

5101:2-53-06

Involuntary custody of Indian children.

(A) Prior to an involuntary custody court proceeding, the public children services agency (PCSA) or private child placing agency (PCPA) shall provide the court with information which either proves or suggests a child is a member of an Indian tribe and is eligible to be within the jurisdiction of a tribal court pursuant to rule 5101:2-53-03 of the Administrative Code.

(B) All juvenile court proceedings are to be notified to the tribe's designated agent or tribal court by the agency or every proceeding affecting their tribal member even if the tribe has declined to be involved. The tribe still retains the right to participate as an interested party or to intervene at any point in the proceeding.

(C) Notices shall be sent by the agency to the parents or Indian custodian and the Indian child's tribe, region director at the bureau of Indian affairs (BIA), and the U.S. secretary of the interior. A notice shall be sent by registered mail with "return receipt requested" and the notice shall include:

(1) The name of the Indian child.

(2) The Indian child's tribal affiliation.

(3) A copy of the petition, complaint, or other document by which the proceeding was initiated.

(4) The name of the petitioner and the name and address of the petitioner's attorney.

(5) A statement of the right of the parent or Indian custodian and the child's tribe to intervene in the proceeding.

(a) If there is a reason to believe that the parent or Indian custodian will not understand the notice because of possible limited English proficiency, a copy of the notice shall be sent by the agency to the BIA area office nearest to the residence of that person, and a request made of BIA to arrange for translation in the language that the parent or Indian custodian best understands.

(b) The PCSA or PCPA shall document the request for translation in the file.

(6) A statement of the right of the parent or Indian custodian and the Indian child's tribe that no temporary or permanent court commitment proceeding or permanent court commitment proceeding shall be held until at least ten days after the parent or Indian custodian and the Indian child's tribe have received notice of the agency's intention to commence such an involuntary court action. This statement shall also include the provision that, upon request, the parent or Indian custodian or the Indian child's tribe shall be granted up to twenty additional days to prepare for the proceedings.

- (7) The location, mailing address, and telephone number of the court.
- (8) A statement of the right of the parent or Indian custodian or the Indian child's tribe to petition the court to transfer the proceeding to the Indian child's tribal court.
- (9) A statement of the potential legal consequences of an adjudication on future custodial rights of the parents or Indian custodians.
- (10) A statement in the notice to the Indian tribe that since child custody proceedings are usually conducted on a confidential basis, tribal officials should keep confidential the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's right under the act.
- (D) If the identity or location of the parent or Indian custodian and the tribe cannot be determined, the agency shall send the same type of notification identified in paragraph (B) of this rule in the same manner to the region director at BIA and U.S. secretary of the interior, who shall have fifteen days after receipt to notify the parents or Indian custodian and the tribe.
- (E) The agency shall be able to document with clear and convincing evidence, including testimony by one or more qualified witnesses, that the continued custody by the parent or Indian custodian would likely result in serious physical or emotional harm to the child. To be clear and convincing, the evidence shall show:
- (1) The existence of particular conditions in the home that are likely to result in serious emotional or physical damage to the particular child who is the subject of the proceeding.
 - (2) The evidence shall show the causal relationship between the conditions that exist and the damage that is likely to result.
- (F) When the agency recommends foster placement, an affidavit documenting active efforts shall be submitted to the court and contains all of the following information and record in the case record:
- (1) A description of active efforts to reunify the family since the last disposition or review hearing and if those efforts were not successful, an explanation regarding why.
 - (2) A description of active efforts to coordinate with the child's tribe or any Indian organization in assisting the Indian parent or Indian custodian with services needed to avoid the need for placement, and an explanation of why these services were unsuccessful.

- (3) An explanation of why the child cannot be protected from serious emotional or physical harm if the child remains in the home even if services are provided to the child and family.
- (4) An explanation of the diligent efforts made to contact the child's extended family about providing a placement for the child or, if any members are not known, diligent efforts made to contact the child's tribe and other local Indian organizations for assistance in identifying and contacting extended family, other tribal members, or Indian families for placement.
- (5) That efforts were made by the agency to ensure the child's visitation with extended family, or with other tribal members, to ensure the child's ongoing participation in his/her culture.
- (6) That efforts were made by the agency for the child to attend significant cultural and familial events. These arrangements are to be coordinated with the child's tribe.
- (G) The agency shall submit a report that contains the following information at the review hearing:

 - (1) A statement of family changes needed to correct the problems necessitating intervention, with timetables for accomplishing them.
 - (2) A description of services to be provided to assist the family, specifically identifying those made available with assistance from the tribe or an Indian organization.
 - (3) A description of services to be provided to ensure the child's ongoing connection to his/her culture while placed outside of his/her family, including attendance at significant cultural events.
 - (4) A description of actions to be taken by the parents to correct the identified problems, and of the parents' compliance with the case plan thus far.
 - (5) The agency shall be able to document that active efforts have been made to provide services to rehabilitate or prevent the breakup of the Indian family and that these efforts were not successful.
- (H) The agency shall act in accordance with the requirements and policies set forth in rule 5101:2-42-95 of the Administrative Code. When the agency submits a report requesting termination of parental rights to the court, the following items should be included:

 - (1) The description of circumstances supporting the grounds for termination.

- (2) A description of the active efforts made to provide remedial services and rehabilitative programs as coordinated efforts to prevent the breakup of the family and why these efforts were unsuccessful.
 - (3) A description of the active efforts made to assist the Indian parent or custodian with services needed to avoid termination of parental rights and an explanation of why these efforts were unsuccessful.
 - (4) An explanation of why the child cannot be protected from the identified problems in the home.
 - (5) Tribal correspondence or supporting documentation sent to the agency and a summary of the agency's understanding of the tribe's position regarding the permanency plan.
 - (6) An explanation of the active efforts sought in the placement preference and contacting the child's tribe, extended family, or other local Indian organizations about providing an appropriate placement for the child.
 - (7) If the child is not placed within the Indian tribe's preference, an explanation of why the child cannot be moved to a placement that meets the preferences established within the Indian Child Welfare Act (ICWA).
 - (8) A description of arrangements made by the agency to ensure visitation is protected and all efforts made to support the child's cultural connections.
 - (9) A permanency plan for the child.
- (I) In accordance with 25 U.S.C. section 1912(f) (2001), 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, 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.
- (J) Upon the agency's determination that there are compelling reasons not to pursue terminating parental rights, the agency shall submit a planned permanent living arrangement to the court. The planned permanent living arrangement report shall include the following:
- (1) Documented facts and circumstances refuting the grounds for termination of parental rights. The agency has to show that although the child cannot be returned home, termination of parental rights is not in the child's best interest.
 - (2) A description of why the planned permanent living arrangement is in the child's best interest.

- (3) A description of the active efforts made to provide remedial services and rehabilitative programs as coordinated efforts to prevent the breakup of the family and why these efforts were unsuccessful.
- (4) An explanation of the active efforts made to contact the child's tribe, extended family, and other local Indian organizations for assistance in identifying a culturally appropriate placement for the child.
- (5) If the child is not placed following the tribes placement preference, an explanation of why the child cannot be moved to a placement that meets the preferences established within ICWA.
- (6) A description of arrangements made by the agency to ensure visitation with extended family, or, if there is no extended family, with other tribal members, to support the child's cultural connections.
- (7) A summary of the tribe's position regarding the permanency plan, including any attachments or supporting documents sent by the tribe to the agency.
- (8) A plan to ensure the stability of the planned permanent living arrangement.

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Certification

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