



Tennessee Department of Children's Services

Protocol for Work with Children of Indian Heritage

Supplemental to DCS Policy: [16.24, Children of Indian Heritage](#)

Employees may use this protocol when working with children and families that may have, or are confirmed to have, Indian Heritage to ensure compliance with the Indian Child Welfare Act (ICWA) and DCS policy [16.24, Children of Indian Heritage](#).

A. Actions Involving Reservation Children:

1. ICWA makes a distinction between how cases are handled when the child resides on reservation lands versus non-reservation lands.
 - a) Absent a formal written agreement between the Tribe and the Department, DCS does *not* have jurisdiction on reservation lands.
 - b) Prior to any action on reservation lands, or suspected reservation lands, the case manager shall confirm with Regional Legal Counsel or Central Office Legal Counsel whether such an agreement exists.
2. DCS and Tennessee courts have only limited authority regarding children residing on reservation lands.
 - a) ICWA does not prevent the emergency removal of an Indian child, pursuant to State law, who is a resident of or is domiciled on reservation lands but temporarily located off reservation lands, if said removal is made to prevent imminent physical damage or harm to the child.
 - b) DCS must expeditiously initiate a child custody proceeding, transfer the child to the jurisdiction of the Tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

B. Immediate Responsibilities:

When DCS is involved with a suspected or confirmed Indian child, assessment of residence address and tribal affiliation **must** be completed for **all** types of cases (CPS, FSS, FCIP, etc.).

1. Assessment of Residence Address:
 - a) The case manager will immediately confirm the child's residence address and if the residence address is on reservation lands.
 - b) The case manager will immediately notify the case manager's supervisor and Regional Legal Counsel of the determination.
 - ◆ Federally recognized reservation trust lands for the Mississippi Band of Choctaw Indians

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are located in Lauderdale County (Henning), Tennessee. Additional reservation lands may be privately held as restricted fee land by any tribe or individual, which also qualify under ICWA.

- For example, the Eastern Band of Cherokee Indians own land in Sevier County, Tennessee, and that land may or may not qualify as reservation land under ICWA.
- ◆ DCS has a Memorandum of Understanding with the Mississippi Band of Choctaw Indians (MBCI) regarding referral response and case handling on MBCI reservation lands. The MOU outlines the following responsibilities for case managers:
 - Determine whether the child is an "Indian child." If so, contact the Tribe immediately so they can assume immediate authority. If a determination of Native American heritage cannot be made, the case manager shall assume initial authority and initiate an investigation to determine whether the child is an Indian child.
 - Make every effort to place Choctaw children living off-Reservation with Choctaw families.
 - Report criminal charges in the appropriate jurisdiction if they are the agency investigating.
 - Accompany Tribal workers, if requested, to visit Choctaw children off-Reservation.
 - Testify in Tribal Court proceedings involving Choctaw children living on and off-Reservation.
 - Provide the Tribe with the Tennessee Child Abuse Hotline phone number for all reports of abuse or neglect involving Choctaw children off-reservation: 1 (877) 237-0004.
 - Comply with an agreed procedure for monthly in-home assessments of Choctaw children on-Reservation.
 - Jointly provide training which will address issues related to Choctaw culture and these established protocols.
- ◆ The DCS International, Immigration, and Cultural Affairs Division (IICA), the Office of General Counsel, and Regional Legal Counsel are available to assist case managers with determination of whether the child resides on reservation lands.

2. Assessment of Tribal Affiliation:

- a) During initial contact with the child/family, the case manager will conduct an assessment to determine Indian heritage. (See [CS-0050, Case Intake Packet Documents and Indian Heritage Verification](#))
- b) The assessment of tribal affiliation must be completed regardless of whether the child/family is enrolled or registered with a tribe.
- c) At any time during a case, if there is reason to believe that a child/family has Indian heritage, the case manager will make a referral to the International, Immigration, and

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Cultural Affairs Division (IICA) for assignment to an IICA Specialist, using form [CS-4275, Indian Child Welfare Act \(ICWA\) Referral to Cultural Affairs Team](#), within three (3) business days.

- ◆ IICA may be contacted via email at ei_dcs_culturalaffairs@tn.gov.
- d) The case manager will notify the case manager's supervisor and Regional Legal Counsel of the pending Indian heritage confirmation and all updates thereto.
- e) The case manager will ensure that the assigned IICA Specialist:
 - ◆ Is invited to all Child and Family Team Meetings as a required participant;
 - ◆ Receives notice of all court hearings involving the child;
 - ◆ Is consulted prior to making permanency decisions or recommendations to the Court concerning the child;
 - ◆ Is notified as soon as possible about any delinquency or unruly petitions filed concerning the child;
 - ◆ Is notified if the child is placed on runaway status; and
 - ◆ Is regularly informed about the status of the child and any updates to the child's case.
- f) The child/family and significant others, as appropriate and with the consent of the family, are advised of the ongoing progress and will be invited to participate in service planning as appropriate.

C. Legal Actions:

1. If the child resides on reservation lands where the tribe exercises exclusive jurisdiction over child custody matters, foster placement must terminate as soon as the risk of imminent physical damage or harm to the child which resulted in the emergency removal no longer exists or as soon as the tribe exercises jurisdiction over the case, whichever is earlier.
2. Regardless of the child's residence, if the child is not returned to the parents or Indian custodian(s), or if jurisdiction is not transferred to the tribe, DCS must promptly commence a State court proceeding according to State law timeframes. (See [14.14, Removals: Safety and Permanency Considerations](#)).
3. DCS must include the following information in its petition (or separate affidavit filed with the court):
 - a) The name, age, and last known address of the Indian child.
 - b) The name and address of the child's parents and Indian custodian(s), if any.
 - ◆ If such persons are unknown, a detailed explanation of what efforts have been made to locate them shall be included.
 - c) Facts necessary to determine the residence of the Indian child and whether the residence is on reservation lands.

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- ◆ If the residence is believed to be on reservation lands, the name of the reservation shall be listed.
- d) The tribal affiliation of the child, parents, and/or Indian custodian(s).
- e) A specific and detailed account of the circumstances leading to emergency removal of the child.
- f) If the child is believed to reside on reservation lands where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to transfer the child to the tribe's jurisdiction.
- g) A statement of the specific actions that have been taken to assist the parents or Indian custodian(s) so the child may safely be returned to their custody.
- 4. The tribe has the right to examine all reports or other documents filed with the Court upon which any decision may be based in foster placement or termination of parental rights proceedings.
 - a) No decision of the Court may be based on any report or other document not filed with the Court.
 - b) Regional Legal Counsel will ensure that all pertinent exhibits, documents, and pleadings are properly filed with the Court.

D. International, Immigration, and Cultural Affairs Division (IICA):

1. Referrals to IICA:
 - a) The case manager will ensure that all identification and other supporting documents provided by the child and family are submitted to IICA with the case referral.
 - b) If the Child Abuse Hotline receives a referral alleging child abuse or neglect on reservation lands, the Hotline will consult with IICA prior to screening out the referral.
 - ◆ No consult is required if the Hotline deems the referral necessary to be screened in and assigned.
2. Responsibilities of IICA:
 - a) IICA Specialists provide guidance and assistance to case managers on ICWA-related issues.
 - b) Upon receipt of a referral, an IICA Specialist will be assigned to the case within two (2) business days.
 - ◆ The IICA Specialist remains assigned to the case throughout any custodial episode to assist with ICWA-related matters until the child exits state custody or it is determined that the child does not qualify as an Indian child pursuant to ICWA.
 - c) The IICA Specialist will seek confirmation of the child/family's enrollment status from the tribe and/or the Bureau of Indian Affairs (BIA) and provide notice of the child custody proceedings.

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- ◆ (See sections **E. Tribal Affiliation Determination** and **F. ICWA Notice and Confirmation of Tribal Affiliation** below.)
- d) The IICA Specialist will participate as a member of the Child and Family Team.
- e) IICA will maintain regularly updated documents to track children referred to the Division to ensure ICWA-related deadlines and requirements are met.
- f) The IICA Specialist serves as the primary agency contact for any involved tribal representatives. Case managers will refer all communication with tribal representatives to the assigned IICA Specialist.
- g) No permanency decisions are made for the child without consulting the assigned IICA Specialist.
- h) When IICA is made aware that an Indian child has been adopted from DCS custody in State court, the IICA Specialist will ensure that the BIA is provided with notice and a copy of the final adoption decree within thirty (30) days. (See [CS-4278, Confidential ICWA Adoption Notice](#))
- ◆ The notice (or decree) must contain:
 - The birth name, birth date, tribal affiliation, and adopted name of the Indian child;
 - The names and addresses of the biological parents;
 - The names and addresses of the adoptive parents;
 - The names and contact information for any agency having files or information relating to the adoption.
- ◆ If the biological parents have executed an affidavit seeking to remain confidential, a copy of the affidavit must be attached.
- ◆ The notice and decree must be mailed in an envelope marked "Confidential" to:

Bureau of Indian Affairs
Chief, Division of Human Services
1849 C Street, N.W.
MS-3645-MIB
Washington, D.C. 20240

E. Tribal Affiliation Determination:

1. If it is believed that the child might qualify as an Indian child under ICWA, but the tribe or enrollment information is not known, tribal affiliation must be determined.
 - a) The IICA Specialist will contact the BIA for assistance to identify tribal affiliation.
 - ◆ See [CS-4276, Request for Determination of Tribal Affiliation](#).

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- ♦ A copy of the request letter must be saved to the child's electronic file and sent to the case manager's supervisor and Regional Legal Counsel.
- 2. The BIA's **Eastern Region** processes these requests for child custody proceedings in Tennessee:

Bureau of Indian Affairs
Eastern Region
545 Marriott Drive, Suite 700
Nashville, TN 37214
Phone: (615) 564-6500 / Fax: (615) 564-6701

- 3. The request should include the following information to assist the BIA with determining tribal affiliation:
 - a) Familial identifying information:
 - ♦ Birth names, birth dates, birth places, and contact information for the child, parents, grandparents, and possibly the great-grandparents;
 - b) Any available tribal affiliation information (e.g., Mother identified Indian ancestry but could not identify tribe, Father identified Cherokee ancestry but could not identify specific tribe)
 - c) Description of current court action (i.e., type of action (dependency and neglect action, termination of parental rights action) and status of proceedings);
 - ♦ Court name, address, phone number, and docket number;
 - ♦ Names and contact information for attorneys involved in the case; and
 - ♦ Confidentiality statement (included in template letter).
- 4. If needed, the case manager will conduct a diligent search to obtain the above information for the request.
- 5. The BIA will provide further instructions or information as appropriate.

F. ICWA Notice and Confirmation of Tribal Affiliation:

- 1. When tribal affiliation for the child/family has been identified or confirmed, the IICA Specialist will provide notice of the removal action and court proceedings to the tribe pursuant to ICWA. (See [CS-4277, ICWA Notice and Confirmation Request](#))
 - a) The ICWA Notice must be sent by certified/registered mail, return receipt requested, to the parents, the Indian custodian (if applicable), and the tribe's ICWA Designated Agent, with a copy to the BIA Eastern Regional Director.
 - ♦ A copy of the notice must be saved to the child's electronic file and sent to the case manager's supervisor and Regional Legal Counsel.

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- b) Regional Legal Counsel will notify the Court that ICWA applies.
- c) The ICWA Notice should include the birth name, birthplace, date of birth, and tribal affiliation or enrollment/registration information (if available) for the child, parents, grandparents, and other direct lineal ancestors (if known).
 - ◆ Copies of the relevant court documents (i.e., petition, orders, notices) should be attached to the notice, and the date, time, and location of any scheduled hearings should be clearly noted.
 - If needed, the case manager will conduct a diligent search to obtain the above information for the notice.
- 2. If ICWA applies, the case manager and Regional Legal Counsel (via certificate of service) will provide continuing notice of all hearing dates and of any subsequent actions (i.e., petitions for termination of parental rights, guardianship, adoption, or transfer of custody) to the tribe, parents, and Indian custodian (if any).
- 3. If ICWA applies but the case is not transferred to the tribal court, all ICWA protections (including notices, legal standards, required qualified expert witness, active efforts, and other required actions) continue to apply to the child's case through adoption.

G. Minimum Timeframe Requirements for Response to Notice:

The time limits listed below are minimum time periods required by ICWA to allow for response to the ICWA Notice. The Court may grant more time to prepare where State law permits.

- 1. The tribe, parent, or Indian custodian has the right, upon request, to be granted an additional twenty (20) days from the date upon which notice was received to prepare for participation in the proceeding.
- 2. The proceeding may not begin until all the following dates have passed:
 - a) Ten (10) days after the parent, tribe, or Indian custodian (or BIA Secretary when the parent or Indian custodian is unknown to the petitioner) received the ICWA Notice;
 - b) Thirty (30) days after the parent, tribe, or Indian custodian received the ICWA Notice if the parent, tribe, or Indian custodian requested an additional twenty (20) days to prepare for the proceeding.

H. Court Jurisdiction

- 1. The parent, tribe, or Indian custodian may request transfer of the State court proceeding to tribal court at any time.
- 2. Upon transfer request and after notice requirements have been met, the State court will make a determination regarding transfer to the tribal court.
 - ◆ Absent good cause or objection by either parent, the Indian custodian, or the tribe, transfer to the tribal court should be granted.

3. If transfer is granted:

- a) Regional Legal Counsel will seek timely entry by the State court of the order for transfer.
- b) Custody of the child will be relinquished by DCS to the tribe. The case manager will coordinate and facilitate timely transfer of physical custody to a tribal representative.
- c) The legal case will move to the tribal court for further proceedings.
- d) Civil prosecution responsibilities transfer to the tribal authorities.
- e) The case manager, in consultation with Regional Legal Counsel, should cooperate with tribal authorities and tribal court proceedings for adjudication.

I. Timeframe for ICWA Adjudication of Removal:

- 1. Absent extraordinary circumstances, ICWA requires that temporary emergency custody shall not be continued for more than ninety (90) days without determination by the State court, supported by clear and convincing evidence and the testimony of a qualified expert witness, that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
- 2. Regional Legal Counsel will seek timely ICWA adjudication or a finding of extraordinary circumstances.

J. Qualified Expert Witness Testimony:

- 1. Qualified expert witness testimony is required for every ICWA case at adjudication of removal of custody and termination of parental rights.
 - a) The DCS case manager regularly assigned to the case may not serve as the qualified expert witness.
- 2. Although not specifically defined by ICWA, the qualified expert witness must possess expertise beyond basic social work.
 - ◆ The BIA has suggested the following guideline qualifications:
 - A member of the tribe recognized by the tribal community as knowledgeable in tribal customs as they pertain to family or organization in childrearing practices;
 - A lay witness having substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and childrearing practices within the tribe; or
 - A professional having substantial education and experience in the area of his or her specialty.
- 3. The case manager and IICA Specialist will assist Regional Legal Counsel in identifying and securing a qualified expert witness for each case.

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4. Regional Legal Counsel will ensure that qualified expert witness testimony is offered at all adjudications for ICWA cases.

K. Delinquency and Unruly Proceedings:

Other than a general duty of inquiry, a delinquency proceeding involving a delinquent act, which if committed by an adult would be deemed a crime, is **not covered under ICWA** unless allegations of dependency and neglect are considered as a basis for removal of the child into foster care. However, a proceeding involving a status (unruly) offense *is covered* under ICWA.

L. Most Common Tribal Affiliations in Tennessee:

1. Listed below are the most common tribal affiliations in Tennessee. Information regarding other tribes may be accessed at [List of ICWA Tribal Agents](#) or the BIA may be contacted for more information.

a) Eastern Region:

- ◆ Eastern Band of Cherokee Indians
Jenny Bean, Family Safety Supervisor
P.O. Box 666
Cherokee, North Carolina 28719
Phone: (828) 359-6149
jennbean@ebci-nsn.gov

b) Mississippi Band of Choctaw Indians:

- ◆ Natasha Wesley, ICWA Coordinator
P.O. Box 6258
Choctaw, Mississippi 39350
Phone: (601) 656-4501
icwa@choctaw.org

c) Eastern Oklahoma Region:

- ◆ Cherokee Nation of Oklahoma
Lou Stretch, Indian Child Welfare Director
P.O. Box 948
Tahlequah, Oklahoma 74465
Phone: (918) 458-6900
icwaeligcherokeemission@cherokee.org