

# INDIAN CHILD WELFARE

LAW  
&  
PRACTICE

# WHAT IS THE LAW?

- Constitution
- Federal Statutes
- Federal Regulations
- State Statutes
- State Regulations
- Federal and State Appellate Court Decisions
- Acts and decisions of Tribes and Tribal Courts entitled to full faith and credit.

# PRACTICE

- BIA Guidelines for State Courts
- CA's Indian Child Welfare Manual
- Tribal/State Agreement
- Local Tribal/State Agreements

# STATE REGULATIONS PRE-DATE ICWA

WAC 388-70

[Order 1167, § 388-70-091, filed **10/27/76.**]

# 388-70-091

## DEFINES “INDIAN” AS:

- (1) An enrolled Indian:
  - (a) Any person who is enrolled or eligible for enrollment in a recognized tribe.
  - (b) Any person determined, or eligible to be found, to be an Indian by the Secretary of the Interior.
  - (c) An Eskimo, Aleut or other Alaskan native.
- (2) A Canadian Indian: Any person who is a member of a treaty tribe, Metis community or nonstatus Indian community from Canada.
- (3) An unenrolled Indian: A person considered to be an Indian by a federally or nonfederally recognized Indian tribe or urban Indian/Alaskan native community organization.

# WAC 388-70

## ALSO

- Assures tribal sovereignty where Indian children within reservation are supervised by DCFS and where homes within reservation are licensed to provide foster care.
- Sets practice standards including
  - Documenting efforts to avoid separating an Indian child from parents, relatives, tribe, or culture.
  - Use of LICWAC for cooperative planning and aid in placement.

# WAC 388-70

## ALSO

- Sets Practice standards including
  - Use of tribal, Department and Indian community resources to locate parents and relatives to identify possible placement resources and to assist in developing plan to address issues that brought child to attention of the Dept.
  - Documented consideration of tribal membership, tribal culture and Indian religion in foster placement decisions.
  - Foster care placement preference criteria.
  - Completion of family ancestry form and forwarding to tribal and US and Canadian governments to facilitate enrollment.

# WAC 388-70

## ALSO

- Sets Practice standards including
  - Development of Dept. social resources and staff training programs designed to meet the special needs of Indian children through coordination with tribal, Indian health service, bureau of Indian affairs social service staff, appropriate urban Indian and Alaskan native consultants, national, state and local Indian welfare organizations and LICWACs.

# WAC 388-70

## ALSO

- Sets Practice standards including
  - Diligent and demonstrable efforts to recruit facilities and/or homes particularly capable of meeting the special needs of Indian children with the assistance of LICWACs.
  - Notification of the LICWAC when an Indian child in foster care dies, is seriously injured, abandoned or incarcerated.
  - Adoptive planning and placements priorities, standards and preferences.
  - Structure and purpose for LICWACs

# INDIAN CHILD WELFARE ACT

- 1901. Congressional Findings
- 1902. Congressional declaration of policy
- 1903. Definitions
- 1911. Indian tribe jurisdiction  
Indian child custody proceedings.
- 1912. Pending court proceedings.
- 1913. Parental rights; voluntary termination.
- 1914. Petition to court of competent jurisdiction to  
invalidate action upon showing of certain violations.
- 1915. Placement of Indian children.
- 1916. Return of custody.

# INDIAN CHILD WELFARE ACT

- 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court.
- 1918. Reassumption of jurisdiction over child custody proceedings.
- 1919. Agreements between States and Indian tribes.
- 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child; danger exception.
- 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child.
- 1922. Emergency removal or placement of child; termination appropriate action.
- 1923. Effective date.

# RCW 13.34.040

(3) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903. If the child is an Indian child as defined under the Indian child welfare act, the provisions of the act shall apply.

(4) Every order or decree entered under this chapter shall contain a finding that the Indian child welfare act does or does not apply. Where there is a finding that the Indian child welfare act does apply, the decree or order must also contain a finding that all notice requirements and evidentiary requirements under the Indian child welfare act have been satisfied.

# BIA GUIDELINES FOR STATE COURTS

Although the rulemaking procedures of the Administration Procedures Act have been followed in developing these guidelines, they are not published as regulations because they are not intended to have binding legislative effect.

# BIA GUIDELINES FOR STATE COURTS

Many of these guidelines represent the interpretation of the Interior Department of certain provisions of the Act. Other guidelines provide procedures which, if followed, will help assure that rights guaranteed by the Act are protected when state courts decide Indian child custody matters.

# BIA GUIDELINES FOR STATE COURTS

To the extent that the Department's interpretations of the Act are correct, contrary interpretations by the courts would be violations of the Act. If procedures different from those recommended in these guidelines are adopted by a state, their adequacy to protect rights guaranteed by the Act will have to be judged on their own merits.

# BIA GUIDELINES FOR STATE COURTS

- A. Policy
- B. Pre-trial requirements
  - B.1. Determination that child is an Indian
  - B.2. Determination of Indian child's tribe
  - B.3. Determination that placement is covered by the Act
  - B.4. Determination of jurisdiction
  - B.5. Notice requirements
  - B.6. Time limits and extensions
  - B.7. Emergency removal of an Indian child
  - B.8. Improper removal from custody

# BIA GUIDELINES FOR STATE COURTS

- C. Requests for transfer to tribal court
- C.1. Petitions under 25 U.S.C. § 1911(b) for transfer of proceeding
- C.2. Criteria and procedures for ruling on 25 U.S.C. § 1911(b) transfer petitions
- C.3. Determination of good cause to the contrary
- C.4. Tribal court declination of transfer

# BIA GUIDELINES FOR STATE COURTS

- D. Adjudication of involuntary placements, adoptions or terminations of parental rights
  - D.1. Access to reports
  - D.2. Efforts to alleviate need to remove child from parents or Indian custodians
  - D.3. Standards of evidence
  - D.4. Qualified expert witnesses

# BIA GUIDELINES FOR STATE COURTS

- E. Voluntary proceedings
- E.1. Execution of consent
- E.2. Content of consent document
- E.3. Withdrawal of consent to placement
- E.4. Withdrawal of consent to adoption

# BIA GUIDELINES FOR STATE COURTS

- F. Dispositions
- F.1. Adoptive placements
- F.2. Foster care or pre-adoptive placements
- F.3. Good cause to modify preferences

# BIA GUIDELINES FOR STATE COURTS

- G. Post-trial rights
- G.1. Petition to vacate adoptions
- G.2. Adult adoptee rights
- G.3. Notice of change in child's status
- G.4. Maintenance of records

# CHILDREN'S ADMINISTRATION INDIAN CHILD WELFARE POLICY MANUAL

The rules and procedures set forth in this manual apply to all child welfare actions, taken by CA or licensed, certified, or contracted agencies, involving children and families of North American Indian descent. Section 01.10.

# CHILDREN'S ADMINISTRATION INDIAN CHILD WELFARE POLICY MANUAL

Children's Administration has based the procedures contained in this manual on applicable state law contained in the Revised Code of Washington (RCW), federal law contained in the United States Code (USC), treaties, agreements with the Tribes, and the Washington Administrative Code (WAC). These include:

# CHILDREN'S ADMINISTRATION INDIAN CHILD WELFARE POLICY MANUAL

- The United States Constitution
- 25 USC 1901, et seq. - Indian Child Welfare Act
- 42 USC 675 – the Social Security Act
- 42 USC 671a – Inter-Ethnic Placement Act
- RCW 13.32a - Family Reconciliation Services
- RCW 13.34 - Juvenile Court Act - Dependency
- RCW 26.33 – Adoption
- RCW 26.34 - Interstate Compact on the Placement of Children
- RCW 26.44 - Abuse of Children
- RCW 74.13 - Child Welfare Services
- RCW 74.14a – Children and Family Services
- RCW 74.14b – Children’s Services
- RCW 74.14c – Family Preservation Services
- RCW 74.14d – Alternative Family-Centered Services
- RCW 74.15 – Care of Children, Expectant Mothers, and Developmentally Disabled
- The State-Tribal Centennial Accord
- Tribal-State Indian Child Welfare Agreement of 1987
- Chapter 388 WAC
- Treaties between Indian Tribes and the U. S. government
- Treaties between Indian Tribes and the state of Washington
- Other applicable federal and state laws
- Federal and state court decisions

# TRIBAL/STATE AGREEMENT

- Exclusive Jurisdiction
- Concurrent Jurisdiction
- Local Tribal/State Agreements

# TRIBAL/STATE AGREEMENT

This Agreement is the result of a partnership formed by Indian tribes in the State of Washington, the Washington State Department of Social and Health Services, and the Bureau of Indian Affairs. The intent of this Agreement is to protect Indian children and families by maintaining the integrity of the family unit and resolving family problems in a way that is beneficial to Indian children.

# TRIBAL/STATE AGREEMENT

This Agreement was developed in the spirit of providing the mechanism for maximum participation by tribes in child welfare services for the protection of Indian children and families. This Agreement goes beyond the scope of the Indian Child Welfare Act and demonstrates the concerns shared by tribal leaders and representatives, the Bureau of Indian Affairs and the Washington State Department of Social and Health Services.

# TRIBAL/STATE AGREEMENT

- This Agreement represents the spirit of cooperation through tribal, state, and federal participation in the development of a comprehensive working relationship between the Department of Social and Health Services and the tribes for delivery of social and child welfare services. Consistent with the Indian Child Welfare Act and the Indian child welfare provisions of the Washington State Administrative Code, the Agreement was developed to address barriers to implementing services. The Agreement sets forth principles and concepts agreed to by the tribes and the Department. It specifies the roles and duties of the parties. It is intended to be a blueprint for the development of policy, local agreements, training, and other necessary activities to be undertaken jointly by the tribes and the Department, for the purpose of carrying into effect on a daily basis the provisions contained herein.

# LOCAL TRIBAL/STATE AGREEMENT

- Jamestown S’Klallam
  - <http://www.dshs.wa.gov/pdf/ca/JamestownSKlallam.pdf>
- Snoqualmie Indian Tribe
  - <http://www.dshs.wa.gov/pdf/ca/SnoqualmieTribe.pdf>
- Local Agreement/MOU Template found at:  
<http://www.dshs.wa.gov/ca/services/srvICWAgree.asp>