

Child and Family Services Policy Manual: Adoption Indian Adoptions

Indian Child Welfare Act	The Indian Child Welfare Act (ICWA) requirements must be followed regarding the relinquishment and placement of Indian children. (See Section 305-1, Indian Child Welfare Act.)
Relinquishment	<p>Parental rights must be relinquished before a judge and accompanied by the judge's certification that the terms and consequences of the relinquishment have been fully explained to and understood by the parent.</p> <p>A relinquishment of an Indian child may not be accepted until the child to be relinquished is at least ten days old.</p>
Preference under ICWA	<p>The ICWA states that the following list of people must be given preference as adoptive parent(s) for an Indian child covered by ICWA:</p> <ol style="list-style-type: none"> 1. a member of the child's extended family; 2. other members of the child's tribe; or 3. other Indian families. <p>To preclude the possibility that the adoption may be invalidated at a later date, all tribes with which the child has connections or may be eligible for membership must be notified. The child's tribe(s) must determine whether it wants to intervene in the adoption.</p>
Good Cause not to follow Preference Order	<p>An Indian child shall be placed for adoption with a person listed above unless there is good cause not to follow the preference order. Good cause not to follow the preference order may be established in the following cases:</p> <ol style="list-style-type: none"> 1. the request of the biological parents or the child (if of sufficient age); 2. the extraordinary physical or emotional needs of the child as established by testimony of a Qualified Expert Witness; or 3. the unavailability of suitable families for placement, after a diligent search has been completed for families meeting the preference criteria. <p>Failure to follow the ICWA's placement preference provisions</p>

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without good cause could subject an adoption to being declared invalid.

The Indian Child Welfare Act Report Form (DPHHS-CFS\ICWA-250) must be completed for all adoptions in order to collect information for the Bureau of Indian Affairs Social Services Office.

Additional Information

For additional information regarding ICWA and any out-of-home placement of an Indian child, refer to Section 305-1, of this manual.

References

25 U.S.C. 1901-1963
Mont. Code Ann. § 41-3-109