



Office and Division: Office of Children, Youth & Families-Division of Child Welfare	Number: OM-CW-2019-0018
Program Area: Child Welfare	Issue Date: July 17, 2019
Title: Indian Child Welfare Act revised Colorado State Statutes	Office Director: Minna Castillo Cohen, M.Ed. - Office of Children, Youth & Families
Memo Type: Operation	Division Director: Ann Rosales, MSW -Division of Child Welfare
Pertinent State/Federal Statute and/or State/Federal Rule: 25 USC § 1902, 25 CFR 23 and § 19-1-126	Expiry Date: July 17, 2022
Outcome: County departments of human/social services will be able to comply with the updated Indian Child Welfare Act Regulations	Effective Date: July 17, 2019
Key Words: Indian Child Welfare Act, ICWA,	

This communication has been sent to all county human/social service directors, and subscribers to the Office of Children, Youth and Families community partners email list that elect to receive notification when the Office issues a memo. Please forward pertinent information to staff members as you deem necessary.

The purpose of this memorandum from the Division of Child Welfare is to provide guidance and clarification to county departments of human/social services about the new language revised in the Colorado Revised Statutes (C.R.S. 19-1-126) regarding the Indian Child Welfare Act (ICWA) signed on May 28, 2019. This memo is intended to address the revisions to the Colorado Revised Statutes and how it affects practice regarding the ICWA.

Revision to the Statute includes:

- A. Language change from “reason to believe” to “reason to know” to determine when further inquiry is required when asking whether a child is an enrolled tribal member or eligible for enrollment.

“The Court shall ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is to be made at the commencement of the proceeding, and all responses must be on the record,” (C.R.S 19-1-126).

“Reason to Know” is defined by the following:

- (1) “Any participant in the child-custody proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;
- (2) Any participant in the child-custody proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;
- (3) The child who is the subject of the child-custody proceeding gives the court reason to know he or she is an Indian child;
- (4) The court is informed that the domicile or residence of the child, the child’s parent, or the child’s Indian custodian is on a reservation or in an Alaska Native village;



- (5) The court is informed that the child is or has been a ward of a Tribal court; or
 - (6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe." (C.R.S 19-1-126)
- B. Additionally, "the court shall direct the petitioning or filing party to make a record of the effort taken to determine whether there is reason to know that the child is an Indian child." (25 CFR 23)
- (1) County caseworkers are required to document all inquiries of knowledge of American Indian/Alaska Native (AI/AN) heritage with all parties, including relatives and kin who attend family engagement meetings, court hearings, and those encountered at home visits.
 - (2) If a reason to know definition is met, it is the county's responsibility to assist the family and connect with the Tribe(s) in order to determine whether the child/youth falls under the definition of an Indian child/youth, therefore determining ICWA should be followed.
 - a. Definition of Indian Child according to ICWA:
 - i. The child/youth must be unmarried, under the age of 18 and either a member of a federally recognized Tribe or eligible for enrollment in a federally recognized Tribe.
 - (3) Until the court makes a determination of either ICWA or non-ICWA, the case should be treated as an ICWA case and all elements of ICWA should apply. These are to include:
 - a. Active efforts,
 - b. Comply with ICWA placement preferences;
 - c. Counties must provide a Qualified Expert Witness (QEW) at every child custody proceeding;
 - d. County caseworkers are required to document all communication with Tribes, all active efforts the caseworkers have made, inquires made to family and kin, and notification to the Tribes involved.
- C. The Revised Colorado Statute removes the "good cause not to transfer jurisdiction" section in order to comply with the Federal Regulations. The following lists reasons to deny transfer of jurisdiction from county court to Tribal court:
- (1) "Either parent objects to such transfer;
 - (2) The tribal court declines the transfer; or
 - (3) Good cause exists to denying the transfer." (§ 23.118) Good cause not to transfer *does not* include:
 - a. Whether the foster-care or termination-of-parental-rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or Tribe did not receive notice of the child-custody proceeding until an advanced stage;
 - b. Whether there have been prior proceedings involving the child for which no petition to transfer was filed;
 - c. Whether transfer could affect the placement of the child;
 - d. The Indian child's cultural connections with the Tribe or its reservation; or
 - e. Socioeconomic conditions or any negative perception of Tribal or BIA social services or judicial systems.
 - f. The basis for any State-court decision to deny transfer should be stated orally on the record or in a written order." (§ 23.118)

Background: In 1978, the United States Congress enacted the Indian Child Welfare Act to address the disproportion of American Indian and Alaska Native children/youth being removed from their families and placed in non-Native homes. The ICWA was implemented "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families," (25 U.S.C. § 1902).



The Department of Interior issued Federal Regulations effective on December 12, 2016. These regulations define the processes of ICWA in more detail.

The Colorado Department of Human Services (CDHS) and county departments of human/social services are fully committed to ensuring compliance with ICWA. CDHS and county departments will continue to honor Tribal sovereignty, value Native cultural traditions and build upon the government-to-government relationship they have developed with Tribal Nations.

Colorado ICWA rules are stated in Volume 7 ([Section 7.309](#)) and reiterate the Bureau of Indian Affairs (BIA) Federal Regulations from December 2016.

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