

# Implementing the Indian Child Welfare Act

Rhode Island Department of Children, Youth and Families

**Policy: 700.0170**

*Effective Date: April 10, 1989 Revised Date: December 29, 2006 Version: 2*

The Rhode Island Department of Children, Youth and Families (DCYF) provides services to Indian families that are culturally relevant and consistent with the mandates of the Indian Child Welfare Act (ICWA) (PL 95-608). DCYF utilizes the principles of family centered practice in its delivery of child welfare services and recognizes the importance of maintaining connections between children and their heritage. DCYF supports early contact and active engagement with a child's tribe to ensure that services provided reflect the unique values of Indian culture and meet the safety, permanency and well-being requirements of the Adoption and Safe Families Act (ASFA) (PL 150-89).

ICWA provides protection for the rights of Indian children, families and tribes and sets guidelines for the individual states to follow in handling child welfare cases involving Indian children. It is the intent of the ICWA to serve the best interests of Indian children by strengthening Indian families and preserving the cultural identity of Indian children. ICWA further protects Indian children from removal from their tribes and assures that tribes are given the opportunity to raise Indian children when placement outside of the natural home is necessary. In compliance with state and federal law, the child's health, safety and well-being are the paramount concerns in making reasonable efforts towards reunification with parents or guardians.

## **Related Procedure**

[Implementing the Indian Child Welfare Act](#)

## **Related Policies**

[Voluntary Placement](#)

[Termination of Parental Rights](#)

[Obtaining Custody of Child Through the Dependent/Neglected/Abused Petition](#)

[Removal of Child from Home](#)

# Implementing the Indian Child Welfare Act

## Procedure From Policy 700.0170: [Implementing the Indian Child Welfare Act](#)

- A. Identification of Indian children - It is important to determine if a child is of Indian descent as soon as possible after he/she becomes active with DCYF to ensure that the child's best interests are considered in accordance with the ICWA.
1. Child Protective Services (CPS) Investigative Staff and Child Protective Intake Staff
    - a. During the preliminary stages of a CPS investigation the Child Protective Investigator (CPI) inquires if there is any Indian heritage in the family. If the CPI is unable to gather this information, the Intake worker attempts to determine the background of the child when he/she receives the case.
    - b. If there is no Indian heritage, this information is documented by the Intake worker in RICHIST (refer to [RICHIST Window Help: Case Maintenance](#)). If the CPI has determined that there is Indian heritage, this information is forwarded to Intake. The CPI may proceed with emergency placement as needed (refer to RICHIST Window Help: Indian Child Welfare Checklist Window).
    - c. If there is Indian heritage, the following information is included in RICHIST (refer to [RICHIST Window Help: Case Maintenance](#)):
      - i. Indian child's name, date of birth and birthplace
      - ii. Parents' names (including mother's maiden name), or names of Indian custodian(s), dates of birth and birthplaces
      - iii. Indian child's tribal affiliation
    - d. Information contained in Subsection "c" above is forwarded immediately to DCYF Legal Counsel. All necessary parties will be notified prior to any court proceedings by DCYF Legal Counsel:
      - i. Legal Counsel notifies the Indian child's parent(s) or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention.
      - ii. If parent(s) and/or tribe is unknown, Legal Counsel notifies the Secretary of the Interior's Bureau of Indian Affairs by registered mail with return receipt requested.
      - iii. Legal Counsel forwards a copy of the applicable correspondence to the primary service worker. Primary service worker incorporates into the case record.
  2. Family Services Caseworkers and Probation Counselors
    - a. If there is no documentation in the case record regarding a child's Indian heritage, the primary service worker inquires if there is any Indian heritage and follows procedures outlined above (Subsection 1).
    - b. The primary service worker informs the family that they are entitled to rights and privileges in accordance with the ICWA.
- B. Court Involvement - ICWA protects the rights of Indian children, families and tribes and sets guidelines for the individual states to follow in handling child welfare cases involving Indian children. Procedures outlined below are followed when there is a Family Court Hearing for the foster placement or the termination of parental rights (TPR) of an Indian child.
1. Hearing for Voluntary Placement/TPR:

- a. If it has been determined that a child is of Indian descent and the parent(s) desires to voluntarily place the child, customary DCYF procedures are followed with the addition of the following (refer to Policy: 700.0015, Voluntary Placement):
    - i. Child must be at least ten (10) days of age. If younger than ten (10) days, consult DCYF Legal Counsel.
    - ii. Parent's request must be executed in writing at a Family Court Hearing and certified by the presiding Judge. Consult with DCYF Legal Counsel for protocol.
  - b. If the parent(s) of an Indian child desires to voluntarily terminate parental rights, customary DCYF procedures are followed with the addition of the following (refer to [Policy: 1100.0020, Termination of Parental Rights](#)):
    - i. Worker informs DCYF Legal Counsel that child is of Indian descent and discusses the appropriateness of the action. Legal Counsel will prepare the applicable documents for the procedure.
    - ii. Parent's request must be executed in writing at a Family Court Hearing. Consult with DCYF Legal Counsel for protocol.
2. Hearing for Involuntary Placement/TPR – In compliance with the ICWA, no foster care placement or termination of parental rights proceedings shall be held until at least ten days after receipt of the notice of the pending proceedings by the parent or Indian custodian and the tribe or the Secretary of the Interior.
    - a. The Court must be satisfied that placement/TPR is the last resort after all active efforts to maintain the child at home have failed.
    - b. For involuntary placement, in compliance with the ICWA, DCYF must prove with clear and convincing evidence, based on the testimony of expert witnesses that further care by the parent would result in serious emotional or physical damage to the child.
    - c. For a TPR, in compliance with the ICWA, a determination must be made supported by evidence beyond a reasonable doubt, including testimony of a qualified witness, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
  3. DCYF makes every attempt to locate and engage absent parents and paternal relatives as critical partners in meeting the permanency needs of Indian children and youth. If a putative father notifies the Department that he may be the father of a child in care, steps must be taken to determine paternity (refer to [Policy: 1100.0000, Obtaining Custody of Child Through the Dependent/Neglected/Abused Petition](#)).
- C. Emergency Placement:
1. If an Indian child is at risk of physical harm, he/she may be removed from the home on an emergency basis for his/her protection (refer to [Policy: 500.0075, Removal of Child from Home](#)).
  2. As soon as the child is placed, the procedures regarding the placement of an Indian child must be followed (refer to [RICHIST Window Help: Indian Child Welfare Checklist Window](#)).
- D. Placement of an Indian Child in a Placement Resource or Pre-adoptive Home
1. Selection of a Placement Resource - Placement Unit staff attempt to find a placement within a reasonable distance of the child's home and in the least restrictive environment to meet the special needs of the identified Indian child:

- a. The Placement Unit's search for and selection of the placement occurs in conjunction with the tribe's representative in the following order of preference:
    - i. A member of the Indian child's extended family
    - ii. A foster home licensed, approved or specified by the Indian child's tribe
    - iii. An Indian foster home licensed or approved by an authorized non-Indian licensing authority
    - iv. An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs
  - b. Deviation from the order of preference is made only when the Department can show good cause for such deviation and a final determination is made by the Family/Tribal Court.
2. Selection of an Adoptive Home
- a. The search for and selection of the home occurs in conjunction with the tribe's representative in the following order of preference:
    - i. A member of the Indian child's extended family
    - ii. Other members of the Indian child's tribe
    - iii. Other Indian family
    - iv. Non-Indian family
  - b. Deviation from the order of preference is made only when the Department can show good cause for such deviation and a final determination is made by the Family/Tribal Court.