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**CFOP:** 175-36

**Procedure Name:** Reports and Services Involving Indian Children

**Procedure Number:** OP-1036  
**Revision #/Date:** (1) 5/12/2009  
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**Applicable to:** All CBCB Staff and Contract Providers

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**SUBJECT:** Reports and Services Involving Indian Children

**PURPOSE:** This operating procedure describes the special requirements for reports and subsequent actions relating to Indian Children.

**PROCEDURE:**

**1. Definitions (Federal)**

- a. **Indian Child.** Means any unmarried person who is under age eighteen and is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.
- b. **Indian Child Welfare Act.** (25 U.S.C. 1901 et seq.) Means the act which governs all dependency actions, including status offenses. The act does not apply to divorce custody or delinquency actions.
- 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 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 Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established

**2. Federal Policy**

It is the policy of this nation as set forth in the Indian Child Welfare Act, PL 95-608, to protect the best interests of 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.

### **3. Authority for Removal**

- a. The department has no authority on an Indian reservation unless the department has a signed agreement to the contrary. The department does have the authority to respond in situations in which the Indian child does not live on a reservation. However, immediate contact must be made with the tribal chiefs, if known, or with the Bureau of Indian Affairs, if tribe or tribal chiefs are not known.
- b. Upon receipt of a report alleging the abuse, neglect, or abandonment of an Indian child no matter where the child lives, the program administrator must be contacted for information on any agreement which may exist within the district between the Indian tribe and department. The program administrator shall implement a tracking system in order to maintain a record and to ensure that protocol is followed.
- c. While emergency removal is allowed off the reservation, the child's Indian parents, custodians and the tribe must be notified. If the tribe is unknown, the regional office of the Bureau of Indian Affairs must be contacted to determine the child's tribal membership. The notice of removal to the tribe must be in writing. The notification of the tribe results in the tribe determining if it wants to assume jurisdiction. If the tribe does not respond to the written notification, department staff should continue to follow up with the tribe until the tribe either accepts jurisdiction or declines to accept jurisdiction. Even if the tribe does not assume jurisdiction of the case, the tribe must continue to receive notice of all hearings and be kept informed of significant changes in the status of the case since the tribe has the right to assert jurisdiction at any time.
  - (1) If the tribe assumes jurisdiction, it must receive all department file information (except the reporter's name) and the child must be released to the tribe. If a detention hearing has been held, the child welfare attorney must schedule an emergency review hearing to transfer jurisdiction to the tribe. The protective investigator may be called as a witness in tribal court just as he or she would in the juvenile division of circuit court. Nevertheless, the department's case must be closed as "no jurisdiction" to investigate. 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 jurisdiction.
  - (2) If the tribe does not assume jurisdiction, the placement becomes more complicated as the protective investigator and the court are required to attempt placement in an Indian home. Further, in any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the 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 Indian community standards, not department licensing standards. Only if all of these options fail can placement be made in a non-Indian home.

### **4. Voluntary Foster Care**

Placements must be explained in court as a judge must determine that the 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.

**5. 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 Indian family including community services and culturally appropriate programs, and that these efforts have proved unsuccessful.

**6. Foster Care Placement Orders**

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, 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.

**7. Parental Rights Termination Orders**

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, 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.

**8. 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 tribe resolution, govern the priority of placement.

BY DIRECTION OF THE CHIEF EXECUTIVE OFFICER:



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