

Title of Proposed Rule: INDIAN CHILD WELFARE ACT

CDHS Tracking #: 17-01-09-1

Office, Division, & Program:
OCYF, DCW

Rule Author:
Jeannie Berzinskas

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STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.

Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule.

On June 8, 2016, the Bureau of Indian Affairs (BIA) released the first comprehensive regulations for the substantive legal requirement regarding the Indian Child Welfare Act (ICWA). The regulations provide the first legally-binding federal guidance about how to implement ICWA. The federal regulations went into effect December 12, 2016. These proposed changes will bring the current rules into compliance with the new federal regulations and mirror best practices as presented in the guidelines also released by the BIA in December 2016. The proposed rules will update definitions and notice provisions in the existing rules and adds new subparts to address ICWA implementation. It promotes uniformity and provides clarity to the Federal standards established by the statute. The rules will reflect best practices, as established by the BIA. The rule allows for early compliance that promotes the maintenance of Indian families, and the reunification of Indian children with their families.

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2016)	State Board to promulgate rules
26-1-109, C.R.S. (2016)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2016)	State department to promulgate rules for public assistance and welfare activities.

Program Authority for Rule: *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
19-1-126, C.R.S.(2016)	Compliance with the Federal "Indian Child Welfare Act"
26-1-109, C.R.S (2016)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2016)	State department to promulgate rules for public assistance and welfare activities.
26-5-102, C.R.S. (2016)	State Department to adopt rules regarding child welfare services.

Does the rule incorporate material by reference?

Yes

No

Does this rule repeat language found in statute?

Yes

No

If yes, please explain.

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REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

The groups that will benefit, bear the burdens and be impacted by this rule include: Indian and Alaskan Native children, youth and families, state and county child welfare, foster and adoptive parents and Residential Treatment Centers.

2. Describe the qualitative and quantitative impact.

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

Indian children, youth and families will benefit from standardized practices across Colorado with the goal of reducing the alarmingly high percentage of Indian children who are removed from their homes and not placed with other Indian families. County departments will benefit by the successes of the Native American families that they serve. Yet, they will bear the burdens of the workload and administrative tasks outlined in the new federal regulations. Native American children and youth make up approximately 2% of the current child welfare population. However, the new federal regulations have set a higher standard regarding inquiry into Native American heritage which could impact the entire child welfare population.

3. Fiscal Impact

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just "no impact" answer should include "no impact because..."***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

State fiscal impacts include training and technical assistance to the county administered child welfare departments. There should be no CBMS changes requested. However, fiscal impacts will be incurred to update the Statewide Automated Child Welfare Information System (SACWIS).

County Fiscal Impact

County fiscal impacts include staff time, identifying and providing foster homes that qualify as an Indian Foster Home, and costs to obtain a qualified expert witness in ICWA cases. County departments will also bear the costs associated with identification of ICWA cases, notice to Tribal entities, and collection of ICWA information.

Federal Fiscal Impact

No impacts as these rules will mirror federal regulations

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Other Fiscal Impact (such as providers, local governments, etc.)

State Courts and county departments will bear the burden of providing a qualified expert witness in ICWA cases and the costs associated with identification of ICWA cases that includes notice to the Tribes.

4. Data Description

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

The following federal announcements were relied upon when developing these rules: Indian Child Welfare Act of 1978; The Bureau of Indian Affairs released guidelines related to ICWA in February 2015 and December 16, 2016, the federal regulations released June 8, 2016, which took effect on December 12, 2016.

5. Alternatives to this Rule-making

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just "no alternative" answer should include "no alternative because..."

No alternative as this is a federal regulation.

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OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Public Comment No / Detail
7.304.53	Court-related procedures	Compliance with ICWA	Technical changes to correct 7.309 references.	No
7.309.1	Additional and updated definitions	Definitions	Adds definitions that were clarified in the updated Federal regulation	Yes, see below
7.309.2	Eligibility requirements changes	Determination of eligibility	Technical changes	Yes, see below
7.309.31	Notification Requirements changes	Notification procedures	Updates to include the option of registered or certified mail; clarifies information that shall be included in notice; and provides addresses for the BIA in case their assistance is needed to locate the parents or Tribe.	Yes, see below
7.309.32	Notification for involuntary placements	Requirements for notifying the parent, Indian Custodian and Tribe in involuntary placements.	Clarifies the notice within 48 hours may be completed by telephone or email. It also clarifies that mailed notices may be by registered or certified mail.	Yes, see below
7.309.33	Initial notification for voluntary placements	Requirements for notification	Clarifies that the county department shall use active efforts to verify a child's status if a party has stated there is reason to believe the child is an Indian child.	Yes, see below
7.309.34	Emergency Proceedings	None	Clarifies what qualifies as an emergency and when to terminate emergency proceedings	Yes, see below
7.309.4	Changes in Transfer to Tribal Courts	Process for transferring jurisdiction to tribal court	Clarifies what may not constitute good cause for transferring jurisdiction to a tribe.	Yes, see below
7.309.5	Foster care and pre-adoptive placements	Efforts shall be made to place in the least restrictive setting and close to a child's home	Clarifies consideration for sibling attachment and special needs. Also clarifies that placement can be close to a child's home, their extended family or siblings. Adds clarification about withdrawal of consent for voluntary placements.	Yes, see below
7.309.6	Order of Placement Preference	Establishes an order of placement preference	Clarifies what does and does not constitute good cause for deviating from placement preferences.	Yes, see below
7.309.7	Changes in Voluntary Placement requirements	Requirements for voluntary consent	Placements regarding status offenses	Yes, see below
7.309.8	Changes in Adoptive placements	Involuntary termination of parent-child relationship	Sequencing/formatting changes	Yes, see below
7.309.81	Relinquishment	Procedures for relinquishment	Adds the names of both Colorado Tribes and adds new language about voluntary consent.	Yes, see below
7.309.82	Order for preference for adoption	Establishes an order of preference for adoptive placement	Clarifies to consider the placement preference of the child and/or parent.	Yes, see below
7.309.83	Documentation	None	Requirement to maintain documentation regarding various ICWA related tasks.	No

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 **New**  **Revise**  **Technical Change**  **Repeal**

Page #	Section	New Rule #	New Rule Title/Reference	Current Rule #	Status	Changes/Current Description
1	Court-related procedures			7.304.53, A	Revision	Technical change to correct 7.309 references.
1-4	Indian Child Welfare Act (ICWA) Definitions			7.309.1	Revision	Revises language of some definitions and adds new definitions.
4	ICWA Determination of eligibility			7.309.2	Technical change	Technical change for language consistency.
4	ICWA Notification procedures			7.309.31, A	Revision	Clarifies the expectation of asking if any party has a reason to know that a child is an Indian child.
5-6	ICWA Notification procedures	7.309.31, B-H			New	Adds clarification about what information notifications must contain and who they must be sent to.
7	ICWA Initial notification of involuntary placements			7.309.32	Revision	Clarifies the notice within 48 hours may be completed by telephone or email. It also clarifies that mailed notices may be by registered or certified mail.
7	ICWA Initial notification of voluntary placements			7.309.33	Technical change	Technical change for language consistency.
7-8	ICWA Emergency proceeding	7.309.34			New	Clarifies what qualifies as an emergency and when to terminate emergency proceedings
8-9	ICWA Transfer of jurisdiction from state court to tribal court			7.309.4	Revision	Clarifies what may not constitute good cause for transferring jurisdiction to a tribe.
9	ICWA Foster care and pre-adoptive placements			7.309.5	Revision	Clarifies consideration for sibling attachment and special needs. Also clarifies that placement can be close to a child's home, their extended family or siblings. Adds clarification about withdrawal of consent for voluntary placements.
9-10	ICWA Order of placement preference for foster care and pre-adoptive placements			7.309.6	Revision	Clarifies what does and does not constitute good cause for deviating from placement preferences.
10-11	ICWA Placements involving status offenses	7.309.7			New	Placements regarding status offenses.

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Page #	Section	New Rule #	New Rule Title/Reference	Current Rule #	Status	Changes/Current Description
11	ICWA Involuntary termination of parent-child relationship			7.309.8	Technical change	Sequencing/formatting changes
11-12	ICWA Relinquishment of child for adoption			7.309.81	Revision	Adds the names of both Colorado Tribes and adds new language about voluntary consent.
12	ICWA Oder of preference for adoption			7.309.82	Revision	Clarifies to consider the placement preference of the child and/or parent.
12	ICWA Documentation	7.309.83			New	Requirement to maintain documentation regarding various ICWA related tasks.
13	ICWA Disrupted or changed placement			7.309.84	Technical change	Clarifies that notice may be given by registered or certified mail and technical changes.
13	ICWA Adoption decree	7.309.85			New	Procedures for notification of adoption to the BIA. Also outlines record keeping requirements.
14	Invalidating ICWA violations	7.309.86			New	Notifies county departments of ramifications if ICWA is violated

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STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

PAC, Sub-PAC, DIFRC stakeholders, Court Improvement Program ICWA Sub-committee. The following meetings are scheduled to receive feedback regarding these rules:
1/13/17 Permanency Task Group
1/19/17 Ute Mountain Ute Tribe and Southern Ute Indian Tribe
1/20/17 Child Protection Task Group
1/26/17 County/community stakeholder teleconference
1/31/17 County/community stakeholder teleconference

This Rule-Making Package

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:

PAC, Sub-PAC, DIFRC stakeholders, Court Improvement Program ICWA Sub-committee. The following meetings are scheduled to receive feedback regarding these rules:
1/13/17 Permanency Task Group
1/19/17 Ute Mountain Ute Tribe and Southern Ute Indian Tribe
1/20/17 Child Protection Task Group
1/26/17 County/community stakeholder teleconference
1/31/17 County/community stakeholder teleconference
2/15/17 Additional Southern Ute Indian Tribe

Other State Agencies

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

Yes No

If yes, who was contacted and what was their input?

State Courts – these rules have been presented at the Court Improvement Program ICWA sub-committee

Sub-PAC

Have these rules been reviewed by the appropriate Sub-PAC Committee?

Yes No

Name of Sub-PAC	Child Welfare		
Date presented	1/5/17		
What issues were raised?	Clarify the role of the county departments versus the courts. Terminology changes for clarification. Obtain clarification regarding parental consent in termination of parental rights. Obtain clarification about the court's role in voluntary placements.		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.	Due to these rules being a result of mandatory federal regulations, the group opted out of a formal vote.		

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PAC

Have these rules been approved by PAC?

Yes No

Date presented 1/5/17

What issues were raised? Carry-over concern from Sub-PAC striking the language in 7.309.6 D with the understanding that it will be re-worded in a way that will not inhibit the county departments from completing their work, but preserves Tribes' decision-making ability.

Vote Count	For	Against	Abstain
	All	None	

If not presented, explain why.

Other Comments

Comments were received from stakeholders on the proposed rules:

Yes No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

The following feedback from Denver Indian Family Resource Center (DIFRC):

- Changes are good and reflect the changes made in the federal legislation.
- DIFRC would like additional explanation as to Tribal sovereignty in the initial portion of the rule.
- DIFRC would like to add rules for Colorado about youth who re-enter after they have turned 18 years of age. The federal regulations do not cover these youth but they believe best practice would be to incorporate them into Colorado rules.
- DIFRC would like the word prompt to be defined in 7.309.31. This is not defined in federal regulations but feel it would be best practice for Colorado.
- DIFRC would like Colorado Ute to be changed to Colorado Ute Mountain Ute and Southern Ute.
- DIFRC would like approved to be further defined in 7.309.6 (A)(2).
- DIFRC would like to make sure that Tribal entities review these rules prior to implementation.

The Department incorporated DIFRC's feedback where appropriate and when the feedback was within the Department's authority.

The following feedback from the Permanency and Child Protection Task Groups was considered and incorporated where appropriate:

- Strike the definition "Indian Child" as the eligibility criteria in rule mirrors the federal definition of Indian Child.
- Revise the definition of "Involuntary Proceeding" to reflect the language used in the federal definition.
- Strike the definition of "Upon Demand" as it was only referenced in the definition of "Involuntary Proceeding."
- Remove the word "prompt" from the notification requirement as the timeframe is outlined in 7.309.32 and 7.309.33.

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- Strike the word “damage” from emergency placements and replace with wording consistent in other areas of rule.
- In emergency placements, strike the word “restoring” and replace with “returning” in front of ...the child to the parent(s) or Indian custodian(s).
- In order of placement preferences, separate out extraordinary needs from unavailability of a suitable preferred placement.
- Question of whether language concerning considering a child and or parent(s)' placement preference aligns with the statutory requirement of a youth over the age of 12 needing to consent to their adoption. This does not conflict, as it would be an appropriate time to consider their preference.
- Clarify notification to the BIA needs to occur within 30 days of the final decree of adoption.

The following feedback from the Ute Mountain Ute and Southern Ute Indian Tribes was considered and incorporated where appropriate and when the feedback was within the Department's authority:

- Include the use of Code of Federal Regulations Court (CFR) in the definition of “Tribal Court” and any references to Tribal Court.
- Add a clarifying statement to the definition of “Tribal Sovereignty” or use a different definition.
- Add clarifying information about the Federal Guidelines in the introductory paragraph.
- For child eligibility, add “may be” in front of eligible for membership or citizenship.
- Define “prompt” notice.
- Replace the definition of tribal court with that of the Federal definition.
- Clarify that status offenses are not voluntary placements.
- Clarify expectations or case coordination and file transfer during transfer of jurisdiction.
- Add withdrawal of consent to the foster care and pre-adoptive placements section.
- Use the term “Southern Ute Indian Tribe” in every reference to Southern Ute.
- Strike the definition of “Indian Child.”
- Remove the section about invalidating ICWA violations as the county department would not be enforcing it.

The following feedback from public comment teleconferences was considered and incorporated where appropriate and when the feedback was within the Department's authority:

- Revise the statement in the general description of ICWA discussing rights and privileges afforded to parents and children in other sections of rule applying to Indian parents, custodians and children as it is confusing.
- Active Efforts: Add “to the maximum extent possible.”
- Add exact language from the Federal Regs regarding #8-11 of “Active Efforts.”
- Use the Federal Regs term of “damage” regarding emergency proceedings.
- Clear and convincing evidence is not required in emergency proceedings.
- Clarify that notice must be sent to all required parties for each child custody proceeding initiated on or after December 12, 2016 as outlined in page 4 of the 2016 December guidelines.
- Best practice is to provide documentation of return receipts to the court. Consider adding this to rule.
- 7.309.31 I, change the word “case” to “child” as there could be multiple children within a case.
- 7.309.31 J, add Due Diligence.
- In emergency placements, add the findings that courts can make to extend beyond the 30 days.
- In transfer of jurisdiction to tribal court, the first bullet does not address conversion from foster care to adoption as being a new proceeding.

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- Clarify that order of placement preference applies to Guardianship and APR as well.
- Remove the term “who is eligible” from the first sentence of Involuntary Termination of the Parent-Child Relationship.
- 7.309.83 Documentation: clarify- good cause for _____.

(12 CCR 2509-4)

7.304.53 Court-Related Procedures [Rev. eff. 1/1/16]

- A. County department staff shall work with the courts in order to best serve families, children, and adults. This includes, but is not limited to:
 1. Providing competent and appropriate testimony. When the case involves the Indian Child Welfare Act, testimony shall be provided by a qualified ~~Indian~~ expert witness (see Indian Child Welfare Act, "Definitions", Section 7.309.1, ~~E~~K).
 2. Identifying witnesses and evidence to be presented.
 3. Being in compliance with the Indian Child Welfare Act.
 4. Working with the legal representative of the county department and all other attorneys involved to serve the best interest of the child(ren) and family.
 5. Ensuring that the court is provided names and addresses of parents, foster parents, preadoptive parents, and kin who are providing out of home care for a child in order that the court can inform and allow these individuals an opportunity to be heard at all hearings and reviews involving the child.

+++++

7.309 INDIAN CHILD WELFARE ACT (ICWA) OF 1978

The Indian Child Welfare Act (ICWA) of 1978 is federal legislation that establishes standards for the placement of ~~Native-American~~ INDIAN children in foster care or adoptive homes. REGULATIONS EFFECTIVE ON DECEMBER 12, 2016 WERE CREATED FOR THE SUBSTANTIVE LEGAL REQUIREMENTS OF ICWA AND UPDATED FEDERAL GUIDELINES WERE ALSO ADOPTED AT THAT TIME TO CLARIFY BEST PRACTICES IN IMPLEMENTING ICWA AND ITS REGULATIONS. All rights and privileges afforded to parents and children in any other section of this manual are applicable to rights and privileges for ~~Native-American~~ INDIAN parent(s), Indian Custodian(s), and children under jurisdiction of county departments. INDIAN TRIBES ARE NOT SUBJECT TO RULES RELATED TO ICWA AS THEY HAVE TRIBAL SOVEREIGNTY.

7.309.1 DEFINITIONS

- A. Active Efforts - ~~efforts which have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.~~ AFFIRMATIVE, ACTIVE, THOROUGH, AND TIMELY EFFORTS INTENDED PRIMARILY TO MAINTAIN OR REUNITE AN INDIAN CHILD WITH HIS OR HER FAMILY. ACTIVE EFFORTS SHALL INVOLVE ASSISTING THE PARENT(S) OR INDIAN CUSTODIAN(S) THROUGH THE STEPS OF A CASE PLAN AND 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 OF THE INDIAN CHILD'S TRIBE AND SHOULD BE CONDUCTED IN PARTNERSHIP WITH THE INDIAN CHILD AND THE INDIAN CHILD'S PARENT(S), EXTENDED FAMILY MEMBERS, INDIAN CUSTODIAN AND TRIBE. ACTIVE EFFORTS MAY INCLUDE:

1. CONDUCTING A COMPREHENSIVE ASSESSMENT OF THE CIRCUMSTANCES OF THE INDIAN CHILD'S FAMILY, WITH A FOCUS ON SAFE REUNIFICATION AS THE MOST DESIRABLE GOAL;
 2. IDENTIFYING APPROPRIATE CULTURAL SERVICES AND HELPING THE PARENT(S) TO OVERCOME BARRIERS, INCLUDING ACTIVELY ASSISTING THE PARENT(S) IN OBTAINING SUCH SERVICES;
 3. IDENTIFYING, NOTIFYING, AND INVITING REPRESENTATIVES OF THE INDIAN CHILD'S TRIBE TO PARTICIPATE IN PROVIDING SUPPORT AND SERVICES TO THE INDIAN CHILD'S FAMILY AND IN FAMILY MEETINGS, PERMANENCY PLANNING AND RESOLUTION OF PLACEMENT ISSUES;
 4. CONDUCTING A DILIGENT SEARCH OR INTENSIVE FAMILY FINDING FOR THE INDIAN CHILD'S EXTENDED FAMILY MEMBERS, AND CONTACTING AND CONSULTING WITH EXTENDED FAMILY MEMBERS TO PROVIDE FAMILY STRUCTURE AND SUPPORT FOR THE INDIAN CHILD AND THE INDIAN CHILD'S PARENT(S);
 5. OFFERING AND EMPLOYING ALL AVAILABLE AND CULTURALLY APPROPRIATE FAMILY PRESERVATION STRATEGIES AND FACILITATING THE USE OF REMEDIAL AND REHABILITATIVE SERVICES PROVIDED BY THE CHILD'S TRIBE;
 6. TAKING STEPS TO KEEP SIBLINGS TOGETHER WHENEVER POSSIBLE;
 7. SUPPORTING REGULAR VISITS WITH PARENT(S) OR INDIAN CUSTODIAN(S) IN THE MOST NATURAL SETTING POSSIBLE AS WELL AS TRIAL HOME VISITS OF THE INDIAN CHILD DURING ANY PERIOD OF REMOVAL, CONSISTENT WITH THE NEED TO ENSURE THE HEALTH, SAFETY, AND WELFARE OF THE CHILD;
 8. IDENTIFYING COMMUNITY RESOURCES INCLUDING HOUSING, FINANCIAL, TRANSPORTATION, MENTAL HEALTH, SUBSTANCE ABUSE, AND PEER SUPPORT SERVICES AND ACTIVELY ASSISTING THE INDIAN CHILD'S PARENT(S) OR, WHEN APPROPRIATE, THE CHILD'S FAMILY IN UTILIZING AND ACCESSING THOSE RESOURCES;
 9. MONITORING PROGRESS AND PARTICIPATION IN SERVICES;
 10. CONSIDERING ALTERNATIVE WAYS TO ADDRESS THE NEEDS OF THE INDIAN CHILD'S PARENT(S) AND, WHERE APPROPRIATE, THE FAMILY, IF THE OPTIMUM SERVICES DO NOT EXIST OR ARE NOT AVAILABLE; AND,
 11. PROVIDING POST-REUNIFICATION SERVICES AND MONITORING.
- B. CHILD CUSTODY PROCEEDINGS - ANY ACTION OTHER THAN AN EMERGENCY PROCEEDING THAT MAY CULMINATE INTO ONE OF THE FOLLOWING OUTCOMES: FOSTER CARE PLACEMENT, TERMINATION OF PARENTAL RIGHTS, PREADOPTIVE PLACEMENT, OR ADOPTIVE PLACEMENT.
- C. CONTINUED CUSTODY – PHYSICAL OR LEGAL CUSTODY THAT THE PARENT(S) OR INDIAN CUSTODIAN(S) HAS OR HAD AT ANY POINT IN THE PAST AND MAY BE APPLICABLE BY TRIBAL LAW OR CUSTOM.
- D. DOMICILE – FOR A PARENT(S) OR INDIAN CUSTODIAN(S), THE PLACE AT WHICH A PERSON HAS BEEN PHYSICALLY PRESENT AND THAT THE PERSON REGARDS AS HOME; A PERSON'S FIXED PRINCIPAL AND PERMANENT HOME, TO WHICH THAT PERSON INTENDS TO RETURN AND REMAIN INDEFINITELY EVEN THOUGH THE PERSON MAY BE CURRENTLY RESIDING ELSEWHERE.

E. [B.] Emergency Placement - child(ren) must be in imminent DANGER OF MODERATE TO SEVERE physical damage or harm with clear and convincing evidence available to be presented before the court . EMERGENCY PLACEMENT MAY NOT LAST LONGER THAN THIRTY (30) DAYS.]

E. [F.] EMERGENCY PROCEEDING- INCLUDES ANY COURT ACTION THAT INVOLVES AN EMERGENCY REMOVAL OR EMERGENCY PLACEMENT OF AN INDIAN CHILD.

F. [G.] EXISTING INDIAN EXCEPTION – REPEALED.

G. [H.] C. Indian Custodian(S) - any ~~Native American~~ INDIAN who has legal custody of a ~~Native American~~ INDIAN child under tribal law, custom, or by state law, including those situations when the parent(S) has transferred temporary physical care, custody, and control to another individual.

H. [I.] INDIAN FOSTER HOME – A FOSTER HOME IN WHICH ONE OR MORE OF THE FOSTER PARENT(S) IS A MEMBER/CITIZEN OF A FEDERALLY RECOGNIZED INDIAN TRIBE, OR WHO IS AN ALASKA NATIVE AND A MEMBER OF A REGIONAL CORPORATION.

I. [J.] INVOLUNTARY PROCEEDING – A CHILD CUSTODY PROCEEDING IN WHICH THE PARENT DOES NOT CONSENT OF HIS OR HER FREE WILL TO THE FOSTER CARE, PREADOPTIVE, OR ADOPTIVE PLACEMENT OR TERMINATION OF PARENTAL RIGHTS. THIS INCLUDES PARENTAL CONSENT UNDER THREAT OF REMOVAL BY A COURT OR COUNTY DEPARTMENT.

J. [K.] D. ~~Native American~~ INDIAN Tribe - any ~~Native American~~ INDIAN Tribe, band, nation, or other organized group federally recognized as eligible for the services provided to ~~Native Americans~~ INDIANS including ~~Native~~ Alaskans NATIVE VILLAGES.

K. [L.] E. ~~Qualified Indian Expert Witness - an individual who is experienced and knowledgeable about Indian culture, childrearing practices, and traditions.~~ QUALIFIED TO TESTIFY REGARDING WHETHER THE CHILD'S CONTINUED CUSTODY BY THE PARENT(S) OR INDIAN CUSTODIAN(S) IS LIKELY TO RESULT IN SERIOUS EMOTIONAL OR PHYSICAL HARM TO THE CHILD AND IS QUALIFIED TO TESTIFY AS TO 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 BUREAU OF INDIAN AFFAIRS (BIA) IN LOCATING PERSONS QUALIFIED TO SERVE AS EXPERT WITNESSES. THE CASE WORKER REGULARLY ASSIGNED TO THE INDIAN CHILD MAY NOT SERVE AS A QUALIFIED EXPERT WITNESS IN CHILD-CUSTODY PROCEEDINGS CONCERNING THE CHILD.

L. [M] F. ~~Tribal Court - a court established and operated under the code or custom of a INDIAN Native American Tribe to have jurisdiction over child custody matters. THIS INCLUDES CODE OF FEDERAL REGULATIONS COURT (CFR), A COURT ESTABLISHED AND OPERATED BY THE BUREAU OF INDIAN AFFAIRS (BIA) THAT FOLLOWS TRIBAL, FEDERAL, AND STATE CODES.~~

A COURT WITH JURISDICTION OVER CHILD CUSTODY PROCEEDINGS AND WHICH IS EITHER A COURT OF INDIAN OFFENSES, A COURT ESTABLISHED AND OPERATED UNDER THE CODE OR CUSTOM OF AN INDIAN TRIBE, OR ANY OTHER ADMINISTRATIVE BODY OF A TRIBE WHICH IS VESTED WITH AUTHORITY OVER CHILD CUSTODY PROCEEDINGS.

M. [N.] TRIBAL SOVEREIGNTY – REFERS TO TRIBE'S RIGHTS TO GOVERN THEMSELVES, DEFINE THEIR OWN MEMBERSHIP, MANAGE TRIBAL PROPERTY, AND REGULATE TRIBAL BUSINESS AND DOMESTIC RELATIONS; IT FURTHER RECOGNIZES THE

EXISTENCE OF A GOVERNMENT-TO-GOVERNMENT RELATIONSHIP BETWEEN SUCH TRIBES AND THE FEDERAL GOVERNMENT.

- N. **[O.]** STATUS OFFENSE - AN OFFENSE THAT WOULD NOT BE CONSIDERED CRIMINAL IF COMMITTED BY AN ADULT, AND ARE PROHIBITED ONLY BECAUSE OF A PERSON'S STATUS AS A MINOR, SUCH AS TRUANCY. IF AN INDIAN CHILD IS BEING REMOVED BECAUSE HE OR SHE COMMITTED A STATUS OFFENSE, THEN ICWA APPLIES.

7.309.2 DETERMINATION OF ELIGIBILITY - INDIAN CHILD WELFARE ACT

7.309.21 ~~Specific Eligibility Criteria~~

~~Native American~~ INDIAN children served under the ICWA ~~Indian Child Welfare Act~~ shall meet the following criteria for eligibility: ~~in addition to generic eligibility requirements for services in foster care or adoption.~~

A. The INDIAN child must be:

1. unmarried; ~~and,~~
2. under EIGHTEEN (18) years of age; and EITHER,
3. a member OR CITIZEN of an INDIAN ~~Native American~~ Tribe; or,
4. eligible for membership OR CITIZENSHIP in an ~~Native American~~ INDIAN Tribe and the biological child of an eligible member/CITIZEN of an ~~Native American~~ INDIAN Tribe.

~~B. In addition, the parent(s) or Indian Custodian(s) must be:~~

1. a member of a tribe; or,
2. ~~eligible for membership of a tribe.~~

B. IF THE CHILD-CUSTODY PROCEEDING EXTENDS BEYOND AN INDIAN CHILD'S EIGHTEENTH (18TH) BIRTHDAY, ICWA CONTINUES TO APPLY.

7.309.3 NOTIFICATION PROCEDURES - INDIAN CHILD WELFARE ACT

7.309.31 Notification Requirements - Indian Child Welfare Act

A. The county department SHALL ~~must~~ notify THE PARENT(S), INDIAN CUSTODIAN(S) AND any potential TRIBE OR tribal court of jurisdiction that an INDIAN ~~Native American~~ child is in need of ~~foster care~~ PLACEMENT or IF A PETITION FOR- termination of the parent-child legal relationship HAS BEEN FILED WITH THE COURT, WHEN THE PARTIES HAVE REASON TO KNOW THAT AN INDIAN CHILD IS INVOLVED, except in an emergency placement. ~~as required by the Indian Child Welfare Act of 1978, including:~~ THE COUNTY DEPARTMENT SHALL ASK EACH PARTICIPANT IN THE CASE IF THEY KNOW OR HAVE REASON TO KNOW THAT A CHILD IS AN INDIAN CHILD IN ANY OF THE FOLLOWING:

1. ~~a~~Any involuntary placement of a INDIAN child ~~for foster care~~; or

2. ~~a~~Any voluntary placement of any ~~Native American~~ INDIAN child for foster care or petition for relinquishment as provided in the Tribal-State agreement under ICWA ~~the Indian Child Welfare Act of 1978.~~

B. NOTICE IS NECESSARY TO ENSURE THAT PARENT(S), INDIAN CUSTODIAN(S), AND TRIBES HAVE THE OPPORTUNITY TO PARTICIPATE IN THE PROCEEDING.

NOTICE SHALL BE SENT BY REGISTERED OR CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED, OF THE PENDING CHILD-CUSTODY PROCEEDING AND THEIR RIGHT TO INTERVENE. THE FOLLOWING INFORMATION SHALL BE PROVIDED AS PART OF THIS NOTICE:

1. IDENTIFYING INFORMATION FOR THE CHILD, INCLUDING NAME, BIRTHDATE AND BIRTHPLACE;
2. PARENT(S)' NAMES, INCLUDING ANY KNOWN MAIDEN OR FORMER NAMES OR ALIASES, BIRTHPLACES AND BIRTHDATES AND TRIBAL ENROLLMENT NUMBERS OR AS MUCH INFORMATION AS KNOWN;
3. IF KNOWN, THE NAMES, BIRTHDATES, BIRTHPLACES AND TRIBAL ENROLLMENT INFORMATION OF OTHER DIRECT LINEAL ANCESTORS OF THE CHILD, SUCH AS GRANDPARENT(S);
4. THE NAME OF EACH INDIAN TRIBE IN WHICH THE CHILD IS A MEMBER/CITIZEN OR MAY BE ELIGIBLE FOR MEMBERSHIP/CITIZENSHIP IF A BIOLOGICAL PARENT IS A MEMBER/CITIZEN;
5. A COPY OF THE PETITION INITIATING THE CHILD-CUSTODY PROCEEDING AND A DESCRIPTION OF THE POTENTIAL LEGAL CONSEQUENCES OF THE PROCEEDING AND IF A HEARING HAS BEEN SCHEDULED, INFORMATION ON THE DATE, TIME AND LOCATION OF THE HEARING;
6. THE NAME OF THE PETITIONER AND THE NAMES AND ADDRESSES OF THE PETITIONER'S ATTORNEY;
7. RIGHTS OF ANY PARENT OR INDIAN CUSTODIAN(S) OF THE CHILD TO INTERVENE IN THE PROCEEDINGS;
8. THE INDIAN TRIBE'S RIGHT TO INTERVENE AT ANY TIME IN A STATE-COURT PROCEEDING FOR THE FOSTER CARE PLACEMENT OF OR TERMINATION OF PARENTAL RIGHTS TO AN INDIAN CHILD;
9. THE RIGHTS THAT IF THE CHILD'S PARENT(S) OR INDIAN CUSTODIAN(S) IS UNABLE TO AFFORD COUNSEL BASED ON DETERMINATION OF INDIGENCY BY THE COURT, THE PARENT(S) OR INDIAN CUSTODIAN(S) HAS THE RIGHT TO COURT-APPOINTED COUNSEL;
10. THE RIGHT TO BE GRANTED, UPON REQUEST, UP TO TWENTY (20) ADDITIONAL DAYS TO PREPARE FOR THE CHILD-CUSTODY PROCEEDINGS;
11. THE RIGHT OF THE PARENT(S) OR INDIAN CUSTODIAN(S) AND THE INDIAN CHILD'S TRIBE TO PETITION THE COURT FOR TRANSFER OF THE FOSTER CARE PLACEMENT OR TERMINATION OF THE PARENTAL RIGHTS PROCEEDING TO THE TRIBAL COURT;
12. THE MAILING ADDRESSES AND TELEPHONE NUMBERS OF THE COURT AND INFORMATION RELATED TO ALL PARTIES; AND

13. THE POTENTIAL LEGAL CONSEQUENCES OF THE CHILD CUSTODY PROCEEDINGS ON THE FUTURE PARENTAL AND CUSTODIAL RIGHT.

C. COPIES OF THESE NOTICES SHALL BE SENT TO EACH OF THE FOLLOWING:

1. THE TRIBE WHERE THE CHILD MAY BE A MEMBER/CITIZEN, OR ELIGIBLE FOR MEMBERSHIP/CITIZENSHIP; AND
2. THE CHILD'S PARENT(S) AND IF APPLICABLE THE CHILD'S INDIAN CUSTODIAN(S).

D. IF THE IDENTITY OR LOCATION OF THE CHILD'S PARENT(S), THE CHILD'S INDIAN CUSTODIAN(S), OR THE TRIBES IN WHICH THE INDIAN CHILD IS A MEMBER/CITIZEN OR ELIGIBLE FOR MEMBERSHIP/CITIZENSHIP CANNOT BE ASCERTAINED, BUT THERE IS REASON TO KNOW THE CHILD IS AN INDIAN CHILD, NOTICES OF THE CHILD CUSTODY PROCEEDING SHALL BE SENT TO THE BUREAU OF INDIAN AFFAIRS (BIA) REGIONAL DIRECTOR TO ESTABLISH TRIBAL IDENTITY.

E. NOTICE FOR THE COLORADO REGIONAL DIRECTOR SHALL BE SENT TO THE FOLLOWING ADDRESS:

ALBUQUERQUE REGIONAL DIRECTOR
BUREAU OF INDIAN AFFAIRS
615 FIRST STREET, PO BOX 26567
ALBUQUERQUE, NEW MEXICO 87125

F. THE BIA WILL NOT MAKE A DETERMINATION OF TRIBAL MEMBERSHIP/CITIZENSHIP BUT MAY, IN SOME INSTANCES, BE ABLE TO IDENTIFY TRIBES TO CONTACT.

G. NOTICE MAY ALSO BE SENT VIA PERSONAL SERVICE OR ELECTRONICALLY, BUT SUCH ALTERNATIVE METHODS DO NOT REPLACE THE REQUIREMENT FOR NOTICE TO BE SENT BY REGISTERED OR CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED.

H. ~~THE COUNTY DEPARTMENT SHALL PROCEED IN ALL CASES THAT THEY KNOW OR HAVE REASON TO KNOW THAT THE CHILD THIS CASE MAY QUALIFY FOR THE PROTECTIONS OF ICWA BY APPLYING ICWA UNTIL THEY HAVE CONFIRMATION THAT THE CHILD IS NOT AN INDIAN CHILD OR A JUDGE HAS DETERMINED OTHERWISE.~~

THE COUNTY DEPARTMENT SHALL EXERCISE DUE DILIGENCE TO:

1. IDENTIFY THE TRIBE;
2. WORK WITH THE TRIBE TO VERIFY WHETHER THE CHILD IS A CITIZEN/MEMBER OR THEIR BIOLOGICAL PARENT IS A CITIZEN/MEMBER AND THE CHILD IS ELIGIBLE FOR CITIZENSHIP/MEMBERSHIP; AND,
3. TREAT THE CHILD AS AN INDIAN CHILD, UNLESS AND UNTIL THE COURT DETERMINES THAT THE CHILD IS NOT AN INDIAN CHILD.

7.309.32 Initial Notification - Involuntary Placements - Indian Child Welfare Act

- A. The county department shall give notice in involuntary placements by telephone OR VIA EMAIL within 48 hours, followed by a registered OR CERTIFIED letter MAIL with return receipt requested, to the parent(s), Indian Custodian(s), if applicable, and the child's Tribe.
- B. The county department shall observe the following timelines (except for emergency placements) before a judicial request for placement can be made. The county department shall wait at least 10

working days after receiving the return receipt of notice before proceeding with a judicial request when the notice has been sent to:

1. The parent(s) or Indian Custodian(s). If the parent(s) or Indian Custodian(s) requests time to prepare for the proceeding, the county department shall petition the court to set the hearing NO EARLIER THAN 30 calendar days after receipt of notice.
2. The Tribe. If the Tribe requests time to prepare for the proceeding, the county department shall petition the court to set the hearing NO EARLIER THAN 30 calendar days after receipt of notice.
- ~~3. The Bureau of Indian Affairs.~~

7.309.33 Initial Notification - Voluntary Placements - Indian Child Welfare Act

- A. The county department shall give notice to the Tribe, when a placement is voluntary or a relinquishment is contemplated, in the same manner as noted immediately above, or according to the Tribal-State Agreement if the child is a MEMBER/CITIZEN OF THE Colorado UTE MOUNTAIN UTE OR ENROLLED OR ELIGIBLE FOR ENROLLMENT IN THE SOUTHERN Ute INDIAN TRIBE.
- B. The county department shall file a Petition for the Review of Need of Placement by the 90th day of out-of-home care as outlined in Court Related Procedures, Section 7.304.53.
- C. The county department shall follow step B. outlined in Section "Initial Notification-Involuntary Placements" when the child is placed due to a voluntary relinquishment.

~~7.309.34 Continuous Notification for Involuntary and Voluntary Placements – Indian Child Welfare Act~~ EMERGENCY PROCEEDINGS – INDIAN CHILD WELFARE ACT

~~The county department shall be responsible for informing the tribal court of jurisdiction of placement moves for Native American child(ren).~~

- A. EMERGENCY PROCEEDINGS CAN ONLY BE USED IF IT IS NECESSARY TO PREVENT IMMINENT DANGER OF PHYSICAL HARM TO THE CHILD. THE COUNTY DEPARTMENT SHALL PETITION THE COURT TO TERMINATE THE EMERGENCY PROCEEDING IMMEDIATELY WHEN THE REMOVAL OR PLACEMENT IS NO LONGER NECESSARY TO PREVENT IMMINENT DANGER OF HARM TO THE CHILD. AN EMERGENCY PROCEEDING CAN BE TERMINATED BY ONE OR MORE OF THE FOLLOWING ACTIONS:
 1. RETURNING THE CHILD TO THE PARENT(S) OR INDIAN CUSTODIAN(S);
 2. TRANSFER OF THE CHILD TO THE JURISDICTION OF THE APPROPRIATE INDIAN TRIBE; OR,
 3. INITIATION OF A CHILD-CUSTODY PROCEEDING SUBJECT TO THE PROVISIONS OF ICWA.
- B. ACTIVE EFFORTS SHALL BE APPLIED IN EMERGENCY PLACEMENTS WHEN POSSIBLE.

C. EMERGENCY PLACEMENTS REGARDING AN INDIAN CHILD SHALL NOT BE CONTINUED FOR MORE THAN 30 DAYS UNLESS THE COURT MAKES ONE OF THE FOLLOWING DETERMINATIONS:

1. RETURNING THE CHILD TO THE PARENT(S) OR INDIAN CUSTODIAN(S) WOULD SUBJECT THE CHILD TO IMMINENT PHYSICAL HARM;
2. THE COURT HAS BEEN UNABLE TO TRANSFER THE PROCEEDING TO THE JURISDICTION OF THE APPROPRIATE INDIAN TRIBE; OR,
3. IT HAS NOT BEEN POSSIBLE TO INITIATE A CHILD CUSTODY PROCEEDING.

7.309.4 TRANSFER OF JURISDICTION FROM STATE COURT TO TRIBAL COURT

A. Upon the Tribe's petition for transfer of jurisdiction, the county department shall carry out the transfer to the Tribe within FIVE (5) working days, unless either parent or the Indian Custodian(s) objects to a transfer; WHERE THE TRIBAL COURT DECLINES THE TRANSFER; or the court determines there is good cause not to transfer jurisdiction. A COUNTY DEPARTMENT SHALL NOT REQUEST A GOOD CAUSE DETERMINATION BASED ON THE FOLLOWING:

1. THE CHILD CUSTODY PROCEEDING CASE IS IN THE ADVANCED STAGES OF THE PROCEEDING, IF THE PARENT(S), INDIAN CUSTODIAN(S), OR INDIAN CHILD'S TRIBE DID NOT RECEIVE NOTICE OF THE PROCEEDING UNTIL AN ADVANCE STAGE;
2. PRIOR PROCEEDINGS INVOLVING THE CHILD FOR WHICH NO PETITION TO TRANSFER WAS FILED;
3. PREDICTIONS OF WHETHER THE TRANSFER COULD RESULT IN A CHANGE IN THE PLACEMENT OF THE CHILD;
4. THE INDIAN CHILD'S PERCEIVED CULTURAL CONNECTIONS WITH THE TRIBE OR RESERVATION;
5. CONSIDERATION OF ANY PERCEIVED INADEQUACY OF JUDICIAL SYSTEMS;
6. CONSIDERATION OF THE PERCEIVED SOCIOECONOMIC CONDITIONS WITHIN A TRIBE OR RESERVATION; OR,
7. CONSIDERATION OF BONDING OR ATTACHMENT THAT RESULTED FROM TIME SPENT IN A NON-PREFERRED PLACEMENT THAT WAS MADE IN VIOLATION OF ICWA.

B. The county department shall prepare child(ren) for legal transfer to the Tribal court of jurisdiction as appropriate to their age. Such preparation shall include:

1. Information about reasons for the transfer and its timing.
2. Involvement of the child in the plans for transfer (see Pre-Placement Activities, Section 7.304.61).

C. THE COUNTY DEPARTMENT SHALL COORDINATE PLANS FOR THE TRANSFER OF THE CHILD(REN) WITH THE TRIBAL AGENCY RESPONSIBLE FOR ACCEPTING CUSTODY OF THE CHILD(REN) PRIOR TO THE TRANSFER.

D. THE COUNTY DEPARTMENT SHALL EXPEDITIOUSLY PROVIDE A COMPLETE COPY OF ITS FILE(S) CONCERNING THE INDIAN CHILD(REN) TO THE INDIAN CHILD'S TRIBE.

7.309.5 FOSTER CARE AND PRE-ADOPTIVE PLACEMENTS - INDIAN CHILD WELFARE ACT

The county department shall make every effort to make placements:

- A. In the most appropriate, least restrictive setting, that most approximates a family **AND BEST MEETS THE NEEDS OF THE CHILD**, TAKING INTO CONSIDERATION:
1. SIBLING ATTACHMENT;
 2. THE INDIAN CHILD'S SPECIAL NEEDS (IF ANY); and,
 3. ~~That best meets the needs of the child.~~
- B. Within a reasonable distance to the child's home, EXTENDED FAMILY, OR SIBLINGS.
- C. THE PARENT OR INDIAN CUSTODIAN MAY WITHDRAW CONSENT TO VOLUNTARY FOSTER CARE PLACEMENT AT ANY TIME AND HAVE THE INDIAN CHILD RETURNED TO THEM AS SOON AS PRACTICAL.

7.309.6 ORDER OF PREFERENCE - INDIAN CHILD WELFARE ACT (FOSTER CARE AND PREADOPTIVE PLACEMENT)

The county department shall place eligible ~~Native American~~ INDIAN children for foster care or pre-adoptive placement according to the following order of preference. It shall do so, unless the child's Tribe has established another order, or UNLESS IT HAS ~~without~~ good cause to the contrary, as documented in the child's record.

- A. For Out-of-Home Care/Pre-Adoptive Placement:

~~Under ICWA Indian Child Welfare Act regulations, the county department shall use the following order of preference IN FOSTER CARE OR PREADOPTIVE PLACEMENTS. THE CHILD SHALL BE PLACED IN THE LEAST-RESTRICTIVE SETTING. THE COUNTY DEPARTMENT SHALL ENGAGE THE TRIBE AT THE EARLIEST POSSIBLE OPPORTUNITY TO NOT HINDER THE TRIBES' ABILITY AND OPTIONS REGARDING PLACEMENT PREFERENCE. The county department shall contact the INDIAN CHILD'S appropriate Tribe to identify if it has a different placement preference than the following:~~

THE COUNTY DEPARTMENT SHALL ENGAGE THE TRIBE AT THE EARLIEST POSSIBLE OPPORTUNITY TO NOT HINDER THE TRIBES' ABILITY AND OPTIONS REGARDING PLACEMENT PREFERENCE IN FOSTER CARE OR PREADOPTIVE PLACEMENTS. UNDER ICWA THE COUNTY DEPARTMENT SHALL USE THE FOLLOWING ORDER OF PREFERENCE UNLESS THE INDIAN CHILD'S TRIBE HAS IDENTIFIED A DIFFERENT PLACEMENT PREFERENCE THAN THE FOLLOWING

1. Member of child's extended family; ;
2. Foster home licensed/CERTIFIED, approved or specified by the ~~Native American~~ INDIAN child's Tribe;
3. ~~Native American~~ INDIAN foster home licensed/CERTIFIED, approved OR SPECIFIED by an authorized non-Indian authority; OR

4. Institution for children approved by a ~~tribal or state authorized licensing authority~~ **AN INDIAN TRIBE OR OPERATED BY AN INDIAN ORGANIZATION WHICH** that has programs suitable to meet the needs of ~~Native American~~ **INDIAN** children.
- B. THE COUNTY DEPARTMENT SHALL NOT DEPART FROM PLACEMENT PREFERENCE BASED ON THE SOCIOECONOMIC STATUS OF ANY PLACEMENT RELATIVE TO ANOTHER PLACEMENT OR BASED ON THE ORDINARY BONDING OR ATTACHEMENT THAT RESULTS FROM TIME SPENT IN A NON-PREFERRED PLACEMENT THAT WAS MADE IN VIOLATION OF ICWA.
 - C. THE FOLLOWING ARE THE ONLY ACTIONS CONSIDERED GOOD CAUSE TO DEVIATE FROM PLACEMENT PREFERENCES:
 1. REQUEST FROM THE PARENT(S);
 2. REQUEST FROM THE CHILD;
 3. SIBLING ATTACHMENT; OR,
 4. EXTRAORDINARY PHYSICAL, MENTAL OR EMOTIONAL NEEDS OF THE CHILD; OR,
 5. THE UNAVAILABILITY OF A SUITABLE PREFERRED PLACEMENT.
 - D. ~~B.~~ The county department shall follow a different order of preference if one is established by the ~~T~~tribe, so long as the placement is the most appropriate and least restrictive setting to meet the child's needs. Where appropriate, the preference of the ~~Native American~~ **INDIAN** child or parent(s) shall be considered. ~~if a consenting parent has a desire for anonymity, the county department shall give weight to such desire in applying the preferences.~~

7.309.7 PLACEMENTS INVOLVING STATUS OFFENSES- INDIAN CHILD WELFARE ACT (See Court Related Procedures, Section 7.304.53)

- A. ~~The county department shall not accept voluntary consent for foster or adoptive care unless all of these conditions are met:~~
 1. ~~The child is over 10 days old.~~
 2. ~~The consent is voluntary and obtained free of fraud or duress.~~
 3. ~~The consent is in writing and recorded before a judge.~~
 4. ~~The consent is accompanied by the judge's certificate ensuring that terms and consequences of the consent were fully explained in:~~
 - a. ~~Detail and fully understood by the parent(s) or Indian Custodian(s).~~
 - b. ~~English or interpreted into a language understood by the parent(s) or Indian Custodian(s).~~
- A. ICWA INCLUDES REQUIREMENTS THAT APPLY WHENEVER AN INDIAN CHILD IS THE SUBJECT OF A PROCEEDING INVOLVING STATUS OFFENSES IF ANY PART OF THAT PROCEEDING RESULTS IN THE NEED FOR OUT-OF-HOME PLACEMENT FOR THE CHILD, INCLUDING A FOSTER CARE, PRE-ADOPTIVE, OR ADOPTIVE PLACEMENT OR TERMINATION OF PARENTAL RIGHTS.

B. The county department shall ensure that the Consent signed by the parent(s)/Indian Custodian(s) shall contain all of the following:

1. Name and birth date of child.
2. Name of child's Tribe.
3. Child's enrollment number or other indication of membership/CITIZENSHIP in the Tribe.
4. Name, and address AND TRIBAL ENROLLMENT NUMBER of consenting parent(s)/custodian(s).
5. Name and address of prospective parent(s), if known, for substitute care placements.
6. Name and address of person or agency through whom placement arranged, if any, or adoptive placements.

7.309.8 ADOPTIVE PLACEMENTS – INDIAN CHILD WELFARE ACT

7.309.81 Involuntary Termination of Parent-Child Relationship - Indian Child Welfare Act

When terminating the parent-child legal relationship of a child who is eligible under ICWA the Indian Child Welfare Act, the county department shall provide the court of jurisdiction with evidence beyond a reasonable doubt, including testimony of qualified expert witnesses. (SEE SECTION 7.309. 1). (qualified in Native American cultural matters pertinent to the situation), that continued custody of the child by the parent(s) or Indian Custodian(s) is likely to result in serious emotional or physical damage to the child.

7.309.821 Relinquishment of Child for Adoption

- A. A voluntary relinquishment of a Native American INDIAN child may be done in a state court when the parent(s) chooses to file a relinquishment petition under Colorado statutes.
- B. The county department shall not petition the court for relinquishment before 10 days after the child's birth.
- ~~C. The county department shall place the child into out of home care during the 10 day waiting period with a Request for Placement (Consents) that has been signed before the court by the mother (or father, if he holds custody). Consents given before the 10 days shall not be valid~~
- C. The county department shall follow the procedure outlined for court ordered placement in the "Initial Notification - Involuntary Placements" section. If the child is from either UTE MOUNTAIN UTE OR SOUTHERN Ute INDIAN Tribe, the county department shall comply with the Tribal-State Agreement.
- D. THE COUNTY DEPARTMENT SHALL NOT ACCEPT VOLUNTARY CONSENT FOR FOSTER OR ADOPTIVE CARE UNLESS ALL OF THESE CONDITIONS ARE MET:
 1. THE CONSENT IS VOLUNTARY AND OBTAINED FREE OF FRAUD OR DURESS;
 2. THE CONSENT IS IN WRITING AND RECORDED BEFORE A JUDGE; AND,

3. THE CONSENT IS ACCOMPANIED BY THE JUDGE'S CERTIFICATE ENSURING THAT TERMS AND CONSEQUENCES OF THE CONSENT WERE FULLY EXPLAINED IN:
 - a. DETAIL AND FULLY UNDERSTOOD BY THE PARENT(S) OR INDIAN CUSTODIAN(S).
 - b. ENGLISH OR INTERPRETED INTO A LANGUAGE UNDERSTOOD BY THE PARENT(S) OR INDIAN CUSTODIAN(S).
- E. WITHDRAWAL OF CONSENT MAY APPLY TO RELINQUISHMENT OF PARENTAL RIGHTS. IN THESE SITUATIONS THE PARENT(S) OR INDIAN CUSTODIAN(S) MAY WITHDRAW CONSENT FOR ANY REASON AT ANY TIME PRIOR TO THE ENTRY OF THE FINAL DECREE OF RELINQUISHMENT AND HAVE THE CHILD RETURNED.

7.309.832 ADOPTION Order of Preference – Indian Child Welfare Act ORDER OF PREFERENCE - INDIAN CHILD WELFARE ACT, ADOPTION

- A. The county department shall make placements of eligible ~~Native American~~ INDIAN children for adoption according to the following order of preference, unless there is good cause to the contrary as determined by the court, OR WHERE THE INDIAN CHILD'S TRIBE HAS NOT ESTABLISHED A DIFFERENT ORDER OF PREFERENCE. PREFERENCE SHALL BE GIVEN IN DESCENDING ORDER, AS LISTED BELOW:
 1. ~~A.~~ A member of the child's extended family;
 2. ~~B.~~ Other members of the ~~Native American~~ INDIAN child's Tribe; OR
 3. ~~C.~~ Other ~~Native American~~ INDIAN families.
- B. THE COUNTY DEPARTMENT SHALL ALSO CONSIDER, WHEN APPROPRIATE, THE PLACEMENT PREFERENCE OF THE INDIAN CHILD OR INDIAN CHILD'S PARENT(S).

7.309.83 DOCUMENTATION– INDIAN CHILD WELFARE ACT

- A. THE COUNTY DEPARTMENT SHALL DOCUMENT ALL ACTIVE EFFORTS, NOTICE PROVIDED, AND DEPARTURES FROM PLACEMENT PREFERENCES IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM.
- B. THE COUNTY DEPARTMENT SHALL MAINTAIN RECORDS EVIDENCING THE EFFORTS TO COMPLY WITH PLACEMENT PREFERENCE. THESE RECORDS SHALL BE MADE AVAILABLE AT ANY TIME UPON THE REQUEST OF THE BIA OR THE INDIAN CHILD'S TRIBE. EFFORTS TO COMPLY SHALL INCLUDE DOCUMENTATION BY THE COUNTY DEPARTMENT TO SEARCH DILIGENTLY FOR PLACEMENT WHICH FALLS WITHIN THE PREFERENCE OF THE ACT.
- C. THE COUNTY DEPARTMENT BEARS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THERE IS GOOD CAUSE TO DEPART FROM PLACEMENT PREFERENCE, AND THE COURT'S DETERMINATION OF GOOD CAUSE SHALL BE MADE ON THE RECORD AND IN WRITING AND MAINTAINED BY THE COUNTY DEPARTMENT.
- D. THE COUNTY DEPARTMENT SHALL MAINTAIN RECORDS OF EVERY VOLUNTARY OR INVOLUNTARY FOSTER-CARE, PRE-ADOPTIVE AND ADOPTIVE PLACEMENT OF AN INDIAN CHILD AND MAKE THE RECORDS AVAILABLE WITHIN FOURTEEN (14) DAYS UPON REQUEST OF THE SECRETARY OF THE BIA OR THE INDIAN CHILD'S TRIBE. THE RECORD SHALL CONTAIN, AT A MINIMUM, THE PETITION OR COMPLAINT, ALL SUBSTANTIVE ORDERS ENTERED IN THE CHILD-CUSTODY PROCEEDING, THE COMPLETE RECORD OF THE PLACEMENT DETERMINATION, AND IF THE PLACEMENT

DEPARTS FROM THE PLACEMENT PREFERENCES, DETAILED DOCUMENTATION OF THE EFFORTS TO COMPLY WITH THE PLACEMENT PREFERENCE.

7.309.84 Disrupted or Changed Placement - Foster Care or Adoption - Indian Child Welfare Act Notice to Parent(s) and the Tribe

- ~~A. When a foster care placement is changed before a termination or relinquishment of the parent-child legal relationship, the county department shall notify the parent(s), Indian Custodian(s), and the tribe within 10 days of the child's change of placement.~~
- B. A. When a final decree of adoption of a ~~Native American~~ INDIAN child has been vacated or set aside or the adoptive parent(s) has voluntarily consented to the termination of his or her parental rights to the child, the county department shall notify the child's parent(s), Indian Custodian(s), ~~or~~ ~~†~~ AND Tribe of jurisdiction within 10 working days. These parties may petition for return of custody and the court shall grant such petition unless there is a showing that such return of custody is not in the best interests of the child. (See Order of Preference, Section 7.309.83.) This notice shall inform the recipient of her or his right to petition for return of custody of the child. The Tribe shall also be notified of changes or disruptions in adoptive placements.
- B. NOTICE SHALL BE SENT BY REGISTERED OR CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED TO THE PARENT(S), INDIAN CUSTODIAN(S) AND THE TRIBE WHENEVER A FINAL DECREE OF ADOPTION HAS BEEN VACATED.

7.309.85 ADOPTION DECREE

- A. THE COUNTY DEPARTMENT SHALL PROVIDE NOTICE OF ANY VOLUNTARY OR INVOLUNTARY ADOPTION OF AN INDIAN CHILD TO THE BIA WITHIN 30 DAYS OF THE FINAL DECREE, TO THE FOLLOWING ADDRESS:
- BUREAU OF INDIAN AFFAIRS, CHIEF
DIVISION OF HUMAN SERVICES
1849 C STREET NW., MAIL STOP 4513 MIB
WASHINGTON DC 20240
- B. THE FOLLOWING INFORMATION SHALL BE INCLUDED, IN AN ENVELOPE MARKED "CONFIDENTIAL":
1. BIRTH NAME AND BIRTHDATE OF THE INDIAN CHILD, AND TRIBAL AFFILIATION AND NAME OF THE INDIAN CHILD AFTER ADOPTION;
 2. NAMES AND ADDRESSES OF THE BIOLOGICAL PARENT(S);
 3. NAMES AND ADDRESSES OF THE ADOPTIVE PARENT(S);
 4. NAMES AND CONTACT INFORMATION FOR ANY AGENCY HAVING FILES OR INFORMATION RELATING TO THE ADOPTION;
 5. ANY AFFIDAVIT SIGNED BY THE BIOLOGICAL PARENT OR PARENTS ASKING THAT THEIR IDENTITY REMAIN CONFIDENTIAL; AND
 6. ANY INFORMATION RELATING TO TRIBAL MEMBERSHIP/CITIZENSHIP OR ELIGIBILITY FOR TRIBAL MEMBERSHIP/CITIZENSHIP OF THE ADOPTED CHILD.

7.309.86 INVALIDATING ICWA VIOLATIONS

THE ADOPTION OF INDIAN CHILDREN MAY BE INVALIDATED WITHIN TWO (2) YEARS AFTER THE FINAL DECREE OF ADOPTION IF ICWA WAS VIOLATED. THE PETITION MAY BE FILED BY THE INDIAN CHILD WHO WAS THE SUBJECT OF THE ACTION, THE PARENT(S) OR INDIAN CUSTODIAN(S) FROM WHOM THE CHILD WAS REMOVED, OR THE INDIAN TRIBE IF IT IS FOUND THAT THE PARENT'S CONSENT WAS OBTAINED BY FRAUD OR DURESS.

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