

CF OPERATING PROCEDURE
NO. 175-36

STATE OF FLORIDA
DEPARTMENT OF
CHILDREN AND FAMILIES
TALLAHASSEE, July 8, 2013

Family Safety

REPORTS AND SERVICES INVOLVING AMERICAN INDIAN CHILDREN

1. Purpose. This operating procedure describes the requirements for identifying, documenting and reporting actions relating to American Indian and Alaskan Native children. When working with a family who is American Indian it is important to follow the Indian Child Welfare Act and federal regulations. This operating procedure provides the processes to be used by investigators and case managers.
2. Scope. This operating procedure is applicable to all regions and to all child protective investigations, in-home and out-of-home care case management and legal staff involved in shelter, placement and case planning for children.
3. References. Policy and procedure regarding federal mandates found in the Indian Child Welfare Act of 1978, 25 U.S.C. 1901 et seq. (Public Law 95-608) are as follows:
 - a. 45 CFR Parts 1355 and 1356, Tribal Child Welfare.
 - b. Section 39.0137, Florida Statutes.
 - c. Section 39.012, Florida Statutes.
 - d. Section 39.0121, Florida Statutes.
 - e. Chapter 65C-28, Florida Administrative Code.
 - f. Chapter 65C-29, Florida Administrative Code.
 - g. Chapter 65C-30, Florida Administrative Code.
4. Definitions. For the purposes of this operating procedure, the following definitions shall apply:
 - a. Indian Child. Means any unmarried person who is under age eighteen and who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and who is the biological child of a member of an Indian tribe.
 - b. Indian Child Welfare Act (ICWA). (25 U.S.C. 1901 et seq.) Means the federal act which governs all dependency actions and certain private proceedings involving American Indian or Alaskan Native children who meet the federal criteria for the protections of the Indian Child Welfare Act. These protections apply to voluntary and involuntary placements, including those placements associated with status offenses, but do not apply to divorce proceedings as long as one or the other parent is awarded custody of the child. The Indian Child Welfare Act does not apply to placements resulting from actions committed by a child that would constitute a crime if committed by an adult.

This operating procedure supersedes CFOP 175-36 dated December 1, 1998.

OPR: PDFS

DISTRIBUTION: X: OSEC; OSGC; ASGO; PDFS; Region/Circuit Child Welfare staff.

c. Indian Custodian. Means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

d. Indian Tribe. Means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to American Indians by the Secretary, United States Department of the Interior, Bureau of Indian Affairs, because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended [42 USCS §1602(c)].

e. Parent. Means any biological parent or parents of an American Indian child or any American Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the putative father of a child born outside of marriage if paternity has not been acknowledged or established.

f. Reservation. Means American Indian lands, described in federal law as Indian country, and defined in section 1151 of title 18, U.S.C., and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any American Indian tribe or individual or held by any American Indian tribe or individual subject to a restriction by the United States against alienation.

5. Federal Policy. It is the policy of this nation as set forth in the Indian Child Welfare Act to protect the best interests of American Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

6. Authority for Removal.

a. The Department has no authority or jurisdiction on an American Indian reservation unless the Department has a signed agreement to the contrary. The Department does have the authority to respond in circumstances in which the American Indian child does not live on a reservation. However, immediate contact must be made with the "Designated Tribal Agent for Service of Notice" named in the current Federal Register for the tribe with which the child is enrolled, is a member, or in which the child is eligible for enrollment or membership, consistent with the criteria established by the Indian Child Welfare Act.

b. Pursuant to Florida Administrative Code 65C-28.013, Child Protective Investigators, at the onset of each investigation, must determine a child's eligibility for the protections of the Indian Child Welfare Act and document their findings in the Florida Safe Families Network (FSFN). In situations in which the information is not complete at the time of Early Services Intervention (ESI) or the transfer of the case to case management, it is the responsibility of the case manager to further explore and document the child's status under the Indian Child Welfare Act.

c. Upon receipt of a report alleging the abuse, neglect, or abandonment of an American Indian child, regardless of the location of the child's residence, the Regional or State Indian Child Welfare Act Specialist must be contacted for information on any agreements that may exist within the state or the region between the American Indian tribe and Department. The Regional Indian Child Welfare Act Specialist shall implement a tracking system in order to maintain a record of ICWA cases and to ensure that protocol is followed.

d. While court involvement including emergency removal is allowed off the reservation, the child's American Indian parents, custodians and the tribe must be notified immediately and in writing. If

the child's tribe is unknown, the regional office of the Bureau of Indian Affairs must be contacted to determine the child's tribal enrollment or membership and if the protections of the Indian Child Welfare Act apply. The notice to the tribe must be in writing. The letter of inquiry and notification to the tribe must be sent to the tribe's Designated Tribal Agent for Service of Notice named in the current Federal Register and must be sent registered mail, return receipt requested. This letter is intended to determine the tribe's interest in assuming jurisdiction, filing a motion to intervene and/or participating in the case planning activities for the child. If the tribe does not respond to the written notification, Department staff should continue to communicate with the tribe until the tribe either accepts jurisdiction or declines to accept jurisdiction. If the tribe does not assume jurisdiction of the case, the tribe must continue to receive notice of all hearings and staffings and be kept informed of significant changes in the status of the case. The tribe has the right to assert jurisdiction at any time. Tribes must be given the opportunity to be heard at proceedings involving the child.

(1) If the tribe assumes legal jurisdiction, the tribe must be provided all Department file information (excluding the reporter's name) and the child must be released to the tribe. If a shelter hearing has been held, the Department's attorney must schedule an emergency shelter review hearing regarding transfer of jurisdiction to the tribe. The Child Protective Investigator may be called as a witness in tribal court just as he or she would in a state court. The Department's case must be closed as "no jurisdiction". American Indian children may also be entitled to other Departmental services such as economic services or a referral to the child protection team even though the tribe has assumed jurisdiction.

(2) If the child's tribe does not assume legal jurisdiction, the placement becomes more complex as the Child Protective Investigator, case manager and the court are required to attempt placement in an tribal home. Further, in any state court proceeding for the foster care placement of, or termination of parental rights to, an American Indian child, the Indian custodian of the child and the American Indian child's tribe shall have a right to intervene at any point in the proceeding.

(3) The standard for approval for out-of-home placement must be American Indian community standards, not Department licensing standards. Only if all of these options fail can placement be made in a non-Indian home.

7. Designated Tribal Agent for Service of Notice. The Designated Tribal Agent for service of notice is the individual or individuals named in the Federal Register as being the official contact designated by the tribe for notification and legal service in compliance with the Indian Child Welfare Act. Contact with this person is required for legal sufficiency.

8. Voluntary Foster Care. Placements must be explained in court as a judge must determine that the American Indian parents understand the nature of their consent. The parents can withdraw their consent at any time and the Department must return the child(ren) to the parents. If the child remains in voluntary foster care and the circuit court maintains jurisdiction, the Department must hold judicial reviews in accordance with state law until the child is released.

9. Remedial Services and Rehabilitative Program. Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the American Indian family, including community services and culturally appropriate programs, and that these efforts have proved unsuccessful. Active efforts rise above reasonable efforts and require more intensive case work. Active efforts require more effort than reasonable efforts. It means that the family and extended family, tribe, and Indian social services agencies are engaged and/or involved.

10. Out-of-Home Care Placement Orders. No out-of-home care placement may be ordered in the absence of a determination, supported by clear and convincing evidence, including testimony of a

qualified expert 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. Qualified expert witnesses may have expertise in multiple areas of practice related to child welfare; however, in cases involving American Indian children, testimony must also be heard from an expert witness qualified to testify on the specific parenting and cultural practices of the child's tribe. Placements of children in out-of-home care must be in accordance with the order of placement defined by the Indian Child Welfare Act.

11. Transfer of Placement and Care Responsibility. When transferring responsibility of placement and care of an Indian child to a Tribal IV-E agency or a Tribe with a IV-E agreement, the child's eligibility under Title IV-E and Medicaid shall not be affected.

a. Determine the child's eligibility for Title IV-E, if not already done.

b. Provide the following documents and information to the Tribal agency. These are essential documents and information necessary to continue a child's eligibility.

(1) All judicial determinations starting with shelter. The judicial determinations should address that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts have been made to prevent the child's removal from his home, to reunify the child and family, and to make and finalize an alternate permanent placement with the child and family cannot be reunited.

(2) Eligibility determination and related documentation including other benefits for which the child is eligible or potentially eligible.

(3) Case Plan to include the health and education records of the child.

(4) Information and documentation of the child's placements. This includes a copy of the foster home or group home license.

12. Parental Rights Termination Orders. No termination of parental rights may be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses in the parenting and cultural practices of the child's tribe, 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.

13. Adoption. When an Indian child is subject to adoption, the extended family has first priority. Second and third priority goes to the child's tribe and to members of other Indian families, respectively. Tribal order of placement preference shall, if established by tribal resolution, govern the priority of placement.

14. The process investigators and case managers must follow the Procedure for Initial Indian Child Welfare Act Determination at Intake and Investigation, Appendix A to this operating procedure. All actions involving compliance with the Indian Child Welfare Act must be documented in the Florida Safe Families Network (FSFN).

BY DIRECTION OF THE SECRETARY:

(Signed original copy on file)

PETE DIGRE
Assistant Secretary for
Operations

SUMMARY OF REVISED, DELETED OR ADDED MATERIAL

Revises terminology and statutory citations; provides transfer procedures for Indian children in foster care who are placed with a Tribal IV-E agency or a Tribe with a IV-E Agreement; and conforms with current law and regulation.

PROCEDURE FOR INITIAL INDIAN CHILD WELFARE ACT DETERMINATION AT INTAKE AND INVESTIGATION AND INSTRUCTIONS FOR COMPLETING FORM CF-FSP 5323 (VERIFICATION OF INDIAN CHILD WELFARE ACT ELIGIBILITY, available in DCF Forms)

PURPOSE:

The state is required by law and regulation to make benefits and services available to American Indian children in the state on the same basis as other children.

- **Section 39.0137, Florida Statutes**, affirms federal authority in matters involving requirements established under the Indian Child Welfare Act (25 U.S.C. 1901, et seq).
- **Florida Administrative Code Section 65C-28.013** requires the determination of eligibility under the Indian Child Welfare Act at the onset of each child protective investigation.
- At initial contact with any child potentially entering the protective custody of an agency, a Child Protective Investigator, or any other child protection staff, must inquire if the child, the child's parents, or his/her grandparents are identified with or are an enrolled member of an American Indian tribe or band or are an Alaskan Native.
- Inquiry should be made into any information regarding potential American Indian ancestry or lineage on the paternal or maternal family lines.
- The requirements established in the Indian Child Welfare Act must be applied in any involuntary proceeding if an eligible child is involved in an out-of-home care placement, including shelter care, or the termination of parental rights to the eligible child is sought.
- The requirements of the Indian Child Welfare Act also apply to cases involving the voluntary relinquishment of children who are members or eligible for membership in American Indian or Alaskan Native tribes.
- At a minimum, the Indian Child Welfare Act requires notice in any involuntary proceeding and under certain circumstances involving voluntary relinquishment. At the commencement of any action the parents and Indian custodian, if any, of an Indian child, and the Indian child's tribe must be given notice. Some exceptions may apply and investigations or case management staff should always consult legal staff if it is suspected that a child is eligible for the protections of ICWA.
- Documentation of any initial information received by the investigator or caseworker regarding possible eligibility will be recorded by completing the form **CF-FSP 5323 (Verification of Indian Child Welfare Act Eligibility) or similar documentation** and entering relevant information in the appropriate screens and in the case notes of the **Florida Safe Families Network**. The CF-FSP 5323 is a tool used to document the results of the *initial* American Indian ancestry inquiry. The parent history family tree chart is completed to the best of the parent's ability for each birth parent that has indicated American Indian ancestry as this will assist the tribe in identifying the family's possible connections to their tribe.
- *Once completed and American Indian or Alaskan Native ancestry has been established or alleged, formal written inquiry and notification to the appropriate tribe(s) and/or to the Bureau of Indian Affairs must be made within 24 hours. This must be in the form of a letter sent registered mail, return receipt requested.*
- The intent of the inquiry and notification letter is to formally advise the tribe that we are involved with a child who has been alleged or shown by document to be associated with their tribe (or a tribal member) and we are making inquiry as to the child's and the parent's status with their tribe. If the tribe denies the child is a member, or eligible for membership in their tribe, the case does not meet ICWA criteria for that tribe. If the

tribe confirms enrollment (or membership), or eligibility, the case will meet ICWA criteria and ICWA requirements must be applied.

- **Telephone contact** with the tribe is **strongly encouraged** and often expedites the process of connecting with the tribe at the earliest point possible and avoids unnecessary delays in permanency planning.
- **The following three tribes have reservations located in Florida, or near Florida borders, and should be contacted immediately if a child known or believed to be a member of one of these tribes is identified during an investigation or in a case management services case:**

Miccosukee Tribe of Indians of Florida
 Dr. John De Gaglia, Director, Social Services Program
 Post Office Box 440021
 Miami, Florida 33144
 Telephone: (305) 223-8380 extension 2267 FAX: (305) 223-1011

Poarch Band of Creek Indians
 Carolyn White, ICWA Social Worker, Department of Family Services
 5811 Jack Springs Road
 Atmore, Alabama 36502
 Telephone: (251)368-9136 extension 2602 FAX: (251) 368-0828

Seminole Tribe of Florida
 Designated Tribal Agent for ICWA
 Attention: Kristi Hill, Family Preservation Administrator
 Family Services Department
 3006 Josie Billie Avenue
 Hollywood, Florida 33024
 Telephone: (954) 965-1314 FAX: (954) 965-1304

- Telephone contact does not, however, take the place of **formal notification in writing** to the tribe and an official response from the tribe regarding the parent and child's membership or eligibility for membership with the tribe. **The tribe's formal response will determine whether or not the Indian Child Welfare Act protections will be applied.**
- The tribe's official response, whether in person or in writing, regarding the child's membership or eligibility for membership in their tribe, and the court's subsequent findings with regard to ICWA eligibility, will become a part of the court record.
- Timely and consistent identification of children eligible for the protections of the Indian Child Welfare Act complies with federal mandates regarding American Indian and Alaskan Native children and prevents harmful disruption, inappropriate placements and avoidable delays in permanency planning for children.

PROCEDURE:

1. Check the case file and the **Florida Safe Families Network** for any previous forms or information regarding American Indian ancestry or ICWA eligibility that may exist. For new children coming into care, or children returning to care, a new eligibility form must be completed if the information is more than twelve months old.
2. **Form CF-FSP 5323 (available in DCF Forms at <http://www.dcf.state.fl.us/DCFForms/Search/DCFFormSearch.aspx>)** must be completed and signed by each birth parent of each child. The related children may be listed together on the form signed by their birth parent. An agency employee should assist the parent in completing the form. Do not allow the parent to take the form home for completion. When unable to locate a birth parent, document efforts to find the absent parent in the case file and in the **Florida Safe Families Network**. Attempts should be made to contact the relatives of the absent parent if tribal affiliation is alleged. Document the identity and relationship of the “informant” if other than the parent.
3. If the birth parent responds “no” to the Indian ancestry question, have the parent sign and date the form **CF-FSP 5323**, file in the case record and document the response in **Florida Safe Families Network**.
4. If a birth parent responds “yes” to any known or suspected American Indian or Alaskan Native ancestry, a diligent search for the child’s tribe and a subsequent inquiry to determine whether Indian Child Welfare Act protections apply must be completed. Discuss with the family any information that will identify a tribe, or tribes, to which the parent and/or child may have connections, affiliation or membership.
5. If the parent or child is already enrolled or a member of a tribe, obtain a copy of the tribal enrollment or membership card, if available, or indicate the enrollment or membership number on the **CF-FSP 5323**. If proof of enrollment or membership is not available, complete Page 1 of the **CF-FSP 5323**, record any information that will support and assist the search process, and include any relative who may have helpful information. Be as thorough as possible in completing the **Parent History Chart** for the birth parent as the tribe(s) will use this information to determine eligibility for enrollment or membership of the child and/or birth parent. The family will likely not have all the information requested but gather as much as possible.
6. When the **CF-FSP 5323** is complete, provide a copy to the person who will be conducting the diligent search process. Do not alter Page 1 of the original signed form. Copies of the form can be altered as needed in conducting the search. The final altered copy can be added to the case file as supporting documentation. Some tribes require separate copies for each child.
7. When taking custody of any child with stated possible Indian Child Welfare Act eligibility through one of the two federally recognized tribes located in Florida or the federally

recognized tribe located in southern Alabama and the birth parent or relative identifies enrollment or membership in, or connections to one of those tribes (that is, the **Seminole Tribe of Florida** or the **Miccosukee Tribe of Indians of Florida** or the **Poarch Band of Creek Indians** in Atmore, Alabama) contact the **Designated Tribal Agent for Indian Child Welfare Act Service of Notice** (found in the current **Federal Register**) for that tribe immediately. When geographically possible, tribal representatives should be contacted in time to attend any hearing involving an eligible or potentially eligible child and should always be noticed as quickly as possible. If out-of-state or at great distance, and if such appearance is approved by the court, tribal representatives may attend hearings by telephone.

When transferring responsibility of placement and care of an Indian child to a Tribal IV-E agency or a Tribe with a IV-E agreement, the child's eligibility under Title IV-E and Medicaid shall not be affected.

- a. Determine the child's eligibility for Title IV-E, if not already done.
- b. Provide the following documents and information to the Tribal agency. These are essential documents and information necessary to continue a child's eligibility.
 - (1) All judicial determinations starting with shelter. The judicial determinations should address that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts have been made.
 - (2) Eligibility determination and related documentation including other benefits for which the child is eligible or potentially eligible.
 - (3) Case Plan to include the health and education records of the child.
 - (4) Information and documentation of the child's placements. This includes a copy of the foster home or group home license.
8. Any information regarding American Indian or Alaskan Native ancestry and possible eligibility for Indian Child Welfare Act protections must be documented on the relevant screens in the **Florida Safe Families Network**.
9. Cases involving eligible or potentially eligible children under the Indian Child Welfare Act should be brought to the attention of legal staff as quickly as possible in order to assure proper legal notifications and procedures are in place. Once eligibility is established the tribe must receive formal notification of all proceedings in accordance with the Act.
10. Children believed or alleged to be eligible for ICWA protections are treated as ICWA eligible until the court finds to the contrary.