1. Provide the parent or Indian custodian the [Consent to Foster Care Placement by Indian Child's Parent or Indian Custodian JU 03.0920](#)
      2. Ensure the parents, Indian custodian, or legal guardian approve and sign the VPA in front of a juvenile state court judicial officer.
      3. Upload a copy of the Consent to Foster Care Placement and the judge's certification in FamLink and file in the legal section of the case file.
    3. Follow CA ICW policies and procedures [Chapter 7 Indian Child Placement Preferences and Relative Search](#) and CA Practices and Procedures [Voluntary Placement Agreement policy](#). VPA's may not be used to place a child or youth with an "[other suitable person](#)" per [RCW 13.34.130](#).
    4. Return the child to the custody of the parent or [Indian custodian](#) at any time upon request, **unless** returning the child will put him or her at [imminent risk of serious harm](#). In that situation, take immediate steps to request the child be taken into protective custody by law enforcement, or work with your AAG to request a pick up order from the court and file a [Dependency Petition JU 03.0100](#), and notify the parents or Indian custodian and tribe.25 U.S.C. §1913 (a),(b) RCW 13.38.150(1)and(2).
  2. **Protective Custody by law enforcement**
    1. Contact law enforcement per CA Practices and Procedures [Law Enforcement Assistance policy](#) to place a child in protective custody when a child is at imminent risk of serious harm and follow:
      1. CA Case Services [Shelter Care policy](#).
      2. File a [Dependency Petition JU 03.0100](#) if needed, per CA Case Services [Dependency Petition](#) and [Initial Court Order](#) policies.
      3. [Follow the State Court Process for notice and summons](#).
  3. **Court order authorizing placement in shelter care**
    1. Use a court order authorizing placement when a [VPA](#) is not possible.
    2. Determine that the child is not a ward of a tribal court.

3. File a [Dependency Petition JU 03.0100](#) per CA Case Services [Dependency Petition policy](#).
4. Follow CA Case Services [Initial Court Order policy](#) and [Shelter Care policy](#).
5. Gather and document the following information used to determine if placement is needed that would need to be included in a petition for a court order authorizing an emergency removal or continued emergency placement:
  1. A statement of the risk of imminent physical damage or harm to the Indian child
  2. Any evidence that the emergency removal or placement continues to be necessary to prevent such imminent physical damage or harm to the child
  3. The name, age, and last known address of the Indian child;
  4. The name and address of the child's parents and Indian custodians, if any;
  5. The steps taken to provide notice to the child's parents, custodians, and tribe about the emergency proceeding;
  6. If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the BIA Regional Director;
  7. The residence and the domicile of the Indian child;
  8. If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the tribe affiliated with that reservation or village;
  9. The tribal affiliation of the child and of the parents or Indian custodians;
  10. A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;
  11. If the child is believed to reside or be domiciled 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 contact the tribe and transfer the child to the tribe's jurisdiction; and
  12. A statement of the efforts that have been taken to assist the parents or Indian custodians so the Indian child may safely be returned to their custody. 25 CFR § 23.113(d).
8. **Follow placement preferences** and notify the child's extended family per CA ICW policies and procedures [Chapter 7 Indian child Placement Preferences and Relative Search](#).

9. Make [active efforts](#) toward reunification with the child's parents or legal custodian unless the court terminates parental rights.
  10. Schedule an [FTDM](#) or [shared planning](#) meeting within 72 hours of placement (excluding weekends and holidays) and prior to return home.
  11. Develop a [case plan](#) with the family and the tribe (for available services and resources when involved) based on the assessment of the family's needs. The [case plan](#) must address the risk factors and the identified safety threat(s) for the child.
  12. Confirm that required notices were sent to the parent, Indian custodian (if any), and tribe(s) before hearings, and that there is documentation of the notice filed.
2. **Intervention by a tribe or Indian Custodian 25 U.S.C. § 1911(c)**  
If a federally recognized Indian tribe or Indian custodian intervenes in a case in which the state has established jurisdiction, the caseworker will:
1. Provide the tribe with the case information according to confidentiality requirements in CA ICW policies and procedures [Chapter 4 Disclosure of Confidential Records/Information to Tribes](#); and
  2. If requested, schedule a case staffing.
3. **Transfer of jurisdiction from state court to tribal court**  
The CA caseworker will:
1. Send [JU 11.0900 Motion for Order Transferring Jurisdiction to Tribal Court](#), and [Tribal Court's Order Accepting/Declining Jurisdiction, JU 11.0960](#) to the tribe for its use for these purposes (a tribe may also use its own tribal court forms). Upon receipt of an order from a tribal court accepting jurisdiction, the state court shall dismiss the child custody proceeding without prejudice.
  2. Provide the tribe with the case information, and if requested, schedule a transfer [case staffing](#).
4. **State court process**  
The CA caseworker will:
1. Inform the tribe, parents, and/or Indian custodian(s), if applicable, of the date and time of the Shelter Care Hearing.
  2. In all situations that require sending notice (not membership inquiries done by NAIR), coordinate with the assigned AAG or prosecuting attorney to determine who is responsible for sending.
  3. Ensure the parent, Indian custodian (if/when identified), and tribe(s) are served with [Indian Child Welfare Act Notice JU 03.0900](#), including [Dependency Petition JU 03.0100](#) and [Notice and Summons/Order JU03.200](#) which includes the date and time of the Fact Finding Hearing, by certified mail, return receipt requested. 25 C.F.R. Sec. 23.111(c)
    1. Follow publication process per [RCW 13.34.080](#) if unable to locate parent(s) on whom to serve legal notice in person.
    2. Send a copy of the [Indian Child Welfare Act Notice JU 03.0900](#), [Notice and Summons/Order JU 03.0200](#) and [Dependency Petition JU 03.0100](#) to the [Portland Bureau of Indian Affairs \(BIA\)](#) by certified mail, return receipt requested upon filing a dependency petition [25 U.S.C. § 1912\(a\)](#)
  4. Immediately inform the child's parent(s), (including any alleged father), [Indian custodian](#) (if any), and the tribe of the time, date, and place of the Dispositional



Hearing if it is scheduled at a different time, date and place than the Fact Finding Hearing.

5. Provide a copy of the court report to the child's parent(s), Indian custodian (if any), the child's tribe, and any other legal party to the proceeding.
6. Inform the parent(s), Indian custodian, if any, and the child's tribe(s) of all upcoming review hearings at least 14 calendar days prior to the Dependency Review Hearing.
7. **Permanency planning:**
  1. Continue active efforts to return the child home.
  2. Work with the AAG or local prosecuting attorney to request that the court make a finding on the record about:
    1. whether the child is an Indian child, and if so
    2. which tribe is serving as the Indian child's tribe.
  3. If **guardianship** is identified as the permanent plan, follow CA Practices and Procedures [Guardianship policy](#), Regional Administrator or designee approval is required prior to asking the court to support guardianship as a permanent plan, and:
    1. Facilitate a [case staffing](#) with the child's tribal designee and obtain tribal recommendations.
    2. Ensure the parent, Indian custodian (if/when identified), and tribe(s) are served with [Indian Child Welfare Act Notice JU 03.0900](#), including [Guardianship Petition JU 14.0100](#) and [Notice and Summons/Order JU14.0200](#) which includes the date and time of the Guardianship Hearing, by certified mail, return receipt requested. 25 C.F.R. Sec. 23.111(c)
    3. Follow publication process per [RCW 13.34.080](#) if unable to serve notice in person.
    4. Send a copy of the [Indian Child Welfare Act Notice JU 03.0900](#), [Guardianship Petition JU 14.0100](#) and [Notice and Summons/Order JU 14.0200](#) to the [Portland BIA](#) by certified mail, return receipt requested upon filing a guardianship petition [25 U.S.C. § 1912\(a\)](#)
8. Prior to filing a **termination petition**, facilitate a [case staffing](#) with the child's tribal designee and obtain tribal recommendations:
  1. Work with the AAG or local prosecuting attorney to request that the court make a finding on the record about:
    1. whether the child is an Indian child, and if so
    2. which tribe is serving as the Indian child's tribe.
  2. Follow CA Practices and Procedures [Filing a Petition to Terminate Parental rights policy](#).
  3. Follow CA Practices and Procedures [Termination of Parental Rights – Compelling Reasons policy](#).
  4. Petitions for voluntary termination of parental rights may not be initiated for an unborn Indian child. The hearing on the petitions for relinquishment or termination cannot occur until the parent has signed

the consent to adoption and **at least 10 days** after the birth of the child per [25 U.S.C. §1913 \(a\)](#).

5. Consult with the CA supervisor and Assistant Attorney General when a tribe is not in agreement with the termination.
  6. Ensure the parent, Indian custodian (if/when identified), tribe(s) are served with [Indian Child Welfare Act Notice JU 03.0900](#), [Notice and Summons/Order JU03.0200](#) and [Termination Petition JU 04.0100](#), which includes the date and time of the Termination Hearing, by certified mail, return receipt requested. 25 C.F.R. Sec. 23.111(c).
    1. Follow the publication process per [RCW 13.34.080](#) if unable to locate parent(s) on whom to serve notice for the termination hearing in person.
    2. Send a copy of the [Indian Child Welfare Act Notice JU 03.0900](#), [Notice and Summons/Order JU 03.0200](#) and [Termination Petition JU 04.0100](#) to the [Portland BIA](#) by certified mail, return receipt requested upon filing a termination petition [25 U.S.C. § 1912\(a\)](#).
  7. Coordinate with the local AAG or prosecuting attorney when service attempts are unsuccessful. The attorney will request the worker complete affidavit [Motion and Declaration to Publish Notice and Summons JU 03.0210](#) and will file a motion and declaration to publish notice and summons.
9. **Qualified Expert Witness:**
1. Work with the local AAG or prosecuting attorney to identify a [qualified expert witness](#) for dependency disposition or termination hearings to meet the “clear, cogent and convincing” standard of proof that continued parental custody will likely result in serious emotional or physical damage to the child. 25 U.S.C. § 1912 (e) (f), 25 C.F.R. § 23.121 and 23.122
  2. When the child’s tribe has an [memorandum of understanding](#) with the Department, review the MOU to determine if it lists the contact information for the tribe’s preferred qualified expert witness. For all other tribes, contact the [Indian child’s tribe](#) at least twenty (20) days prior to any evidentiary hearing in which the testimony of a qualified expert witness is required to request that the tribe identify a qualified expert witness. If the tribe does not identify someone in a timely manner, follow [RCW 13.38.130 \(4\)\(b\)\(i-iv\)-\(c\)](#) to identify a qualified expert witness.
  3. If additional assistance is needed in locating a qualified expert witness, contact regional ICW consultants or CA headquarters ICW program.
10. Document all ICW activities, e.g., notifications and information provided to tribes by creating a FamLink case note and selecting Tribal Contact under the activities tab. Tribal contact case notes, including proof of services to the family are extremely important to CA and the assigned AAG to assess whether CA met its ICWA obligations.

11. File all ICWA/ICW correspondence and documents in the ICW section of the most recent physical case file.

## Forms

- [Consent to Foster Care Placement by Indian Child's Parent or Indian Custodian JU 03.0920](#)
- [Consent by Indian Child's Parent for Termination of Parental Rights and for Adoption JU 03.0930](#)
- [Dependency Petition JU 03.0100](#)
- [Guardianship Petition JU 14.0100](#)
- [Guardianship Notice and Summons/Order JU 14.0200](#)
- [Indian Child Welfare Act Notice JU 03.0900](#)
- [Order to Publish Notice and Summons JU 03.0240](#)
- [Motion for Order Transferring Jurisdiction to Tribal Court, JU 11.0900](#)
- [Tribal Court's Order Accepting/Declining Jurisdiction, JU 11.0960](#)
- [Petition for Termination of Parent-Child Relationship JU 04.0100](#)
- [Motion and Declaration to Publish Notice and Summons JU03.0210](#)
- Temporary Custody Notification DSHS 09-731 (located on the CA intranet)

## Resources

- [Federal Register](#)
- [Washington State Tribal Indian Child Welfare Social Services Directors and Staff Contact Information](#)
- [Washington State Intake Referral and After Hours Tribal Staff Contact Information](#)
- 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
- [Parents' Guide to CPS DSHS 22-484](#)

Bureau of Indian Affairs  
Portland Regional Director  
911 NE 11th Ave  
Portland, Oregon 97232

# 7. Indian Child Placement Preferences and Relative Search

**Approval:** Jennifer Strus, Assistant Secretary

**Original Date:** September 1, 1991

**Revised Date:** September 12, 2016

## **Purpose**

To follow federal and state Indian Child Welfare Acts governing where Indian children may be placed in out-of-home care.

## **Laws**

[RCW 13.38.180](#) Placement Preferences

[25 U.S.C 21 § 1915](#) Placement of Indian children

[RCW 13.34.260](#) Foster Home Placement - Parental Preferences

[25 CFR Part 23](#) Bureau of Indian Affairs ICWA Regulations

Indian children are exempt from the requirements of the Multi-Ethnic Placement Act (MEPA) and the Inter-Ethnic Adoption Provisions (IEAP), 42 USC 671a.

25 C.F.R. § 23.132 How a determination of “good cause” to depart from placement preferences is made

## **Scope**

This policy applies to Division of Children and Family Services staff.

## **Policy**

The CA caseworker will:

1. Follow federal and Washington state laws from initial placement through case closure/adoption when an [Indian child](#) is placed in out-of-home care.
2. If an Indian child is placed in out-of-home care, discuss with the parent(s) or the [Indian custodian](#) his or her placement preferences and follow federal and state ICWA placement preferences or any applicable tribal MOU unless the child's tribe identifies a different order of preference. Placement must be a good faith effort to be in a location where the parent can have regular access to the child without undue economic, physical, or cultural hardship. [RCW 13.38.180](#). Without good cause the placement selected cannot be based solely on a person's socio-economic status. 25 C.F.R. § 23.132
3. Follow the wishes of the parent where appropriate. The preference of the Indian child or parent shall be considered, provided that where a consenting parent indicates a

desire for anonymity, the worker shall give weight to that desire in applying the placement preferences. [25 U.S.C. Sec. 1915\(c\)](#); [RCW 13.38.180\(5\)](#).

4. Place with other siblings or in close proximity to siblings, unless the placement would cause serious physical or emotional harm to one or more of the children; and follow CA Practices and Procedures [Parent, Child, and Sibling Visits policy](#).
5. Coordinate emergent and non-emergent placements of an Indian child with the tribal child welfare agency prior to or within one business day of placement.
6. Conduct a diligent search for a suitable placement, to include contact with the tribe(s) if known, within the order of preference before considering a non-preferred placement.
7. Complete the relative search process per CA Practices and Procedures [Relative Placement policy](#) when an Indian child is placed in out-of-home care.

## Forms

Located on the CA intranet

- Extended Relative Search Referral DSHS 15-325
- Relative Search Letter DSHS 15-330

## Resources

Relative Search documents located on the CA intranet under CFWS or Intake and CPS programs:

- A Parent's Guide to Relative Search
- Protocol for Completing Relative Search Requests
- Creating and Monitoring Your Relative Search Request
- Guidelines for Reasonable Efforts to Locate Children and/or Parents

# 8. Adoption

**Approval:** Jennifer Strus, Assistant Secretary

**Original Date:** September 1, 1991

**Revised Date:** September 12, 2016

**Policy Review:** June 30, 2020

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## Purpose

To follow the federal and state Indian Child Welfare Acts when an Indian child becomes legally free and the permanent plan is adoption. The worker encourages tribal involvement and continued cultural connections for the Indian child up to the adoption.

## Scope

This policy applies to Division of Children and Family Services staff.

## Laws

[RCW 13.38](#) Washington State Indian Child Welfare Act (WICWA)

[25 U.S.C. § 1913 \(c\) \(d\)](#) Parental rights; Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

[25 U.S.C § 1917](#) Tribal affiliation information and other information for protection of rights from tribal relationships; application of subject of adoptive placement; disclosure by court

## Policy

The caseworker will:

1. Follow CA Practices and Procedures [Adoption policy](#).
2. Confirm the inquiry and verification process to determine if the Indian child inquiry has been completed. Follow CA ICW policies and procedures [Chapter 3 Inquiry and Verification](#).
3. Consult with an [Indian child's](#) tribe throughout the adoption process if a child is a member or the biological child of a member and eligible for membership in a federally recognized tribe and the tribe is involved in case planning.
4. Make efforts to enroll a legally free Indian child in the child's tribe if eligible before initiating the adoption process, if not already enrolled. Enrollment as a tribal member can help with possible access to services and education supports and may assist in the goal of keeping the child connected to the child's tribal heritage.
5. If a child is a member but not eligible for enrollment, the worker will contact tribal enrollment and ask for a letter of certified degree of Indian blood or descendency which can help with possible access to medical and educational resources. If the tribe agrees to write a letter, provide it to the adoptive family.
6. Follow CA ICW policies and procedures [Chapter 6 Casework Activities for Court Proceedings](#) if a parent withdraws a voluntary consent to relinquishment at any time before entry of the adoption decree. 25 U.S.C. § 1913.
7. Follow CA Practices and Procedures [Adoption Support policy](#) to determine if an Indian child who is being adopted through the state or tribal court (including [customary adoption](#)) is eligible for adoption support. If the child is eligible, inform the pre-adoptive and adoptive families if different, and assist them in the application process.
8. Document all contacts with the child's tribe in FamLink.

## Procedures

### 1. Placement of Legally Free Indian Children

1. Keep the child's tribe informed of progress in seeking adoption placement and pursue tribal placement recommendations.
2. Follow CA ICW policies and procedures [Chapter 7 Indian Child Placement Preferences and Relative search](#) when a legally free Indian child is in out-of-home care and needs a permanent placement.
3. Follow federal [25 U.S.C. 1915 \(a\)](#) and state [RCW 13.38.180 \(3\)\(a-e\)](#) ICWA adoptive placement preferences, and any applicable tribal MOU unless the child's tribe identifies a different order of preference.
4. Consider a child's input on placement within the placement preferences when the child is of sufficient age and maturity, and able to express a knowledgeable and reasoned opinion.
5. Consult with the Local Indian Child Welfare Advisory Committee (LICWAC) when the child's tribe:
  1. Has intervened and requests or agrees to a CA case staffing.
  2. Has not intervened and is not involved.
6. Follow CA ICW policies and procedures [Chapter 10 LICWAC](#). Provide the child's tribe all adoptive home studies of homes under consideration for placement of the child. Obtain a release of information from the prospective adoptive parents to allow full disclosure of the adoptive home study to the tribe if the child's tribe has not intervened as a party to the case. Follow CA ICW policies and procedures [Chapter 4 Disclosure of confidential records/Information to Tribes](#).
7. Coordinate with the child's tribe, and provide the prospective adoptive parents with information on the child's background.
8. When needed, provide instruction or arrange for instruction of the prospective adoptive parents about:
  1. How to meet the child's needs.
  2. How to help the child adjust to the adoptive placement.

### 2. Services Following Placement of Legally Free Indian Children

1. Actively involve the child's tribe in adoption decision making when CA has care and custody of an Indian child following termination of parental rights.
2. Until the child is adopted, follow CA Practices and Procedures for:
  1. [Monthly Health and Safety Visits policy](#)
  2. [Court Report policy](#)
  3. [Sibling visits policy](#)
  4. [Shared Planning meetings policy](#)
3. Contact the child's tribe to discuss and plan how to involve the tribe(s) in the monthly visits and to assure:
  1. Promotion of the child's relationship with the tribe.
  2. All other placement conditions and commitments are met.
4. When a child or the family is having difficulty adjusting to the adoptive placement involve a qualified professional to assist in overcoming adjustment problems prior to adoption finalization.

5. Follow CA Practices and Procedures [Post Placement Report policy](#) and complete the Post Placement Report DSHS 27-107 when a child is in an adoptive placement for at least three months and prior to his or her adoption finalization. When completing the report:
    1. Invite the child's tribal designee, when known, to participate.
    2. Invite Indian children age 12 and older to participate.
    3. Provide a copy to the child's tribe if requested by the tribe prior to adoption finalization.
    4. If the child's tribe has not intervened as a party in the adoption proceeding and wants a copy of the report, obtain a release of information signed by the adoptive parents or a court order authorizing the release of information. See CA ICW policies and procedures [Chapter 4 Disclosure of Confidential Records/Information to Tribes](#).
  6. If the tribe consents to the adoption include the tribe's written consent to adoption in the case file and upload in FamLink.
  7. If the tribe objects to the adoption, coordinate with the tribe in a detailed case plan review. If the caseworker and his or her supervisor agree with the adoption, despite the tribe's objection:
    1. Document the basis for the determination in a case note.
    2. Request a written notice of objection from the tribe and refer the case for consideration to the regional administrator.
    3. Include the tribe's written notice of objection to the adoption and recommendation for case planning and placement in the case file.
- 3. Releasing Records of an Adopted Indian Child**
1. The CA adoption worker must provide the tribe with a copy of the Indian child's original birth certificate prior to the entry of a final adoption decree.
  2. If the child's tribe has intervened as a party in the adoption proceedings, the CA adoption worker must provide the tribe a copy of the final adoption decree, and other records of the proceeding as requested and releasable under [RCW 26.33](#).
  3. The CA Public Disclosure unit will disclose releasable records when receiving a request from the tribe.
  4. The CA Public Disclosure unit conducts an adoption records search when receiving a written request from an adopted person having reason to believe he or she is Indian. If the records verify the person is adopted complete all of the following:
    1. Provides the person with the information on which court entered the final decree of adoption.
    2. Provides copies of information contained in the archived record that indicate the child's Indian status and tribal affiliation. Without a court order, however, CA may not provide the names or other identifying information about the birth parents.
    3. Refers the person to the Bureau of Indian Affairs in Washington, D.C.
- 4. Disrupted or Dissolved Adoption**
- When CA receives information that the placement for a child from foster care is at risk, or has resulted in either a [disrupted](#) or [dissolved](#) adoption, the CA caseworker will:



1. Contact the CA headquarters adoption program manager when notified of a dissolved adoption to help determine if the child has any tribal affiliation, and if ICWA applies.
2. Follow all requirements of the state and federal ICWA, which includes providing notice to the child's tribe of the new custody proceeding that will occur as a result of either a [disrupted](#) or [dissolved](#) adoption that involves an Indian child.
3. Follow CA ICW policies and procedures [Chapter 6 Casework Activities for Court Proceedings](#).
4. Follow CA Practices and Procedures [Adoption policy](#).

## Forms

- Post Placement Report DSHS 27-107 located on the CA intranet

## Resources

- FamLink Adoption Quick Help Guides located on the CA Knowledge Web
- [Washington State Tribes and Children's Administration's Local Memorandum's of Understanding](#)

# 9. Interstate Compact on the Placement of Indian Children

**Approval:** Jennifer Strus, Assistant Secretary

**Original Date:** September 1, 1991

**Revised Date:** September 12, 2016

**Policy Review:** June 30, 2020

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## Purpose

The Interstate Compact on the Placement of Children (ICPC) applies to Indian Children:

- In the care and custody of Children's Administration and placement is being sought across state lines.

- Under the jurisdiction of a tribe and the tribe requests CA involvement in placement across state lines.

## Laws

[RCW 26.34](#) Interstate Compact on Placement of Children

[RCW 13.38](#) Washington State Indian Child Welfare Act (WICWA)

## Scope

This policy applies to Division of Children and Family Services staff.

## Policy

1. CA must follow placement preferences contained in the [federal](#) and [state](#) Indian Child Welfare Acts for an [Indian child](#) in the care and custody of CA.
2. CA caseworkers must follow CA [Interstate Compact on Placement of Children \(ICPC\)](#) policies when:
  1. Considering out-of-state placement for an Indian child in the care and custody of CA.
  2. A federally recognized tribe has jurisdiction, and requests CA involvement to place an Indian child across state lines including payment for placement and services, e.g., foster care, group care or other services for the child.
  3. A federally recognized tribe has jurisdiction and requests CA involvement to place an Indian child across state lines without payment assistance.
  4. A sending state submits an ICPC request to CA HQ ICPC.
3. CA will maintain jurisdiction of an Indian child in CA's care and custody who is placed out-of-state.
4. When a federally recognized tribe chooses to work through the state Headquarters (HQ) ICPC, the tribe must agree to follow all parts of the ICPC regulations and laws.
5. ICPC is not required if a federally recognized tribe places an Indian child in their jurisdiction out-of-state without CA involvement.

## Procedures

1. **ICPC Out-of-State**
  1. When a Washington state federally recognized tribe requests out-of-state placement of an Indian child under tribal jurisdiction, HQ ICPC determines if a receiving state will accept an ICPC request. A CA caseworker may assist the tribe in referring their request to ICPC HQ.
  2. If an ICPC request is accepted, follow CA [ICPC Out-of-State](#) policy and:
    1. HQ ICPC must have the approved and signed [ICPC Placement Request 100A DSHS 15-092](#) and approved home study (not required for residential placements), prior to the tribe placing the child out of state.

2. The CA caseworker completes the [ICPC Placement Request 100A DSHS 15-092](#), showing the tribe as having legal custody and showing CA as having financial responsibility when a tribe uses the ICPC process, and CA makes payment for placement or related services.
2. **ICPC in Washington State**  
Follow Washington state [ICPC](#) policy when CA HQ ICPC receives a written request from another state for placement.

## Forms

- ICPC Packet Checklist located on the ICPC Page on the CA Intranet

## Resources

Contact CA HQ ICPC at [waicpc@dshs.wa.gov](mailto:waicpc@dshs.wa.gov) or 360.902.7984 with ICPC questions.

# 10. Local Indian Child Welfare Advisory Committees

**Approval:** Jennifer Strus, Assistant Secretary

**Original Date:** October 27, 1976

**Revised Date:** September 12, 2016

**Sunset Review:** June 30, 2020

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## Purpose

The Local Indian Child Welfare Advisory Committees (LICWAC) serve in an advisory capacity to Division of Children and Family Services (DCFS) caseworkers and supervisors by recommending culturally appropriate case plans and services for Indian families. LICWACs offer assistance in the case management of these cases with respect to the needs and rights of Indian children and their families. LICWAC recommendations are included in the court report. LICWAC members are considered volunteers, and are subject to the same confidentiality requirements as Children's Administration (CA) staff.

## Scope

This policy applies to the Division of Children and Family Services.

## Laws

- [25 U.S.C. 1901 - 1923](#) The Federal Indian Child Welfare Act
- [RCW 13.38](#) Washington State Indian Child Welfare Act (WICWA)
- [RCW 26.44.030](#) Child Abuse Mandatory Reporting
- [RCW 74.04.060](#) Records, Confidentiality - Exceptions - Penalty
- [R.C.W. 4.92.070](#) Actions against state officers, employees, volunteers, or foster parents  
"defense by attorney general" legal expenses

## Policy

### 1. Establishing and Maintaining LICWAC

1. The CA regional administrator (RA) or designee will:
  1. Ensure LICWACs are established in his or her region.
  2. Determine that every LICWAC member meets the following requirements:
    1. The member has been designated to serve on a LICWAC by a tribal government or Urban Indian Organization; or
    2. The member is a responsible community member who:
      1. Has a genuine interest in the welfare of Indian children.
      2. Does not have Domestic Violence convictions or offenses against children.
      3. Is not a CA employee.
      4. Does not regularly represent individuals in actions against DSHS.
      5. Is not serving as a Guardian Ad Litem (GAL), or Court Appointed Special Advocates (CASA).
    3. All members are registered as a Department of Social and Health Services (DSHS) volunteer.
  3. Ensure all prospective LICWAC members, including individuals nominated in writing by a tribe or RAIIO, meet all volunteer requirements and pass a criminal background check.
  4. If the background check reveals a negative action, follow the waiver process in the DSHS Administrative policy No. 18.63 Employee Background Check Requirements policy to determine if the individual meets volunteer requirements.
  5. Inform the nominating tribe or RAIIO if the nominee does not meet LICWAC membership or volunteer requirements.
  6. Terminate a LICWAC member's appointment if a member:
    1. Resigns.
    2. Is no longer suitable to serve on the committee as determined with input from the LICWAC, tribes, and RAIIOs.
    3. Violates any of the volunteer requirements.
  7. Designate a CA employee as the LICWAC liaison.
2. The LICWAC liaison must:
  1. Ensure all LICWAC applicants complete:
    1. Volunteer Application Form DSHS 15-186 on the CA intranet.

2. Volunteer Registration Form DSHS 15-054A located on the CA intranet.
  3. [LICWAC Confidentiality Statement DSHS 27-126](#).
  4. [Criminal Background Check DSHS 09-653](#).
2. Conduct criminal background and CPS history checks on all LICWAC applicants in accordance with DSHS Administrative policy No. 18.63 Employee Background Check Requirements.
  3. Notify the RA, or designee if the background check reveals there is a negative action on a LICWAC applicant.
  4. Provide mandatory training and orientation to new and prospective LICWAC members to include:
    1. LICWAC functions and procedures.
    2. Confidentiality requirements under [RCW 74.04.060](#).
    3. Federal and State Indian Child Welfare Acts and other Washington laws impacting Indian Child Welfare including [RCW 26.44.030 Child Abuse Mandatory Reporting](#).
    4. Brief overview of relevant CA policies and procedures (e.g., Permanency planning).
    5. Volunteer liability issues, including coverage through the Department of Labor and Industries and Attorney General representation;
      1. In accordance with [RCW 4.92.070](#), CA will seek legal representation from the Office of the Attorney General for LICWAC members in all tort actions in which LICWAC members become involved as a result of their LICWAC membership.
  5. Follow [WAC 388-70-620](#) and ensure each LICWAC staffing performs one of the following functions:
    1. Acts as a multidisciplinary team for CA in the development of culturally specific case plans.
    2. Reviews potential placements of Indian children in non-Indian homes when the child's tribe is unavailable or not participating. This responsibility would occur if:
      1. Contact with the tribe has been unsuccessful.
      2. The tribe has indicated they do not wish to actively participate in the case.
      3. The tribe has failed to respond within 10 working days from the date post-marked on a written request for involvement.
    3. Acts as the Child Protection Team (CPT) meeting when requested, and the case and LICWAC members meet CPT requirements. Follow Practices and Procedures [CPT policy](#).
    4. Acts as a permanency planning group for Indian children when the Indian child's tribe is not involved or the tribe requests LICWAC conduct the permanency planning. Follow CA

Practices and Procedures [Case Staffings policy](#) or [Shared Planning Staffing](#) or [Permanency Planning](#) policies.

5. Acts as an administrative case review when a court hearing cannot occur within 6 months of the child's original placement date. Follow CA Practices and Procedures [Administrative Case Review policy](#).
  6. In coordination with the LICWAC invite the following participants to a LICWAC staffing at least five calendar days before the staffing **when possible** and provide alternative methods for participation such as conference calls:
    1. Parents, guardians and Indian custodians.
    2. Children age 12 and older.
    3. Foster parents, relatives, or support persons upon agreement by the CA caseworker and LICWAC chairperson.
    4. Tribal representatives or their designees.
    5. Attorneys, upon agreement by the CA caseworker and LICWAC chairperson.
    6. Guardians Ad Litem/CASA.
  7. Provide staff support, coordinate functions and obtain policy clarification when requested.
  8. Identify ongoing training opportunities for LICWAC members.
  9. Identify and advocate for resources to meet the cultural and specific needs of Indian children and their families.
2. **Staffing a Case with LICWAC**
1. The LICWAC liaison will:
    1. Schedule and facilitate LICWAC meetings when requested by the caseworker.
    2. Ensure there are three members present to achieve a quorum. In the event an emergency for a LICWAC member on the day of staffing prevents a quorum LICWAC may still proceed.
    3. Ensure each LICWAC staffing begins with:
      1. An explanation of LICWAC and confidentiality requirements if there are new members or new CA staff observing.
      2. A reminder that members must declare relationships and any conflict of interest before cases are presented. If any conflicts of interest are identified the LICWAC member must leave the room for that case.
    4. Complete relevant sections and ensure members sign the [Shared Planning Meeting DSHS 14-474](#).
    5. Document all LICWAC recommendations in section 7 of the Shared Planning Meeting tab in FamLink.
    6. Follow impasse procedures if there is no agreement with recommendations.
  2. The CA caseworker will:
    1. Coordinate with the LICWAC liaison and schedule a LICWAC staffing when any of the following situations occur for a CFWS case:

1. When the caseworker receives a request from the following individuals:
  1. Tribal designee.
  2. LICWAC committee.
  3. CA worker's supervisor.
  4. LICWAC Liaison.
  5. Child's parent, legal guardian, or Indian custodian.
2. When the CFWS case involves:
  1. Children whose status with a federally recognized tribe is pending.
  2. Indian children whose tribe is unavailable.
  3. Children whose tribe is requesting LICWAC involvement.
  4. Children affiliated with a non-federally recognized tribe or Canadian First Nations. Conduct case staffings with Local Indian Child Welfare Advisory Committees (LICWAC) with a signed [Consent DSHS 14-012](#) from at least one parent.
    1. If both parents are absent and have not participated in the case for 60 days from the Original Placement Date (OPD), and CA has made diligent efforts to locate parents who cannot be found, the case may be staffed at LICWAC **without** a signed consent.
    2. If either parent should subsequently become involved with the case, consent to continue staffing with LICWAC is required.
3. Within timeframes determined by the following staffing type:
  1. Permanency Planning - Within 60 days of original placement date.
  2. CPT - When requested.
  3. Out-of-home placements of an Indian Child in a Non-Indian home staffing - When requested.
  4. Administrative Reviews – When requested.
2. Not schedule a LICWAC staffing when the tribe has requested the case not be staffed at LICWAC.
3. Make efforts (including telephone, fax, email and regular mail) to obtain tribal representation at all LICWAC staffings.

Representation can occur in person, by telephone or through written recommendations. A tribe may be considered unavailable if:

  1. Contact with the tribe has been unsuccessful.
  2. The tribe has indicated they do not wish to actively participate in the case.
  3. The tribe has failed to respond within 10 working days from the date post-marked on a written request for involvement.

4. Notify the LICWAC liaison when the tribe requests no further LICWAC involvement.
  5. Continue to contact the tribe monthly when a tribe does not respond, unless the tribe indicates they do not wish to participate, and document these efforts in FamLink.
  6. At the request of the LICWAC liaison, bring the following copies for each committee member, including but not limited to:
    1. A court report signed by the CA caseworker's supervisor;
    2. The child's [Family Ancestry Chart DSHS 04-220](#);
    3. [Shared Planning Meeting DSHS 14-474](#), with LICWAC's most recent recommendations (if applicable).
  7. Bring the current volume of the child's case file, including but not limited to:
    1. All psychological reports.
    2. All medical reports.
    3. Counseling reports.
    4. Professional correspondence.
    5. Police reports.
    6. Pictures.
    7. Verification of Indian child status.
    8. [Indian Identity Request DSHS 09-761](#).
    9. All court reports.
  8. Present the case to LICWAC and include the following information:
    1. Reasons why the child came into care.
    2. Services provided to the parent and his or her progress.
    3. Tribal involvement, case recommendation if applicable and if membership status is pending.
  9. Document the following in FamLink:
    1. All efforts to obtain representation, including emails and letters sent to the tribe.
    2. A tribe declining or cancelling LICWAC participation.
  10. Advise the LICWAC at the time of the case staffing if he or she does not agree with the LICWAC recommendations. If the CA caseworker cannot resolve the disagreement, the CA caseworker must notify his or her supervisor and area administrator (AA).
  11. Contact the tribe when closing a case.
3. **Conducting a LICWAC/CA Impasse Procedure**
1. CA must initiate impasse procedures if the CA caseworker disagrees with the LICWAC recommendations.
  2. CA will work with LICWAC to resolve issues at the lowest possible level including the use of mediation.
  3. If mediation is unsuccessful, CA and LICWAC will implement impasse procedures to resolve the conflict.
    1. The CA AA or RA will schedule an impasse staffing within five business days (or longer when agreed and there is no imminent risk of serious harm) of learning about the impasse from a LICWAC designee.



He or she will review the LICWAC recommendations section in [Shared Planning Meeting DSHS 14-474](#) for points of disagreement.

2. The CA AA or RA must make every effort to include the following parties at every impasse staffing level:
  1. LICWAC designee.
  2. CA caseworker.
  3. CA caseworker's supervisor.
  4. RA or deputy RA.
  5. Assistant attorney general with expertise in ICW issue, if necessary.
4. If the conflict or impasse is unresolved, the RA, or his or her designee will notify the CA Assistant Secretary and request an impasse staffing.
5. The CA caseworker submits all case related documentation to the CA Assistant Secretary.
6. If the conflict or impasse is unresolved, the Assistant secretary notifies the DSHS Secretary and requests an impasse staffing where the Secretary's decision is final. The CA Assistant Secretary will forward all case related documentation to the DSHS Secretary.

## Forms

- [Family Ancestry Chart DSHS 04-220](#)
- [Indian Identity Request DSHS 09-761](#)
- [LICWAC Confidentiality Statement DSHS 27-126](#)
- [Shared Planning Meeting DSHS 14-474](#)
- Volunteer Application DSHS 15-186 on the CA intranet
- Volunteer Registration DSHS 15-054a on the CA intranet

## Resources

- [DSHS Secretary's List of Crimes and Negative Actions](#)
- [Executive Order 12-04 Community Protection Teams](#)
- [W.A.C. 388-70-600 LICWAC Purpose](#)
- [W.A.C. 388-70-610 LICWAC Membership](#)
- [W.A.C. 388-70-620 LICWAC Functions](#)
- [W.A.C. 388-70-630 LICWAC Meetings](#)
- [W.A.C. 388-70-640 LICWAC Confidentiality](#)
- [Washington State Tribes and Children's Administration's Local Memorandum's of Understanding](#)
- LICWAC Brochure DSHS 22-194 located on the CA intranet ICW site.
- Regional LICWAC liaisons are a resource to help you prepare for a LICWAC case staffing.

# 11. Payments for Services for Children in Tribal Care or Custody

**Approval:** Jennifer Strus, Assistant Secretary

**Effective Date:** September 12, 2016

**Revised Date:** Not Applicable

**Sunset Review:** June 30, 2020

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## Purpose

Provide Children's Administration (CA) caseworkers direction when tribes request a payment for services for a child in the care or custody of a federally recognized Indian tribe as supported by the [DSHS Administrative policy No. 7.01](#).

## Laws

[R.C.W. 74.13.031\(14\)](#) Duties of department - Child welfare services - Children's services advisory committee.

## Scope

These policies apply to all Division of Children and Families Services staff.

## Policy

1. When requested by a federally recognized tribe, CA will approve payment for services for an [Indian child](#), subject to the same *eligibility standards and rates of support applicable to other children for whom the department purchases care* (RCW 74.13.031). Such services include:
  1. Preventative and in-home services when Tribes complete their own CPS/FAR interventions for families residing on the reservation
  2. CFWS case type services
2. The CA intake worker will:
  1. Generate an intake for all tribal payment requests, including open and closed cases, unless the request is a modification to an existing payment only case.
  2. Send the intake to the local office responsible for the case and assignment to the CA payment-only worker or fiduciary.
3. The CA payment-only worker or fiduciary will:
  1. Complete the following case assignment tasks in FamLink:

1. Create a legal record, including Placement and Care Authority as "Tribe with a IV-E Agreement" or "Tribe without a IV-E Agreement."
2. Upload the tribal court order for all placements in out-of-home care.
2. Establish foster care monthly maintenance payment:
  1. Create the placement in FamLink using the Tribal Placement and Care Authority service codes.
  2. Coordinate with the tribe in completing a foster care rate assessment for children within 30 calendar days of placement in out-of-home care, and re-assess every six months thereafter.
3. Referring for Services - When receiving a request from the tribal caseworker for services or evidence based practice services.
  1. Complete Service Referrals in FamLink.
  2. Send to the supervisor for approval.
  3. Once approved by the supervisor, forward to the contracted provider with a copy to the tribal worker.
4. Periodically review the following services:
  1. Foster care rate assessments every six months
  2. Agency service fees for child placement agencies
  3. Parent Child Visits (PCV)
  4. Exceptional Cost Foster Care Plans (ECP)
  5. Child care for renewal
5. Send completed Behavior Rehabilitation Services (BRS) or Wraparound Intensive Services (WISe) screen referrals received from the tribe to the regional BRS program manager.
6. Contact the Regional Relative Guardianship Assistance Program (R-GAP) Gatekeeper when a caregiver is applying for a R-GAP subsidy.
7. Obtain administrative approval for any special needs authorization for goods or services per Practices and Procedures [4525. DCFS Administrative Approvals policy](#).
8. Change a placement when receiving tribal notice of a child's placement changing to return home or to relative care or other suitable placement.
9. Close the case when the tribe has confirmed payment is no longer necessary, and all placements and services are closed, and payments cleared. For a IV-E tribe, close the placement episode only after the child has achieved permanency
10. When receiving a tribal request for child care via the service referral:
  1. Authorize child care per Practices and Procedures [4503. Child Protective Services Child Care](#), [4503. A. Child Welfare Services Child Care](#), [4504. Therapeutic Child Development](#) and [4505. Employed Foster Parent Child Care](#).
  2. Document the following information in FamLink:
    1. The reason why child care is needed.
    2. Name of the child-care provider and the provider ID number.
    3. The begin date.
    4. If full or part-time child care is needed.
    5. If a registration fee is required.

6. If the caregivers are employed, the employer's name and address.
3. Refer requests for [therapeutic child care](#) to the Department of Early Learning (DEL).
4. The placement desk coordinator will make placement arrangements when the tribe requests placement for a child.

## Forms and Tools

- Service Guide and Service Referral processes located on the CA FamLink Knowledge Web
- Evidence Based Practices – Description and Directory, located on the CA intranet

## Resources

- Questions about Guardianship payments: Contact the regional R-GAP Gatekeeper or Guardianship Program Manager at Headquarters
- Regional fiduciary or CA HQ finance and accounting division

# 12. Casework Services for Children and Families of Non-Federally Recognized Tribes and Canadian First Nations

**Approval:** Jennifer Strus, Assistant Secretary

**Original Date:** September 7, 2016

**Revised Date:** Not Applicable

**Policy Review:** June 30, 2020

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## Purpose

To provide guidance about CA responsibilities for children and families when the child is placed in out-of-home care and the federal and state Indian Child Welfare Acts (ICWA) do not apply.

## Laws

[R.C.W. 74.14A.020](#) Services for potentially dependent children

## Scope

This policy applies to Division of Children and Family Services staff.

## Policy

1. ICWA does not apply when a child or family is from a non-federally recognized tribe or Canadian First Nations.
2. When ICWA does not apply, CA caseworkers will:
  1. Follow all CA Practice and Procedure policies including:
    1. [Family Assessment-Assessment of Progress policy](#).
    2. [Community-Informed Decision-Making policy](#).
    3. [Culturally Appropriate Assessment policy](#).
  2. Contact the tribe or Canadian First Nation for help in locating a relative or other placement and available service resources for the child(ren). Follow CA ICW policies and procedures [Chapter 4 Disclosure of confidential records/Information to Tribes](#).
  3. Obtain written consent using [Consent DSHS 14-012](#) from at least one parent to share other information beyond the request for help in locating placement and service resources for the child.
  4. Preserve the child's culture of origin and respect the child's right to participate in his or her culture, when developing case plans. This includes helping the family enroll the child if they are eligible and the family wants to pursue enrollment.
  5. Conduct case staffings with Local Indian Child Welfare Advisory Committees (LICWAC) with a signed [Consent DSHS 14-012](#) from at least one parent.
    1. If both parents are absent and have not participated in the case for 60 days from the Original Placement Date (OPD), and CA has made diligent efforts to locate parents who cannot be found, the case may be staffed at LICWAC **without** a signed consent.
    2. If either parent should subsequently become involved with the case, consent to continue staffing with LICWAC will be required.

## Forms

- [Written Consent DSHS 14-012](#)

## Resources

- [First Nations Child & Family Caring Society of Canada](#)
- ICW policies and procedures [Chapter 10 – Local Indian Child Welfare Advisory Committees](#)

# 13. Definitions

**Active Efforts** means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the

child-custody proceeding, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts are to be tailored to the facts and circumstances of the case (examples are provided in the revised federal regulations).

**Canadian First Nations** means the indigenous peoples of Canada, also called First Peoples.

**Customary adoption** means the permanent placement of an Indian child without termination of parental rights, but the parent or Indian custodian cannot have the child returned upon demand.

**Disrupted adoption** means the permanent placement of a child (with or without termination of parental rights in the case of an Indian child) is at risk, or has resulted in the child coming back into the care and custody of the department.

**Dissolved adoption** means an adoption in which the legal relationship between the adoptive parents and adoptive child is severed, either voluntarily or involuntarily, after the adoption is legally finalized. This results in the child's return to (or entry into) foster care or placement with new adoptive parents.

**Domicile** means

1. For a parent or Indian custodian, the place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere.
2. For an Indian child, the domicile of the Indian child child's parents or Indian custodian or guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's custodial parent. Per 25 C.F.R. § 23.2

**Federally recognized tribe** means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native Village. 25 U. S. C. 1903(8)

**Impasse** means a deadlock between CA and the LICWAC or child's tribe following thorough discussion by the CA case worker of the case plan and case decisions with the worker's supervisor and managers and the LICWAC or tribal designee does not concur with the department's plan and decisions.

**Indian ancestry** means a child or family who have American Indian/Alaska Native heritage. A child does not have to be an Indian child as defined by ICWA to be ethnically Indian.

**Indian child** means any unmarried and unemancipated person who is under age eighteen and is either (a) a member or citizen of an Indian tribe or (b) is eligible for membership or citizenship in an Indian tribe and is the biological child of a member/citizen of an Indian tribe. 25 U.S.C. § 1903 (4); 25 C.F.R. § 23.2. A child who meets this definition is subject to the Indian Child Welfare Act.

**Indian child's tribe** means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts. 25 U.S.C. § 1903(5)

**Indian custodian** means any Indian who has legal custody of an Indian child under applicable Tribal law or custom or under applicable State law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child. An Indian may demonstrate that he or she is an Indian custodian by looking to Tribal law or Tribal custom or State law. 25 U.S.C. § 1903(6)

**Indian tribe** means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native Village. 25 U.S.C. § 1903(8)

**Imminent risk of serious harm** (used in risk only intakes and coordination with law enforcement) means:

Imminent - Having the potential to occur at any moment, or there is substantial likelihood that harm will be experienced.

Risk of Serious Harm - A high likelihood of a child being abused or experiencing negligent treatment or maltreatment that could result in one or more of the following outcomes:

- Death
- Life endangering illness
- Injury requiring medical attention
- Substantial risk of injury to the physical, emotional, or cognitive development

**Local Indian Child Welfare Advisory Committee(LICWAC)** serve in an advisory capacity to Children's Administration (CA) caseworkers and supervisors by recommending appropriate case plans and services for Indian families. LICWAC recommendations are included in the Court Report.

**Memoranda of Understanding** may also be referred to within CA regions as a Memorandum of Agreement. The MOUs clarify roles and responsibilities of both CA and the tribes to enhance coordination and cooperation between the Tribal governments of Washington State federally recognized tribes and CA in providing appropriate child welfare services to Indian children.

**Native American Inquiry Referral (NAIR)** means the centralized CA business process the CA caseworker uses to inquire and verify whether a child is a member/citizen or eligible for membership/citizenship with a federally recognized tribe and meets the definition of Indian Child as defined in federal and state ICWA.

**Non-federally recognized tribe** means any tribe, Band, or other organized group of community of Indians that has not been recognized as eligible for services provided to Indians by the Secretary of the Interior. Such a tribe may refer to itself as a “landless” tribe.

**Qualified Expert Witness** means:

- A professional qualified to testify regarding whether the child’s continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child’s Tribe.
- A person may be designated by the Indian child’s Tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child’s Tribe.
- The court or any party may request the assistance of the Indian child’s Tribe or the BIA office serving the Indian child’s Tribe in locating persons qualified to serve as expert witnesses.
- The caseworker regularly assigned to the Indian child may not serve as a qualified expert witness in child-custody proceedings concerning the child.

**Tribal Court** means a court with jurisdiction over child custody proceedings and which is either:

- A court of Indian offenses; or
- A court established and operated under the code or custom of any federally recognized Indian tribe; or
- Any other administrative body of a federally recognized Indian tribe that is vested with authority over child custody proceedings. 25 U.S.C. § 1903(12)

**Tribal/State Agreement** may also be referred to within CA regions as a Memorandum of Understanding (MOU), Memorandum of Agreement (MOA). The MOUs clarify roles and responsibilities to enhance coordination and cooperation between the tribal governments of Washington State federally recognized tribes and CA in providing appropriate child welfare services to Indian children.

## 14. Appendices

### Appendix A: Resources

#### **A Guide to Compliance with the Indian Child Welfare Act**

This guide is designed to help individuals understand ICWA’s requirements and should be read in conjunction with the law (25 U.S.C. § 1901 et seq.) itself. The information contained in this handout cannot replace the legal advice of your AAG in Washington state.



[http://www.nicwa.org/Indian\\_Child\\_Welfare\\_Act/documents/2015Guide%20to%20ICWA%20Compliance.pdf](http://www.nicwa.org/Indian_Child_Welfare_Act/documents/2015Guide%20to%20ICWA%20Compliance.pdf)

### **Casey Family Programs Indian Child Welfare Programs**

Technical assistance and resources for tribal child welfare systems and urban organizations serving Indian children, youth and families. Education, training and support to state and county-based child welfare systems to improve ICWA compliance and reduce the disproportionate number of American Indian and Alaska Native children receiving foster care services.

[www.casey.org/OurWork/DirectoService/icw.htm](http://www.casey.org/OurWork/DirectoService/icw.htm)

### **Federal Register**

Provides names and addresses of federally recognized tribes or their designated agent for service of notice of proceedings subject to ICWA.

<http://www.bia.gov/cs/groups/public/documents/text/idc012540.pdf>

### **National Indian Child Welfare Association**

NICWA improves the lives of American Indian children and families by helping tribes and other service providers implement services that are culturally competent, community-based, and focused on the strengths and assets of families. This work includes collaborating with tribal and urban Indian child welfare programs to increase their service capacity, enhancing tribal-state relationships, and providing training, [technical assistance](#), [information services](#) and alliance building.

[www.nicwa.org](http://www.nicwa.org)

### **UW Alliance Indian Child Welfare**

Provides training to CA caseworkers and tribal social service specialists on the requirements of ICWA and implementation in Washington State.

<https://allianceforchildwelfare.org/tribalmembers>

### **Washington State Federally Recognized Tribes**

Addresses and contact information for the federally recognized tribes in Washington State

<https://www.dshs.wa.gov/sites/default/files/CA/icw/documents/TribalICWDirectors.pdf>

## **Appendix B: History of Washington State Indian Child Welfare**

There is a rich history that spans over four decades in Washington State dedicated to improving the outcomes of Native American families involved in the child welfare system. In the late 1960s a coalition of Washington State tribes, off-reservation Indian groups, individuals concerned with the welfare of Indian children, representatives from the Office of the Attorney General, and staff of CA came together to address the separation of Indian children from their communities.

In 1972 DSHS created the Office of Indian Affairs, now called the [Office of Indian Policy](#). This office is advisory to all DSHS Administrations. Personnel of Indian ancestry who are familiar with Indian communities staff the O.I.P. It provides an ear for the various tribal and off-reservation Indian communities and a voice for input into policy development. The O.I.P reports to the Assistant Secretary of Services and Enterprise Support Administration within DSHS and is responsible for coordinating efforts with Federally Recognized tribes of Washington State and the Recognized American Indian Organizations in order to address the collective service needs of individual American Indians and Alaska Natives in Washington State.

In 1976, CA implemented Washington Administrative Code [Section 388-70-600](#) establishing regional [Local Indian Child Welfare Advisory Committees \(LICWAC\)](#). The LICWACs serve in an advisory capacity to CA caseworkers and supervisors recommending appropriate case plans and services for Indian Children when CA has not yet identified the children's tribes, the tribe is unavailable or not involved or the children's tribes have requested LICWAC participation on behalf of the tribe. The LICWAC may also serve as the [Child Protection Team \(CPT\)](#) for Indian children. LICWAC volunteers are active in every region in the state and provide a valuable service to CA and Indian families.

In 1978 the [federal Indian Child Welfare Act](#), eleven years in the making, was enacted changing child welfare practice as it is applied to Indian children (and their families). This landmark law defines the rights of tribes to assume jurisdiction over children who are members of a tribe or are the biological child of a member and eligible for membership.

In 1987, the department adopted [Administrative policy No. 7.01](#) to demonstrate the department's commitment to planning and service delivery to Indian governments and communities. Through this policy, DSHS follows a government to government approach to establishing policies and procedures for working with Indian tribes.

In addition to federal and state laws, a historic 1987 Tribal-State Agreement previously set standards for notification, social work practice, equal access to services, and cooperative case planning in cases involving all Indian children. Subsequently, the State has negotiated and executed individual MOUs with some Washington state tribes. Those MOUs outline roles and responsibilities of CA and tribes when coordinating on cases that may or do involve an Indian child, and when working with a tribe CA caseworkers must always refer to any applicable signed MOU.

On August 4, 1989, the [Centennial Accord](#) was executed between the federally recognized Indian tribes of Washington and the State of Washington. The Accord establishes a government-to-government relationship between the State of Washington and the federally recognized Indian tribes in Washington State. The agreement introduces a framework to build more positive relationships in the resolution of disagreements and provides a process for working on issues of mutual concern.

Most recently, and continuing the legacy of their shared commitment to Indian children and families in the child welfare system, Washington State tribes came together with CA in 2011 and worked to encourage the legislature to pass the [Washington State Indian Child Welfare Act](#)

[\(WICWA\)](#). This legislation protects the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the children, or the interests of their tribe.

## **Government to Government Relations**

The state of Washington recognizes the unique cultural and legal status of American Indians and that tribes have the authority to, among other things, govern their people and their land; define their own tribal membership criteria; create tribal legislation, law enforcement, and court systems; and to impose taxes in certain situations as expressed in the Indian Self-Determination Act of 1964.

As part of our ongoing commitment to ensure consistent departmental compliance with the ICWA, WICWA, the Tribal-State Agreement and other state ICW-related laws, CA, to the extent it has resources, will:

- Provide ICW training to state agency and licensed or certified private child placing agencies, CA caseworkers, supervisors, administrators, and policy making staff. CA will train its staff to screen their cases for early identification of Indian status and to staff these cases immediately with the tribes or LICWAC;
- Make available training for tribal agencies at their request and when funds are available; and
- Provide to CA caseworkers resources to consult including the regional ICW program consultant, Office of Indian Policy Regional Manager, when available, the LICWAC liaison, or the CA headquarters ICW Program staff when they need additional information or clarification on Indian affairs or issues pertaining to the delivery of services to Indian clients.

The DSHS [Administrative policy No. 7.01](#) provides further information CA caseworkers should familiarize themselves with, and (dependent on their work/role) use in their interactions with the federally recognized tribes in Washington State and the Recognized American Indian Organizations. The policy outlines duties and responsibilities for DSHS administrations including:

- Communication and consultation protocol with tribes and Recognized American Indian Organizations (RAIOs)
- Role of the Office of Indian Policy
- American Indian Policy 7.01 Implementation Plan Reporting Guidelines