

State of Montana
Department of Public Health and Human Services
ICWA CHECKLIST

To be used in all cases to determine if the child is American Indian as defined by ICWA

Definition of an Indian Child: An "Indian child" means any unmarried person who is under age eighteen and is either 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

Child's Name: _____ DOB: _____
CAPS ID: _____ Date: _____

1. To determine if the child is American Indian:

a. Is the bio mother American Indian? Yes No

If yes, Name: _____

AKA: _____

DOB: _____

b. Is the bio father American Indian? Yes No

If yes, Name: _____

AKA: _____

DOB: _____

c. If known, ask paternal grandparents if American Indian: Yes No

d. If known, ask maternal grandparents if American Indian: Yes No

2. If you determined the child may be an American Indian, identify possible tribal affiliation:

a. Which Tribe or Tribes: _____

b. Date ICEW-251 sent to the Tribe(s): _____

c. Date of response from Tribe(s): _____

d. If Tribe unknown, date of response from BIA: _____

Note: If tribe unknown, contact BIA @ 247-7943.

Note: If the child might be American Indian, you must fill out the ICWA-251.

Make a courtesy call to Tribal Social Service staff of Tribe in question, inform them you've mailed Notice. If you have questions about where to send documents, call the ICWA Program Manager at the Program Bureau Office, (406) 841-2400.

3. Is the child American Indian as defined by ICWA? Yes No

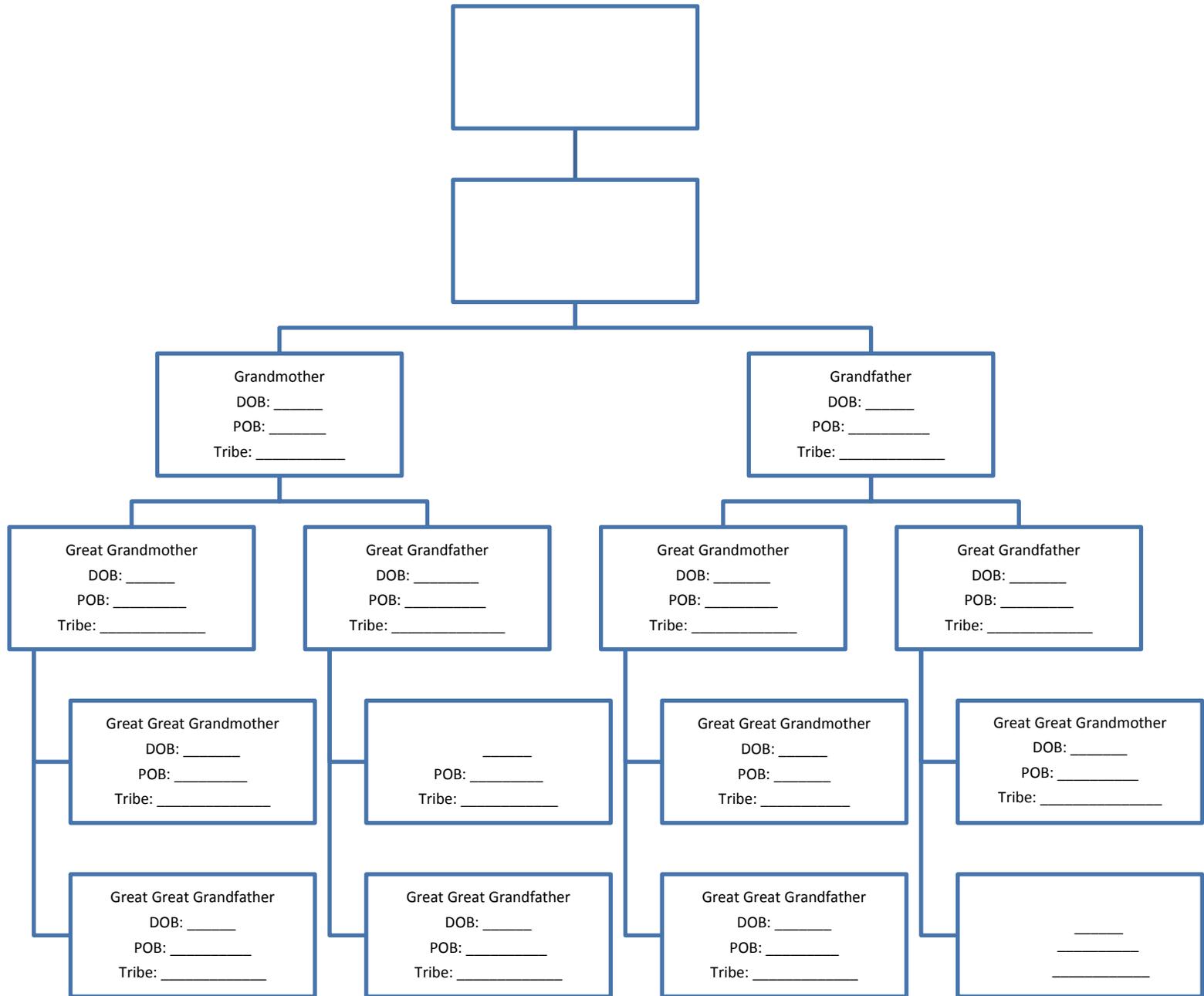
Note: Court orders may be invalidated in cases involving an Indian child where there was non-compliance with the major Provisions of the ICWA. Therefore, when in doubt, it is better to consider the child an Indian child until it is established with reasonable certainty that the child is not eligible for membership in a tribe.

REQUIRED

Worker Signature: _____ **Date:** _____

Supervisor Signature: _____ **Date:** _____

If it is determined the child is not American Indian, ICWA is no longer applicable, therefore, you may stop here.



ACTIVE EFFORTS

Any party seeking to effect a foster care placement of, or termination of parental rights to an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. Active efforts are based on the offer of services. Active efforts for foster care placement must be made from the time worker becomes involved with the family until the Show Cause hearing is held. See In the matter of G.S., jr., and S.S., 2002 MT.245, 312 Mont. 108, 120, 59 P.3d 1063, 1072 (2002).

A cornerstone in the application of active efforts is active and early participation and consultation with the child's tribe in all case planning decisions. Active Efforts applies specifically to those services and activities that affect the reunification plan.

Order of preference in the absence of good cause shall be given to:

1. A member of the child's extended family, including non-Indian family members.
2. A foster home licensed, approved, or specified by an Indian child's tribe.
3. An Indian foster home licensed or approved by an authorized non-Indian licensing authority.
4. An institution for children approved by the tribe that has a program suitable to meet the Indian child's needs.
5. If placement is not ICWA compliant, good cause not to follow the preference order must be documented.

Note: Tribal Resolution can change the preference order. The Department is required to follow the Tribes designated order of preference according to 25 USC §1915(c)

VOLUNTARY PARENTAL AGREEMENT

(check box after completed)

As of October 1, 2003, all parental agreements have a 30-day limit.

1. The parent signed the parental agreement.
2. The parent signed the agreement before either a state district court judge or tribal court judge.
3. The child is at least 10 days old before mother signed agreement.
4. The judge before whom the parent signed the agreement has certified in writing that the terms and consequences of the agreement were fully explained to the parent in detail, and in a language understood by the parent, and that the parent understood the explanation.

Any 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.

REQUIRED

Worker signature: _____ **Date:** _____

Supervisor signature: _____ **Date:** _____

VOLUNTARY RELINQUISHMENT
(check box after completed)

1. The biological mother signed the relinquishment before either a state district court judge or tribal judge.
2. The biological father signed the relinquishment before either a state district court judge or tribal judge.
3. The child was at least 10 days old before mother signed relinquishment
4. The child was at least 10 days old before father signed relinquishment.
5. The judge before whom the birth mother signed the relinquishment has certified in writing that the terms and consequences of the relinquishment were fully explained to the birth mother in detail, and in a language understood by the birth mother, and that the birth mother understood the explanation.
6. The judge before whom the birth father signed the relinquishment has certified in writing that the terms and consequences of the relinquishment were fully explained to the birth father in detail, and in a language understood by the birth father, and that the birth father understood the explanation.
7. Child's tribe was sent notice of the relinquishment.

INVOLUNTARY PROCEEDINGS
(check box after completed)

1. The active efforts made to provide remedial services are documented in the case record.
2. Description of active efforts made to provide remedial services are included in the affidavit which was submitted to the court.
3. Contacted all identified family members about possible foster care placement.
4. Qualified expert witness contacted.
5. Legal notice sent to the child's tribe by registered mail with return receipt.
6. Notification sent to parents.
7. Social worker affidavit contained information regarding Tribal membership.

REQUIRED

Worker signature: _____ **Date:** _____

Supervisor signature: _____ **Date:** _____

ADOPTIONS
(check box after completed)

After the entry of a final decree of adoption of an Indian child in any state court, the parent may withdraw consent upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated.

1. ICWA–250 completed.
2. Order of preference for adoptive placement used in the absence of good cause to the contrary.

Preference order:

1. Member of child’s extended family;
2. Other members of the child’s tribe; or
3. Other Indian families.

An Adoption of a Confederated Salish and Kootenai Indian child in State District Court is not valid without the consent of CSKT Tribal Court. Pursuant to Public Law 280 and Tribal Ordinance 40A.

[Tribal Resolution can change the preference order. The Department is required to follow the Tribes designated order of preference according to 25 USC §1915(c)]

***Note:** failure to follow the placement preferences without good cause could subject the adoption, foster care or pre-adoptive placement to being declared invalid because of a failure to follow the provisions of ICWA.*

REQUIRED

Worker signature: _____ **Date:** _____

Supervisor signature: _____ **Date:** _____