

Fundamentals of Implementation

The State of Wisconsin codified the Federal Indian Child Welfare Act into Chapters 48 and 938 in 2009. The following information provides a basic guideline for implementation of the Wisconsin Indian Child Welfare Act (WICWA).

What is ICWA?

ICWA is the federal Indian Child Welfare Act of 1978 (Public Law 95-608). The Act seeks to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.

What is WICWA?

WICWA is the Wisconsin version of ICWA as codified into Wisconsin statutes. 2009 Wisconsin Act 94, which was the codification, was signed by Gov. Jim Doyle on December 7, 2009 and became effective on December 22, 2009. The Wisconsin law essentially mirrors the ICWA and implements the minimum standards referenced in ICWA.

Who is an Indian child?

An Indian child is a person under the age of 18 who is affiliated with an Indian tribe as

- 1) a member of the tribe or
- 2) A person who is eligible for membership in an Indian tribe and who is the biological child of a member of an Indian tribe.

The tribe in which the child is a member or eligible for membership need not be the same tribe in which the parent is a member. [Ref. s. 48.02(8g); s. 938.02(8g)]

What is a “child custody proceeding”?

A child custody proceeding means any proceeding under Ch. 48 (i.e., CHIPS) and certain proceedings under Ch. 938 (i.e., JIPS) which could result in the out-of-home care or adoptive placement of an Indian child or termination of the parental rights to the Indian child. A child custody proceeding does **not** include a family proceeding under Ch. 767 (e.g., divorce proceedings) or actions related to delinquency acts under Ch. 938. [Ref. s. 48.028(2)(d); s. 938.028(2)(b)]

Does WICWA apply to Ch. 938 cases?

It does apply to certain JIPS cases under s. 938.13. Specifically, WICWA applies to juvenile custody proceedings for juveniles who are:

- Uncontrollable (s. 938.13(4))
- Habitually truant (s. 938.13(6))
- School dropouts (s. 938.13(6m))
- Habitual runaways (s. 938.13(7))

[Ref. s. 938.028(2)(b)]

What resources are available for me to implement the Wisconsin Indian Child Welfare Act?

- 1) **Chapter 48.028 – WICWA**
- 2) **DCF – Website**
<https://dcf.wisconsin.gov/wicwa>
- 3) **DCF – Website Q & A**
<https://dcf.wisconsin.gov/wicwa>

Wisconsin Indian Child Welfare Desk Aid, Version 2, was created to assist in the basic provisions of WICWA. Please refer to the above references for detailed compliance language. This product is not intended to replace or minimize WICWA/ICWA processes or requirements. Please contact the DCF Indian Child Welfare Consultant for questions – 608.266.5330

Access
§ 48.981(3)(bm)

When a county department receives a CPS report of an unborn child or child living wholly or partially within the reservation, and has reason to know that the child is an Indian child, the department shall provide notice within 24 hours of the report, to the tribal agent, consisting of the name and address of the Indian child or expectant mother and that a report has been received. **Best Practice: Apply standard to all Wisconsin Tribes.**

Initial Assessment

In order for the agency to determine whether WICWA/ICWA applies to an Indian child, it must be confirmed whether the child is a member or eligible for membership in a tribe. The eWiSACWIS ICWA site contains the following forms that should be utilized in determining if WICWA/

Request for Confirmation of Child's Indian Status. These forms are sent to the tribal contact via first class mail. The Wisconsin tribal contacts are located on the last page of this Desk Aid; other tribes can be found at <http://www.gpo.gov/fdsys/pkg/FR-2010-05-19/pdf/2010-11696.pdf>. If you do not know the name of the child's tribe, send the information request forms to the Midwest BIA Regional Office, or if the tribe is not a Midwest tribe, send to the appropriate BIA Regional Office located at the aforementioned site. **Best Practice: Ask if the child, parent, grandparents are "Indian". As the case moves forward, follow placement preferences and begin Active Efforts.**

- Request tribal agency to assist in evaluating the case
- Invite representatives of child's tribe to participate in custody proceeding at earliest point
- Notify and consult with extended family members to provide structure and support

Emergency Removals

**25 USC§1922
§48.028(3)(b)2**

The federal and state law permit an agency to remove an Indian child in order to prevent imminent physical harm or damage to the Indian child. When a removal or placement is no longer necessary to prevent imminent physical harm or damage to the child: a) the agency shall expeditiously initiate a child custody proceeding; b) transfer the child to the jurisdiction of the appropriate tribe; or c) return the child to the parent, as may be appropriate. State law requires a hearing within 48 hours of the emergency removal of the child to determine continued custody of the child. **Best Practice: If the agency knows this child is an Indian child and member of a tribe or eligible for membership, fax an informational notice containing name of the child, court jurisdiction and time/date of the Temporary Physical Custody hearing as soon as possible. Formal notice to the tribe under the federal or state law is not required at this point. Placement preferences should be followed in an emergency placement.**

Ongoing

**§ 48.028(4)(a),
(4)(g),
(7)(b), (7)(c)**

**25 USC § 1912,
1915**

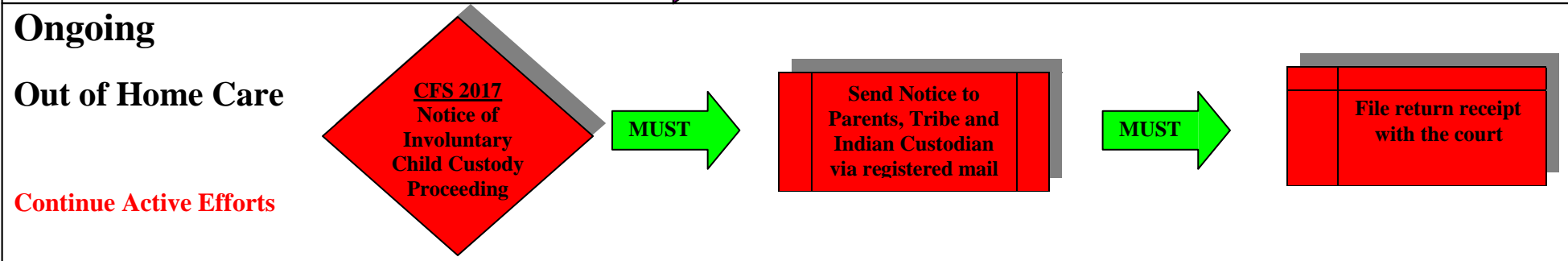
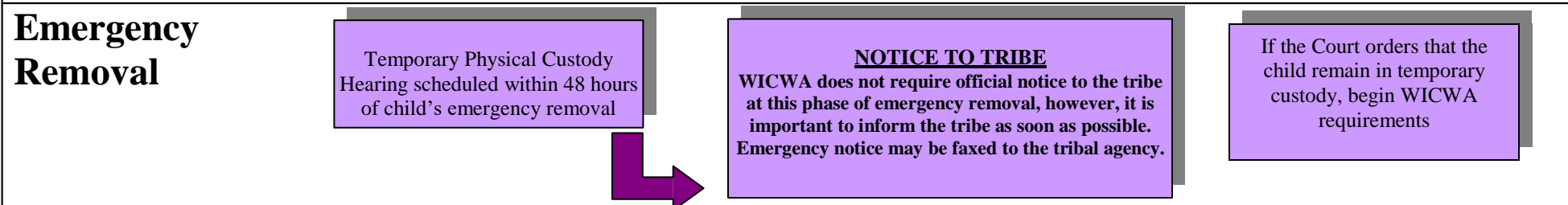
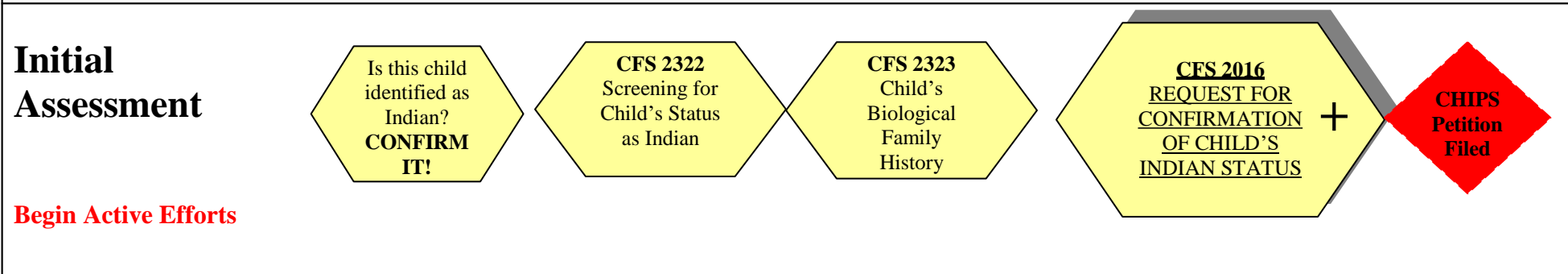
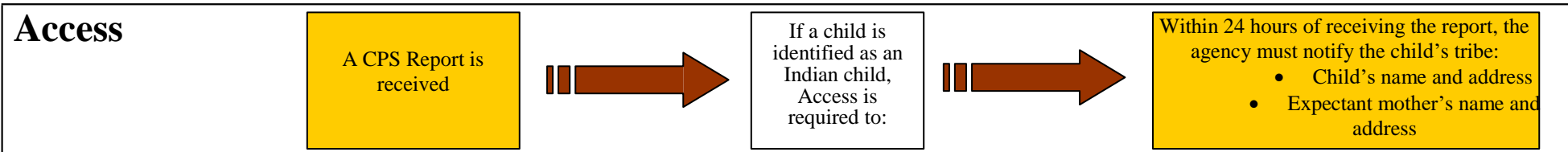
- 1) At the point a county agency is considering requesting a CHIPS or JIPS petition on behalf of an Indian child, the agency shall notify the tribe. Use eWiSACWIS form CFS 2017, **Notice of Involuntary Child Custody Proceeding of an Indian Child**. Send the form to the appropriate tribe(s) via registered mail with return receipt requested. The return receipt must be filed with the court.
- 2) When it is determined that an Indian child will remain in custody, the agency must initiate **placement preferences** of ICWA/WICWA
 - a. A foster home or treatment foster home licensed, approved or specified by the Indian child's tribe
 - b. Indian foster home or treatment foster home licensed or approved by the department, a county department, or a child welfare agency
 - c. A group home or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization
- 3) If the Indian child's tribe has established an order of preference, the order of preference established by that tribe shall be followed
- 4) Once the Indian child is referred to ongoing services, continue **Active Efforts** as defined in WICWA
 - Provide family interaction
 - Community resources were offered and actively assisted in accessing those resources
 - Monitoring progress and client participation in services was provided
 - Alternative ways of addressing the needs were provided if services did not exist or not available to the family

Concurrent Planning

Collaborate and consult with the Tribal agency to pursue permanency and tribal permanency options.

TPR

Re-initiate formal Notice to the tribe and follow ICWA/WICWA requirements for Termination of Parental Rights.



Circuit Court Determinations:

The court or jury must find by clear and convincing evidence, including the testimony of a qualified expert witness (QEW), that continued custody of the Indian child is likely to result in serious emotional or physical damage to the child. § 48.028(4)(d)1. The court or jury must find by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian child's family and that those efforts have proved unsuccessful. § 48.028(4)(d)2.

The Wisconsin Public Defender's office provides representation for Indian Children, Parents, or Indian Custodians of Indian Children in legal matters affected by WICWA. A finding of financial eligibility is required before an attorney may be appointed. Contact the office in your area, for more information, call 608.266.0087 or visit www.wisspd.org

Wisconsin Tribal Contacts

 <p>Bad River Band of Lake Superior Chippewa ICW Director P.O. Box 55 Odanah, WI 54861 715.682.7127 Fax: 715.682.7883 bricw@badriver-nsn.gov</p>	 <p>Forest County Potawatomi Community Indian Child Welfare Dept P.O. Box 340 Crandon, WI 54520 715.478.4812 Fax: 715.478.7442 ICW.Main@fcpotawatomi-nsn.gov</p>
 <p>Ho-Chunk Nation Div. of Child & Family Services P.O. Box 40 Black River Falls, WI 54615 715.284.2622 Fax: 715.284.0097 icw@ho-chunk.com</p>	 <p>Lac Courte Oreilles Band of Lake Superior Chippewa of Wisconsin ICW Director 13394 W. Trepania Road Hayward, WI 54843-2186 715.634.8934 Fax: 715.634.2981 lcoicw@yahoo.com</p>
 <p>Lac du Flambeau Band of Lake Superior Chippewa ICW Director P.O. Box 67 Lac du Flambeau, WI 54538 715.588.3303 Fax: 715.588.9128 ldfcw@ldftribe.com</p>	 <p>Menominee Indian Tribe of Wisconsin ICW Director P.O. Box 520 Keshena, WI 54135-0520 715.799.5161 Fax: 715.799.6061</p>
 <p>Oneida Tribe of Indians of Wisconsin ICW Director P.O. Box 365 Oneida, WI 54155 920.490.3701 Fax: 920.490.3820 ICW@oneidanation.org</p>	 <p>Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ICW Director 88385 Pike Road Bayfield, WI 54814 715.779.3747 Fax: 715.779.3783 icwa@redcliff-nsn.gov</p>
 <p>Sokaogon Chippewa Community ICW Director 3051 Sand Lake Road Crandon, WI 54520 715.478.2520 Fax: 715.478.7674</p>	 <p>St. Croix Chippewa Indians of Wisconsin ICW Director 24670 State Road 35/70 Suite 800 Siren, WI 54872 715.349.2195 Fax: 715.349.8665 icwa@stcroixtribalcenter.com</p>
 <p>Stockbridge-Munsee Community ICW Director W12802 County road A Bowler, WI 54416 715.793.4580 Fax: 715.793.1312 ICW@mohican.com</p>	<p style="text-align: center;">Bureau of Indian Affairs Midwest Region – Human Services 5600 West American Boulevard, Suite 500 Norman Pointe II Building Bloomington, MN 55437 612.725.4571 (ICWA Responses) Fax: 612.713.4439 Valerie.Vasquez@bia.gov</p>

The Department of Children and Families is an equal opportunity employer and service provider. If you have a disability and need to access services, receive information in an alternate format, or need information translated to another language, please call (608) 266-8787. Individuals who are deaf, hard of hearing, deaf-blind or speech disabled can use the free Wisconsin Relay Service (WRS) – 711 to contact the department.