

# INDIAN CHILD WELFARE ACT (ICWA) CHECKLIST

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## I. ICWA ELIGIBILITY

### A. Child's eligibility

- The child is an unmarried person under the age of 18; AND is either: a member of a federally recognized tribe or is eligible for membership of a federally recognized tribe.

### B. Hearing type

- The current proceeding concerns: foster care, termination of parental rights, or adoption.

## II. JURISDICTION

### A. The child is domiciled or resides on a reservation:

- YES – Transfer the case to the Indian tribe. The Indian tribe has exclusive jurisdiction.  
 NO – State court may have jurisdiction. Continue inquiry below.

### B. The child is a ward of the tribal court

- YES – Transfer the case to the Indian tribe. The Indian tribe has exclusive jurisdiction.  
 NO – State court has jurisdiction. Continue with hearing.

## III. NOTICE REQUIREMENTS

- Notice has been provided to all parties, including the child's parents and/or Indian custodians; the tribe; and the Secretary of the Interior (if the identity of the child's parents or tribe is unknown).

## IV. TRANSFER & INTERVENTION

### A. Transfer

- If the parent, Indian custodian or tribe petitions to transfer the case, transfer the case UNLESS
- One parent objects (even if the objecting parent is not an Indian parent);
  - The Indian tribal court declines transfer; OR
  - Good cause to contrary exists.

### B. Intervention

- If the Indian custodian or the Indian tribe petitions/moves to intervene, grant the petition/motion. Such parties have a right to intervene at any point in the state court proceeding.

## V. FINDINGS & ORDERS

- Emergency removal/placement:** Emergency removal or placement of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from the child's parent or Indian custodian may occur to *prevent imminent physical damage or harm to the child.*

- Foster placement:** *There is clear and convincing evidence that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.*
- Termination of parental rights:** *Evidence beyond a reasonable doubt 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.*
- Evidence/findings for both foster placements and termination of parental rights:
  - Finding must be supported by testimony of qualified expert witnesses; and
  - Active efforts must have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.

## **VI. PLACEMENT PREFERENCES**

- Absent good cause to the contrary, out-of-home placements shall occur in the following order of preference:
  - A member of the Indian child's extended family;
  - Foster home licensed, approved, or specified by the Indian child's tribe;
  - An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
  - An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

## **VII. ENGAGEMENT OF TRIBE**

- The tribe is/has been involved in case planning for the child
- Culturally appropriate services have been provided to the child and family
- The tribe is/has been involved with locating relatives