

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER a: SERVICE DELIVERY

PART 307
INDIAN CHILD WELFARE SERVICES

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AUTHORITY: Implementing the Indian Child Welfare Act (25 USC 1901 et seq.) and authorized by Section 4 of the Department of Children and Family Services Act [20 ILCS 505/4].

SOURCE: Adopted and codified at 5 Ill. Reg. 8645, effective August 19, 1981; old Part repealed at 31 Ill. Reg. 4328 and new Part adopted at 31 Ill. Reg. 4330, effective February 28, 2007; amended at 33 Ill. Reg. 14302, effective October 1, 2009.

Section 307.10 Purpose

- a) The purpose of the Indian Child Welfare Act is to promote the identity of Indian children and their connection or affiliation with their Indian tribes. The Department of Children and Family Services recognizes that Indian children are central in the maintenance of Indian tribal culture, traditions and values. Therefore, the Department shall, in conjunction with Indian communities, organizations and agencies, provide a method of early identification of Indian children and their families in order to provide services that assure all the additional protections afforded by the Indian Child Welfare Act.
- b) The Department shall negotiate in good faith with any federally recognized Indian tribe, tribal organization or tribal consortium:
 - 1) that requests to develop an agreement with the Department to administer all or a part of the program under Title IV-E the Social Security Act (42 USC 670 et seq.) on behalf of Indian children who are under authority of the tribe, organization or consortium, including foster care maintenance payments on behalf of children who are placed in Department or tribally licensed foster family homes, adoption assistance payments, and tribal

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access to resources for administration, training and data collection under Title IV-E (see 42 USC 671(a)(32)); and

- 2) that does not receive an allotment under the Chafee Foster Care Independence Program (CFCIP) or Education and Training Voucher (ETV) directly from the Secretary of the U.S. Department of Health and Human Services for a fiscal year and that requests to:
 - A) develop an agreement with the Department to administer, supervise or oversee the CFCIP or ETV program with respect to Indian children who are eligible for those programs and who are under the authority of the tribe, organization or consortium; and
 - B) receive from the Department an appropriate portion of the Department's allotment for the cost of administration, supervision or oversight (see 42 USC 677(b)(3)(G)).

(Source: Amended at 33 Ill. Reg. 14302, effective October 1, 2009)

Section 307.15 Definitions

"Department" means the Department of Children and Family Services.

"Extended family member" shall be defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-parents.

"Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of the Regional Corporation as defined in 43 USC 1606.

"Indian child" means any unmarried person who is under age 18 and is 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.

"Indian child's tribe" means the Indian tribe in which an Indian child is a member or eligible for membership as determined by the tribe; or, in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.

"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 the child.

"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

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Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 USC 1602(c).

"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.

"Qualified expert witness" means:

a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices; or

a lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; or

a professional person having substantial education and experience in the area of his or her specialty. (See Indian Child Welfare Act Checklists for Juvenile and Family Court Judges, Permanency Planning for Children Department, National Council of Juvenile Justice and Family Court Judges, June 2003, P.O. Box 8970, Reno, Nevada 89507.)

"Secretary" means the Secretary of the United States Department of the Interior.

"Tribal court" means a court of jurisdiction over child custody proceedings that is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe that is vested with authority over child custody proceedings.

Section 307.20 Identification of Indian Children

In order for the Department to inform any Indian child, any parent of an Indian child, or any Indian custodian of his or her rights under the Indian Child Welfare Act, the Department shall determine if a child is an Indian child at intake or at any point in the life of the case.

Section 307.25 Notification of Proceedings

- a) The Department shall notify the child's parents or Indian custodian and the child's tribe by registered mail, return receipt requested, within 10 days after determining that an Indian child is the subject of a proceeding under Article II of the Juvenile Court Act of 1987 [705 ILCS 405] or for termination of parental rights.
- b) If the identity or location of the parents or Indian custodian and the tribe cannot be determined, the Department shall notify the Secretary by registered mail, with

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return receipt requested. The Secretary shall have 15 days after receipt to provide the requisite notice to the parents or Indian custodian and the tribe.

- c) No proceeding for adjudication of wardship under Article II of the Juvenile Court Act of 1987 or termination of parental rights shall be held until at least 10 days after receipt of notice by the parent or Indian custodian and the tribe, or by the Secretary. The parent or Indian custodian or tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding. (See 25 USC 1912(a).)

Section 307.30 Transfer of Jurisdiction

- a) When removal of an Indian child from the custody of his or her parent or Indian custodian is contemplated, or when parental rights to an Indian child may be terminated, the child's tribe has the option to request transfer of jurisdiction to the tribal court.
- b) In the event that a single tribe's jurisdiction cannot be established because of multiple tribal claims of right, the Department shall not participate in the intertribal jurisdictional dispute unless specifically requested by the tribes to aid in the resolution of the jurisdictional conflict.
- c) Absent good cause to the contrary, the State court must transfer proceedings to the tribal court. However, objection by either parent shall act as an absolute bar to such transfer.
- d) When the State court transfers the proceedings to the tribal court, the Department shall transfer custody or guardianship of the Indian child as directed by the State or tribal court.

Section 307.35 Placement of an Indian Child

- a) In choosing an adoptive placement, the Department shall assure that the child is placed in accordance with the provisions of 89 Ill. Adm. Code 309 (Adoption Services for Children for Whom the Department of Children and Family Services Is Legally Responsible). In addition, preference must be given in the following order, absent good cause to the contrary, to the placement of an Indian child with:
 - 1) a member of the Indian child's extended family;
 - 2) other members of the Indian child's tribe; or
 - 3) other Indian families. (See 25 USC 1915(a).)
- b) In choosing a foster care or preadoptive placement, the Department shall assure that the child is placed in the least restrictive setting that most approximates a family and in which his or her special needs, if any, may be met. The child shall

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also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In addition, preference must be given in the following order, absent good cause to the contrary, to the placement of an Indian child with:

- 1) a member of the Indian child's extended family;
 - 2) a foster home licensed or approved or specified by the Indian child's tribe;
 - 3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
 - 4) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs. (25 USC 1915(b).)
- c) In the case of a placement under subsection (a) or (b) of this Section, if the Indian child's tribe establishes a different order of preference by resolution, the Department or court selecting the placement shall follow that order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this Section. When appropriate, the preference of the Indian child or parent shall be considered, provided that, when a consenting parent expresses a desire for anonymity, the court or Department shall give weight to that desire in applying the preferences.
- d) The standards to be applied in meeting the preference requirements of this Section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.
- e) The Department shall maintain a record of each placement of an Indian child that includes efforts to comply with the order of preference specified in this Section. The Department shall make these records available for inspection, at any time, upon the request of the Secretary or the Indian child's tribe.

Section 307.40 Retaining Custody of an Indian Child

- a) When seeking temporary custody or placement of, or termination of parental rights to, an Indian child, the Department shall inform the court that the child named in the petition or motion is an Indian child as soon as that information becomes known.
- b) Excluding extraordinary circumstances, the Department may retain temporary custody of an Indian child for a reasonable period of time not to exceed 90 days. Continued custody after that period may occur only upon a court finding, based upon the testimony of a qualified expert witness, that the child is likely to suffer

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serious emotional or physical injury if returned to the custody of the parent or Indian custodian. The court's finding shall be supported by clear and convincing evidence.

- c) Each party to an involuntary placement proceeding involving an Indian child shall have the right to examine all reports or other documents that the Department may present during the proceedings.

Section 307.45 Terminating Parental Rights

- a) When the Department determines at an internal legal screening (as defined in 89 Ill. Adm. Code 309.80 (Termination of Parental Rights)) that adoption is in the best interests of an Indian child and sufficient legal grounds exist for termination of parental rights, the Department shall notify the State's Attorney of the names and addresses of the child's parents or Indian custodian and the child's tribe for purposes of the Juvenile Court proceeding, if these persons or the tribe have not been previously served.
- b) The Department shall request the State's Attorney to notify the tribe so the tribe may intervene in a proceeding for the termination of parental rights.
- c) To terminate parental rights, the court must find, beyond a reasonable doubt, that the child is likely to suffer serious emotional or physical injury if returned to the custody of his or her parent or Indian custodian. The court's finding shall be based upon the testimony of a qualified expert witness. (See 25 USC 1912(f).)
- d) Each party to a proceeding to terminate parental rights that involves an Indian child shall have the right to examine all reports or other documents that the Department may present during the proceedings.
- e) When a parent or Indian custodian voluntarily consents to a foster care placement, or when a parent voluntarily consents to termination of his or her parental rights, the consent shall not be valid unless executed in writing and acknowledged before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, the birth of the Indian child shall not be valid.
- f) A parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian when the sole basis of placement was the consent.

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- g) When a parent of an Indian child has executed a surrender or consent for adoption, the surrender or consent may be withdrawn by the parent for any reason at any time prior to the entry of an order terminating that parent's parental rights or an order of adoption, as the case may be, and the child shall be returned to the parent.

- h) After the entry of an order of adoption of an Indian child, the parent may petition the court to vacate the order for adoption on the grounds that his or her consent was obtained through fraud or duress. If the court finds that the consent was obtained through fraud or duress, the court shall vacate the order of adoption and return the child to the parent. No action to void or revoke a consent to or surrender for adoption based on fraud or duress may be commenced after 24 months from the date of the entry of the order for adoption.

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