



## **MDCPS Policies & Procedures**

### **Indian Child Welfare Act (ICWA)**

**Revised October 2017**



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## **Section 1. Indian Child Welfare Act of 1978 Overview**

### **1.1 Background.**

- A. The Federal *Indian Child Welfare Act (ICWA)* was passed in 1978 and grants Native American tribes exclusive jurisdiction in child welfare cases involving Native American children. This Act ensures that the heritage of Native American children will be recognized, protected, and monitored in and out of state. ICWA provides for the Indian Tribal Council to have priority jurisdiction in the matter of custody and guardianship in the case of any child of Native American heritage.
  
- B. Workers must determine Native American heritage upon making contact with the family. Because of ICWA, MDCPS has no jurisdiction to investigate allegations of abuse or neglect occurring on Native American tribal lands without tribal consent. A Quick Reference Sheet for State Agency Personnel and Training Documents on ICWA from the Department of the Interior, Bureau of Indian Affairs are available [here](#)<sup>1</sup> and [here](#).<sup>2</sup>

### **1.2 Jurisdiction Over a Child.**

- A. The Mississippi Band of Choctaw Indians or any other Native American Tribe to which a child belongs has the right to accept or deny jurisdiction of the said child and to help with placement resources.
  
- B. A tribal court may assume jurisdiction over any Native American child whether the child is living on or off a reservation at any time.

## **Section 2: Implementation**

### **2.1 Reports of Abuse or Neglect Regarding Native American Children.**

- A. MDCPS has and will continue to receive reports of abuse or neglect involving

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<sup>1</sup> <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/ois/pdf/idc2-041403.pdf>

<sup>2</sup> <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/webteam/pdf/idc2-041802.pdf>



Native American children, both on and off of tribal lands. When MCI receives such a report, the intake worker must ask the reporter the following questions in order to determine whether the child falls under the jurisdiction of a Native American tribe:

1. Is parent or child of Native American heritage?
2. Is parent eligible for tribal membership?
3. Is parent registered with Native American tribe?
4. Is child eligible for tribal membership?
5. Has child been registered with Native American tribe?
6. Does the family live on tribal land?

B. The intake worker must document this discussion in the narrative section of the Mississippi Automated Child Welfare Information System (MACWIS).

## **2.2 Investigating Reports of Children Living on Tribal Land.**

- A. If a child is identified at Intake as a member of the Mississippi Band of Choctaw Indians or another federally recognized Native American tribe, MCI will screen the report to the county where the child resides. The COR Intake Supervisor will notify the appropriate Tribal Council and provide them with the allegations and all identifying information. If the Tribal Council does not wish to retain jurisdiction and requests the county to investigate the allegations, the county will follow normal investigative procedures.
- B. If a child is determined to be a Native American child, active efforts to keep the child in the home are required. 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.

## **2.3 Notification to the Tribal Council.**

- A. MDCPS must immediately notify the tribe of any child-custody proceedings involving a Native American child. For ICWA purposes, each of the following is considered a



separate child-custody proceeding and requires separate notice.<sup>3</sup> Child-custody proceedings are defined as:

1. Non-emergency foster care placement;
2. Termination of parental rights;
3. Pre-adoptive placement; and
4. Adoptive placement.<sup>4</sup>

B. Notice must be in clear and understandable language and include the following:

1. The child's name, birthdate, and birthplace;
2. All names known (including maiden, married, and former names or aliases) of the parents, the parents' birthdates and birthplaces, and Tribal enrollment numbers if known;
3. If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents;
4. The name of each Indian Tribe in which the child is a member (or may be eligible for membership if a biological parent is a member);
5. A copy of the petition, complaint, or other document by which the child-custody proceeding was initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing;
6. Statements setting out:
  - a. The name of the petitioner and the name and address of petitioner's attorney;
  - b. The right of any parent or Indian custodian of the child, if not already a party to the child-custody proceeding, to intervene in the proceedings.
  - c. 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.
  - d. That, if the child's parent or Indian custodian is unable to afford counsel based on a determination of indigency by the court, the parent or Indian custodian has the right to court-appointed counsel.
  - e. The right to be granted, upon request, up to 20 additional days to prepare for the child-custody proceedings.
  - f. The right of the parent or Indian custodian and the Indian child's Tribe to petition the court for transfer of the foster-care-placement or termination-of-

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<sup>3</sup> 25 C.F.R. §23.2

<sup>4</sup> 25 C.F.R. §23.2



parental-rights proceeding to Tribal court as provided by 25 U.S.C. 1911 and § 23.115.

- g. The mailing addresses and telephone numbers of the court and information related to all parties to the child-custody proceeding and individuals notified under this section.
- h. The potential legal consequences of the child-custody proceedings on the future parental and custodial rights of the parent or Indian custodian.
- i. That all parties notified must keep confidential the information contained in the notice and the notice should not be handled by anyone not needing the information to exercise rights under ICWA.<sup>5</sup>

**C. Notice must be provided immediately to the registered agent for service of notice by certified letter, return receipt requested, to the appropriate tribe when a Choctaw child, or other Native American child, is taken into MDCPS custody.<sup>6</sup> Send Service of Notice for Choctaw children to:**

Mississippi Band of Choctaw Indians.  
c/o Natasha Wesley, Legal Secretary.  
P.O. Box 6258,  
Choctaw, MS 39350<sup>7</sup>

**D. Copies of notices must be sent to the appropriate Regional Director for the Bureau of Indian Affairs (BIA) either by registered or certified mail with return receipt requested or by personal delivery.<sup>8</sup> The address for service of notice for the Eastern Region is:**

Eastern Regional Director  
Bureau of Indian Affairs  
545 Marriott Drive  
Suite 700  
Nashville, Tennessee 37214

**E. If there is reason to know the child is a member of a Tribe or eligible for membership in a Tribe but the membership cannot be ascertained, notice must be sent directly to the**

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<sup>5</sup> 25 C.F.R. §23.111(d)

<sup>6</sup> 25 U.S.C. §1912

<sup>7</sup> 82 Fed.Reg. 12999

<sup>8</sup> 25 C.F.R. §23.11(b)(1)



appropriate BIA Regional Director.<sup>9</sup>

- F. **No child-custody proceeding may be held until at least ten (10) days after the receipt of notice by the registered agent.**<sup>10</sup> Failure to comply with ICWA requirements can lead to invalidation of removal, foster care placement, or termination of parental rights of Native American children.<sup>11</sup>
- G. If the case is a voluntary placement or in-home services case, the MDCPS should still notify the tribe, though a certified letter is not required.
- H. If the case is an adoption, a copy of the final adoption decree must be sent to the BIA Central Office in Washington, D.C.<sup>12</sup>
- I. If MDCPS is providing services and the child holds membership in a tribe or is eligible for tribal membership, the tribe may assume jurisdiction at any point in the service provision process, including the investigation process and foster care services

## 2.4 Active Efforts Defined.

- A. Active efforts means:
  - 1. affirmative,
  - 2. active,
  - 3. thorough, and
  - 4. timely efforts
  - 5. Are intended primarily to maintain or reunite an Indian child with his or her family.
- B. Active efforts must be documented **in detail** in MACWIS.
- C. Active efforts applies to both remedial and rehabilitative in-home services to the family prior to the removal of a Native American child from his or her parent or Native American custodian, and/or an intensive effort to reunify a Native American child with his or her parent or Native American custodian. Active efforts must

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<sup>9</sup> 25 C.F.R. 23.111

<sup>10</sup> 25 U.S.C. §1912

<sup>11</sup> 25 U.S.C. §1914

<sup>12</sup> 25 C.F.R. 23.111



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. Active efforts must be tailored to the facts and circumstances of the case and 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 services and helping the parents to overcome barriers, including actively assisting the parents 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 team meetings, permanency planning, and resolution of placement issues;
4. Conducting or causing to be conducted a diligent search 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 parents;
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 parents or Indian custodians 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 parents 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 parents and, where appropriate, the family, if the optimum services do not exist or are not available;
11. Providing post-reunification services and monitoring.<sup>13</sup>

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<sup>13</sup> 25 C.F.R. §23.2



## **2.5 Emergency Removal of Indian Children.**

- A. Any emergency removal or placement of an Indian child under State law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.<sup>14</sup>
- B. The State court must:
1. Make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;
  2. Promptly hold a hearing on whether the emergency removal or placement continues to be necessary whenever new information indicates that the emergency situation has ended; and
  3. At any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.
  4. Immediately terminate (or ensure that the agency immediately terminates) the emergency proceeding once the court or agency possesses sufficient evidence to determine that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.<sup>15</sup>
- C. An emergency proceeding can be terminated by one or more of the following actions:
1. Initiation of a child-custody proceeding subject to the provisions of ICWA;
  2. Transfer of the child to the jurisdiction of the appropriate Indian Tribe; or
  3. Restoring the child to the parent or Indian custodian.<sup>16</sup>
- D. A petition for a court order authorizing the emergency removal or continued emergency placement, or its accompanying documents, should contain a statement of the risk of imminent physical damage or harm to the Indian child and any evidence that the emergency removal or placement continues to be necessary

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<sup>14</sup> 25 C.F.R. 23.113(a)

<sup>15</sup> 25 C.F.R. 23.113(b)

<sup>16</sup> 25 C.F.R. 23.113(c)



to prevent such imminent physical damage or harm to the child. The petition or its accompanying documents should also contain the following information:

1. The name, age, and last known address of the Indian child;
2. The name and address of the child's parents and Indian custodians, if any;
3. The steps taken to provide notice to the child's parents, custodians, and Tribe about the emergency proceeding;
4. 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 appropriate BIA Regional Director (see [www.bia.gov](http://www.bia.gov));
5. The residence and the domicile of the Indian child;
6. 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;
7. The Tribal affiliation of the child and of the parents or Indian custodians;
8. A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;
9. 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
10. 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.<sup>17</sup>

E. An emergency proceeding regarding an Indian child should not be continued for more than 30 days unless the court makes the following determinations:

1. Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;
2. The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian Tribe; and
3. It has not been possible to initiate a child-custody proceeding

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<sup>17</sup> 25 C.F.R. 23.113(d)



## **2.6 Mississippi Band of Choctaw Indians.**

The tribal lands of the Mississippi Band of Choctaw Indians are found in eight counties in Mississippi: Neshoba, Attala, Jones, Kemper, Leake, Newton, Scott, and Winston. The contact information for the Mississippi Band of Choctaw Indians is located on the MACWIS Web.

## **2.7 Native American Children From Tribes Other Than the Mississippi Band of Choctaw Indians.**

Information about children who may be or are determined to be members of a Tribe shall be provided to the Regional Director, Bureau of Indian Affairs, Eastern Area Office via service of notice. The address for service of notice for the Eastern Region is:

Eastern Regional Director  
Bureau of Indian Affairs  
545 Marriott Drive  
Suite 700  
Nashville, Tennessee 37214<sup>18</sup>

Upon receipt of notice, the Secretary for the BIA will make reasonable documented efforts to locate and notify the child's Tribe and the child's parent(s) or custodian(s).<sup>19</sup> The Secretary has 15 days after the receipt of notice to notify the child's Tribe and parent(s) and send a copy of the notice to the court. If the Secretary is unable to locate the parent(s) or custodian(s) or verify the child's Tribal membership, the Secretary will inform the court. The Secretary will also inform the court how much more time is necessary to complete the search.

A complete list of Tribes and contact information for ICWA purposes can be found at <https://www.bia.gov/bia/ois/dhs/icwa>.

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<sup>18</sup> 25 C.F.R. §23.11(b)(1)

<sup>19</sup> 25 C.F.R. §23.11(c)



## **2.8 MEPA, Title V, and ICWA.**

Multi Ethnic Placement Act ( MEPA) and Title VI do not impact the placement preferences for an American Native American child who is a member of, or is eligible for membership in a federally recognized tribe. MEPA and Title VI apply fully to American Native American children who are not covered under ICWA.