

Child Protective Services: Juvenile Court Placement Issues

2102.6 Indian Child Welfare Act

Requirement

When a foster care placement of an Indian child is at issue, follow the provisions of the Indian Child Welfare Act of 1978 (See Foster Care Services Manual 1002.32).

Procedures/Practice Issues

The Indian Child Welfare Act provides for specific actions and guidelines that must be followed when American Indian children are being removed from their home. These provisions shall be carefully followed:

An Indian tribe has exclusive jurisdiction over any custody proceeding involving an Indian child who resides within the reservation of such tribe.

Any state court proceeding involving the removal or termination of parental rights to an Indian child not residing within a reservation is transferred to the jurisdiction of the tribe under certain circumstances. (Note: The tribal court of the tribe may decline jurisdiction.)

The parent or Indian custodian and the Indian child's tribe have the right to be notified by registered mail (return receipt requested) of the pending proceedings in juvenile court and their right to intervene.

If the parent or tribe's location cannot be determined, notice is given to the Secretary of the Interior who shall have 15 days after receipt to provide the notice to the parent or Indian custodian or tribe.

No foster care placement or termination proceeding is held until at least 10 days after the receipt or notice by the parent or Indian custodian or the tribe or the Secretary of the Interior.

Any party to the foster care placement or termination proceeding has the right to examine all reports or documents filed with the court.

Any party must satisfy the court that *"active efforts have been made to provide remedial services and rehabilitative programs to the family, and that these efforts have been unsuccessful."*

A foster care placement is only made if there is a determination, supported by clear and convincing evidence 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.