



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 08 2016

Dear State Governor:

State courts and agencies are at the front lines of protecting the interests of children who enter the child-welfare system. Native American children enter the child welfare system at a much higher rate than the general population. Decades ago, Congress enacted the Indian Child Welfare Act (ICWA) to promote the stability of Native American families and tribal communities. Child welfare professionals agree that providing support to maintain family avoids the significant trauma that can be inflicted on a child when he is removed from his home. In this regard, ICWA provides for active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Native American family.

The ICWA establishes certain minimum standards and requirements for child welfare proceedings involving a tribal citizen or a child eligible for citizenship in a tribe. To date, a number of state agencies and courts have made laudable efforts to comply with the Act, with many states enacting state ICWA laws that exceed ICWA's minimum Federal standards. Unfortunately, ICWA implementation remains inconsistent. Today, I am pleased to announce that we have released a final rule that will provide more clarity for state courts and state child welfare agencies regarding the ICWA's minimum requirements.

The final rule reflects the input from several states and thousands of commenters, resulting in a rule taking into account the progress made since ICWA was enacted and tailored to addressing continuing inconsistencies in ICWA implementation. We believe that the final rule carries forward the "gold standard" in child welfare best practices and promotes uniformity in state ICWA proceedings—no matter the child welfare worker, judge, or locality handling the case—while still taking into account the unique circumstances of each child.

I invite you to review the final rule at www.bia.gov. Based on comments by state agencies and others on the proposed rule, you may be especially interested in the following features of the final rule:

- The rule clarifies terms used in the statute so, for example, state agencies and courts can determine, with confidence using the rule's definition of "domicile," who has jurisdiction based on an Indian child's domicile. As another example, states will be better able to identify what actions are necessary to prevent the breakup of an Indian family using the rule's definition of "active efforts."
- The rule provides definitive signposts for ICWA compliance, including:
 - How and when to determine whether ICWA applies;
 - What factors indicate a "reason to know" a child is subject to ICWA;
 - How to verify whether the child is an "Indian child" under the Act; and
 - What to look for in the record to ensure the parties have complied with ICWA.

- The rule allows for notice of involuntary proceedings by certified mail, return receipt requested, as a less costly alternative to registered mail, return receipt requested. In response to states' concerns regarding burden, the final rule no longer requires both the originating state and receiving state in an interstate transfer to provide notice.
- The rule provides flexibility to allow local procedures for emergency removal and placement, as long as ICWA's statutory standard for emergency removal and placement is met, and the emergency removal or placement—i.e., without a full ICWA proceeding—is as short as possible.
- The rule continues to allow for consideration of each child's unique circumstances, but establishes side rails to ensure that ICWA's purposes are not frustrated. For example, the rule makes clear that whether to deny a transfer to a tribal court may not be based on certain factors, such as the proceeding being at an advanced stage. Another example is a provision that makes clear that ICWA's placement preferences cannot be disregarded based solely on ordinary bonding or attachment.
- The final rule ensures states have the flexibility to determine the best way to maintain their records and no longer requires the proposal for maintaining all Indian child custody records in a single location.
- The rule leaves intact a parent's prerogative to choose an adoptive family for their child in voluntary proceedings; the rule requires that the parents review families who meet the placement preferences before making a final decision.
- The rule protects confidentiality of the parties in all child custody proceedings, requiring the Bureau of Indian Affairs, states, and tribes to keep information confidential. In response to confidentiality concerns specific to voluntary proceedings, the rule respects a parent's request for confidentiality, by refraining from mandating the state to contact extended family members and allowing the parent to consent to placement of the child or termination of parental rights in a closed session of court. The final rule also addresses concerns regarding the sharing of confidential information with tribes by clarifying that tribes are sovereign entities entitled to a government-to-government exchange of information necessary for the government agencies' performance of duties.

Before the rule becomes effective (180 days after publication in the Federal Register), we will be offering regional training sessions to state courts and agencies and will host webinars for those unable to attend a training session in person. We have delayed the effective date to allow this training because, while much of the rule restates statutory requirements that have been in place for over 30 years, these additional months will ensure that state courts and agencies have sufficient time to familiarize themselves with the new rule before it becomes effective. To provide an additional tool for implementation, we also plan to issue guidelines conforming to the new rule prior to its effective date.

I thank you for your participation and input in the development of this final rule. It is our belief that the new rule will promote early identification of when ICWA applies, promote the stability and security of families and tribes, reduce the incidents of trauma caused by separations of children from their parents, and promote placements familiar to the child—all of which will improve stability for the child. We look forward to working with you to improve consistency in implementation of this important Federal law.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence S. Roberts", with a stylized flourish at the end.

Lawrence S. Roberts

Acting Assistant Secretary – Indian Affairs