

## **Federal ICWA Checklist**

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### **FIRST -**

**Is this an Indian Child Under ICWA?**

- **Unmarried, under 18 and member or enrolled in a federally recognized tribe OR**
- **Unmarried, under 18 and eligible to be enrolled in a federally recognized tribe and a biological child of a member**
- **NOTE –Tribe or BIA determine who is member, not court**

### **SECOND –**

**Is this a legal procedure in a state court that is covered by ICWA?**

- **Foster care placement for child abuse, neglect, maltreatment**
- **Transfer between foster care placements**
- **Surrender for adoption**
- **Termination of parental rights**
- **Pre-adoptive placement**
- **Adoption – including private adoptions**
- **Custody to a non-parent**

### **THIRD –**

**What is the correct jurisdiction?**

- **Child is already a ward of a tribal court or child resides or is domiciled on reservation or Indian lands –exclusive tribal court jurisdiction**
- **Child does not live on reservation - state court jurisdiction BUT if parent and tribe want it transferred to tribal court then it should be transferred AND if not requesting transfer, tribe can intervene in state proceedings**
- **Tribe has absolute right to intervene if case stays in state court**

### **FOURTH –**

**Has the tribe been properly notified?**

**Have the parents/guardians also had proper ICWA notification?**

### **FIFTH-**

**What are rules for state court to place/remove an ICWA child into foster care? Follow all state laws PLUS**

- **Qualified expert witness must testify**
- **“likely to be serious emotional or physical damage” if not placed**
- **“active efforts”**
- **clear and convincing burden of proof**

**SIXTH –**

**What are rules for state court to take surrender of an ICWA child?**

**Follow all state law PLUS**

- **in writing and before judge**
- **certificate by judge**
- **language parent speaks**
- **more than 10 days after child's birth**
- **parent can revoke at any time before adoption and child returned**

**SEVENTH –**

**What are rules for state court to do TPR of parents for an ICWA child?**

**Follow all state law PLUS**

- **Qualified expert witness must testify**
- **“likely to be serious emotional or physical damage” if returned to parent**
- **Beyond a reasonable doubt burden of proof**

**EIGHTH –**

**What are the preferences for placement of an Indian child out of his/her home?**

- **Least restrictive setting**
- **Reasonable proximity to child's home**
- **Special needs**
- **Placement preferences in order : 1). Extended family 2) Tribe's foster home 3). Indian foster home 4.) Indian institution**

**NINTH –**

**What are the preferences for placement of an Indian child for adoption?**

- 1. extended family members**
- 2. members of the tribe**
- 3. other Indian families**

**TENTH – OVERALL ISSUE -**

**Is the court and the agency doing what it should to make sure the tribe/nation is involved in the child's plan and that the child is maintaining or creating a bond with the tribe/nation?**