

**First Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 25-0214.02 Shelby Ross x4510

HOUSE BILL 25-1204

HOUSE SPONSORSHIP

Duran and Joseph,

SENATE SPONSORSHIP

(None),

House Committees

Health & Human Services
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CODIFICATION OF THE FEDERAL "INDIAN CHILD**
102 **WELFARE ACT OF 1978" AS THE "COLORADO INDIAN CHILD**
103 **WELFARE ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill codifies the federal "Indian Child Welfare Act of 1978" into state law as the "Colorado Indian Child Welfare Act" (CO-ICWA) and provides additional protections for Indian children and children known to be Indian children under state law.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **repeal** 19-1-126 as
3 follows:

4 **19-1-126. Compliance with the federal "Indian Child Welfare**
5 **Act of 1978"**. ~~(1) In each case filed pursuant to this title 19 that~~
6 ~~constitutes a child custody proceeding, as defined in the federal "Indian~~
7 ~~Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., and therefore to~~
8 ~~which the terms of the federal "Indian Child Welfare Act of 1978", 25~~
9 ~~U.S.C. sec. 1901 et seq., apply, the court and each party to the proceeding~~
10 ~~shall comply with the federal implementing regulations, and any~~
11 ~~modifications thereof, of the federal "Indian Child Welfare Act of 1978",~~
12 ~~25 U.S.C. sec. 1901 et seq., located in 25 CFR 23, which outline the~~
13 ~~minimum federal standards governing the implementation of the "Indian~~
14 ~~Child Welfare Act of 1978" to ensure the statute is applied in Colorado~~
15 ~~consistent with the act's express language, congress's intent in enacting~~
16 ~~the statute, and to promote the stability and security of Indian children,~~
17 ~~tribes, and families. In each child-custody proceeding filed pursuant to~~
18 ~~this title 19 to which the terms of the federal "Indian Child Welfare Act~~
19 ~~of 1978", 25 U.S.C. sec. 1901 et seq., apply:~~

20 ~~(a) (I) The court shall make inquiries to determine whether the~~
21 ~~child who is the subject of the proceeding is an Indian child, and, if so,~~
22 ~~shall determine the identity of the Indian child's tribe. In determining the~~
23 ~~Indian child's tribe:~~

24 ~~(A) The court shall ask each participant in an emergency or~~
25 ~~voluntary or involuntary child-custody proceeding whether the participant~~
26 ~~knows or has reason to know that the child is an Indian child. The inquiry~~

1 is to be made at the commencement of the proceeding, and all responses
2 must be on the record. The court shall instruct the participants to inform
3 the court if any participant subsequently receives information that
4 provides reason to know the child is an Indian child.

5 (B) Any party to the proceeding shall disclose any information
6 indicating that the child is an Indian child or provide an identification
7 card indicating membership in a tribe to the petitioning and filing parties
8 and the court in a timely manner. The court shall order the party to
9 provide the information no later than seven business days after the date
10 of the hearing or prior to the next hearing on the matter, whichever occurs
11 first. The information should be filed with the court and provided to the
12 county department of human or social services and each party no later
13 than seven business days after the date of the hearing.

14 (H) The court, upon conducting the inquiry described in
15 subsection (1)(a)(I) of this section, has reason to know that a child is an
16 Indian child if:

17 (A) Any participant in the child-custody proceeding, officer of the
18 court involved in the child-custody proceeding, Indian tribe, Indian
19 organization, or agency informs the court that the child is an Indian child;

20 (B) Any participant in the child-custody proceeding, officer of the
21 court involved in the child-custody proceeding, Indian tribe, Indian
22 organization, or agency informs the court that it has discovered
23 information indicating that the child is an Indian child;

24 (C) The child who is the subject of the child-custody proceeding
25 gives the court reason to know he or she is an Indian child;

26 (D) The court is informed that the domicile or residence of the
27 child, the child's parent, or the child's Indian custodian is on a reservation

1 or in an Alaska native village;

2 (E) ~~The court is informed that the child is or has been a ward of~~
3 ~~a tribal court, as defined in 25 U.S.C. sec. 1903; or~~

4 (F) ~~The court is informed that the child or the child's parent~~
5 ~~possesses an identification card indicating membership in an Indian tribe.~~

6 (b) ~~If the court knows or has reason to know, as defined in~~
7 ~~subsection (1)(a)(II) of this section, that the child who is the subject of the~~
8 ~~proceeding is an Indian child, the petitioning or filing party shall send~~
9 ~~notice by registered or certified mail, return receipt requested, to the~~
10 ~~parent or parents, the Indian custodian or Indian custodians of the child~~
11 ~~and to the tribal agent of the Indian child's tribe as designated in 25 CFR~~
12 ~~23, or, if there is no designated tribal agent, the petitioning or filing party~~
13 ~~shall contact the tribe to be directed to the appropriate office or~~
14 ~~individual. In providing notice, the court and each party shall comply with~~
15 ~~25 CFR 23.111.~~

16 (c) ~~The petitioning or filing party shall disclose in the complaint,~~
17 ~~petition, or other commencing pleading filed with the court that the child~~
18 ~~who is the subject of the proceeding is an Indian child and the identity of~~
19 ~~the Indian child's tribe or what efforts the petitioning or filing party has~~
20 ~~made in determining whether the child is an Indian child. If the child who~~
21 ~~is the subject of the proceeding is determined to be an Indian child, the~~
22 ~~petitioning or filing party shall further identify what reasonable efforts~~
23 ~~have been made to send notice to the persons identified in subsection~~
24 ~~(1)(b) of this section. The postal receipts indicating that notice was~~
25 ~~properly sent by the petitioning or filing party to the parent or Indian~~
26 ~~custodian of the Indian child and to the Indian child's tribe must be~~
27 ~~attached to the complaint, petition, or other commencing pleading filed~~

1 with the court; except that, if notification has not been perfected at the
2 time the initial complaint, petition, or other commencing pleading is filed
3 with the court or if the postal receipts have not been received back from
4 the post office, the petitioning or filing party shall file the postal receipts
5 with the court. Any responses sent by the tribal agents to the petitioning
6 or filing party, the county department of human or social services, or the
7 court must be distributed to the parties and deposited with the court.

8 (2) If there is reason to know the child is an Indian child but the
9 court does not have sufficient evidence to determine that the child is or
10 is not an Indian child, the court shall:

11 (a) Confirm, by way of a report, declaration, or testimony included
12 in the record, that the petitioning or filing party used due diligence to
13 identify and work with all of the tribes of which there is reason to know
14 the child may be a member, or eligible for membership, to verify whether
15 the child is in fact a member, or a biological parent is a member and the
16 child is eligible for membership; and

17 (b) Treat the child as an Indian child, unless and until it is
18 determined on the record that the child does not meet the definition of an
19 Indian child.

20 (3) If the court receives information that the child may have
21 Indian heritage but does not have sufficient information to determine that
22 there is reason to know that the child is an Indian child pursuant to
23 subsection (1)(a)(II) of this section, the court shall direct the petitioning
24 or filing party to exercise due diligence in gathering additional
25 information that would assist the court in determining whether there is
26 reason to know that the child is an Indian child. The court shall direct the
27 petitioning or filing party to make a record of the effort taken to

1 ~~determine whether or not there is reason to know that the child is an~~
2 ~~Indian child.~~

3 ~~(4) The requirements of the federal "Indian Child Welfare Act of~~
4 ~~1978", 25 U.S.C. sec. 1901 et seq., in effect as of February 9, 2003, and~~
5 ~~the related regulations located at 25 CFR 23, in effect as of February 9,~~
6 ~~2023, are incorporated into and adopted as state law.~~

7 **SECTION 2.** In Colorado Revised Statutes, **add** article 1.2 to title
8 19 as follows:

9 **ARTICLE 1.2**

10 **Colorado Indian Child Welfare Act**

11 **19-1.2-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 1.2 IS
12 THE "COLORADO INDIAN CHILD WELFARE ACT".

13 **19-1.2-102. Legislative declaration.** (1) THE GENERAL
14 ASSEMBLY FINDS AND DECLARES THAT:

15 (a) HISTORICALLY, AN ALARMINGLY HIGH PERCENTAGE OF INDIAN
16 FAMILIES WERE DISRUPTED BY THE REMOVAL, OFTEN UNWARRANTED, OF
17 THEIR CHILDREN BY NON-TRIBAL PUBLIC AND PRIVATE AGENCIES, AND
18 THAT A DISTURBINGLY HIGH PERCENTAGE OF THOSE INDIAN CHILDREN
19 WERE PLACED IN NON-INDIAN FOSTER AND ADOPTIVE HOMES AND
20 INSTITUTIONS;

21 (b) AS A RESULT OF THESE ACTIONS, THOUSANDS OF INDIAN
22 FAMILIES, TRIBAL NATIONS, AND ENTIRE CULTURES WERE DEVASTATED;

23 (c) THE STATES, IN EXERCISING THEIR RECOGNIZED JURISDICTION
24 OVER INDIAN CHILD CUSTODY PROCEEDINGS THROUGH ADMINISTRATIVE
25 AND JUDICIAL BODIES, HISTORICALLY FAILED TO RECOGNIZE THE
26 ESSENTIAL TRIBAL RELATIONS OF INDIAN PEOPLE AND THE CULTURAL AND
27 SOCIAL STANDARDS PREVAILING IN INDIAN COMMUNITIES AND CULTURES;

1 (d) IN RESPONSE TO THESE CIRCUMSTANCES, THE UNITED STATES
2 CONGRESS PASSED THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978",
3 25 U.S.C. SEC. 1901 ET SEQ., KNOWN AS "ICWA", TO PROTECT THE BEST
4 INTERESTS OF INDIAN CHILDREN AND TO PROMOTE THE STABILITY AND
5 SECURITY OF INDIAN TRIBES AND FAMILIES BY ESTABLISHING MINIMUM
6 FEDERAL STANDARDS FOR THE REMOVAL OF INDIAN CHILDREN FROM THEIR
7 FAMILIES AND FOR THE PLACEMENT OF THOSE INDIAN CHILDREN IN FOSTER
8 OR ADOPTIVE HOMES THAT WOULD REFLECT THE UNIQUE VALUES OF
9 INDIAN CULTURE. THE ACT PROVIDES ASSISTANCE TO INDIAN TRIBES IN
10 THE OPERATION OF CHILD AND FAMILY SERVICE PROGRAMS.

11 (e) ICWA HAS BEEN THE SUBJECT OF TARGETED ATTACKS IN THE
12 FEDERAL COURTS, INCLUDING MOST RECENTLY IN *HAALAND V. BRACKEEN*,
13 599 U.S. 255 (2023), IN WHICH THE UNITED STATES SUPREME COURT
14 UPHELD ICWA IN ITS ENTIRETY. EVEN WITH *HAALAND V. BRACKEEN*
15 UPHOLDING ICWA, THE LAW REMAINS SUBJECT TO CHALLENGE.

16 (f) THE COLORADO GENERAL ASSEMBLY CAN COMBAT
17 CHALLENGES TO ICWA BY UPHOLDING ICWA'S RECOGNIZED "GOLD
18 STANDARD" IN CHILD WELFARE PROTECTION;

19 (g) AS OF 2025, SEVENTEEN STATES HAVE PASSED COMPREHENSIVE
20 STATE ICWA LAWS WHILE COLORADO HAS ADOPTED PARTS OF THE
21 FEDERAL LAW AND, MOST RECENTLY IN SENATE BILL 23-211, ADOPTED
22 AND INCORPORATED ICWA AND ITS REGULATIONS BY REFERENCE AS
23 COLORADO LAW;

24 (h) A CRITICAL ELEMENT OF ICWA IS THE REQUIREMENT TO
25 NOTIFY AN INDIAN CHILD'S TRIBE WHEN A STATE COURT PROCEEDING IS
26 COMMENCED THAT COULD RESULT IN THE PLACEMENT OF THE INDIAN
27 CHILD OUT OF THE INDIAN CHILD'S HOME. THE PURPOSE OF THE NOTICE IS

1 TO PROVIDE THE INDIAN CHILD'S TRIBE THE OPPORTUNITY TO TRANSFER
2 THE CASE TO A TRIBAL COURT OR OTHERWISE PARTICIPATE IN THE STATE
3 COURT PROCEEDING.

4 (i) TO ACHIEVE THESE GOALS, IT IS CRUCIAL TO DETERMINE,
5 CONSISTENTLY AND FAITHFULLY, WHETHER A CHILD WHO IS THE SUBJECT
6 OF THESE TYPES OF STATE COURT PROCEEDINGS IS AN INDIAN CHILD AND
7 TO ENSURE THAT, IF SO, APPROPRIATE AND TIMELY NOTICE IS PROVIDED,
8 PARTICULARLY NOTICE TO THE RELEVANT TRIBES WHEN THE COUNTY
9 DEPARTMENT OF HUMAN OR SOCIAL SERVICES RECEIVES INFORMATION
10 THAT A CHILD MAY BE AN INDIAN CHILD;

11 (j) THE STATE OF COLORADO HAS PREVIOUSLY RECOGNIZED THAT
12 INDIAN TRIBES HAVE A COMPELLING INTEREST IN PROMOTING AND
13 MAINTAINING THEIR INTEGRITY AND CULTURE BY ENTERING INTO FEDERAL
14 "INDIAN CHILD WELFARE ACT OF 1978" AGREEMENTS WITH THE
15 SOUTHERN UTE INDIAN TRIBE AND THE UTE MOUNTAIN UTE INDIAN
16 TRIBE. THE AGREEMENTS, AMONG OTHER THINGS, PLACE STRINGENT
17 NOTICE REQUIREMENTS ON THE STATE IN PROCEEDINGS INVOLVING INDIAN
18 CHILDREN AND PROVIDE FOR THE DELAY OF PROCEEDINGS UNTIL THE
19 REQUIRED NOTICE HAS BEEN PROVIDED TO THE TRIBE IN QUESTION. THE
20 STATE OF COLORADO FURTHER RECOGNIZES THAT THE DEPARTMENT OF
21 HUMAN SERVICES MAY ALSO ENTER INTO A TRIBAL-STATE AGREEMENT
22 WITH TRIBES OUTSIDE OF COLORADO THAT HAVE SIGNIFICANT NUMBERS
23 OF MEMBER INDIAN CHILDREN OR MEMBERSHIP-ELIGIBLE INDIAN
24 CHILDREN RESIDING IN COLORADO.

25 (k) COLORADO IS COMMITTED TO THE CONSISTENT APPLICATION OF
26 AND COMPLIANCE WITH THE FEDERAL ICWA THROUGHOUT THE STATE TO
27 ENSURE THAT PROPER NOTICE IS PROVIDED AND PROCEDURES ARE

1 FOLLOWED AS SPECIFIED BY ICWA WHEN STATE COURT ACTIONS INVOLVE
2 INDIAN CHILDREN; AND

3 (1) NOTHING IS MORE VITAL TO THE CONTINUED EXISTENCE AND
4 INTEGRITY OF INDIAN TRIBES THAN THEIR CHILDREN.

5 (2) THEREFORE, THE GENERAL ASSEMBLY DETERMINES AND
6 DECLARES THAT:

7 (a) IT IS APPROPRIATE AND IN THE BEST INTERESTS OF THE INDIAN
8 FAMILIES WHO ARE INTENDED TO BE PROTECTED BY THE TERMS OF THE
9 FEDERAL "INDIAN CHILD WELFARE ACT OF 1978" AND THE INDIAN
10 CHILDREN REPRESENTED THEREBY THAT:

11 (I) THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978"
12 AGREEMENTS ENTERED INTO BETWEEN THE STATE OF COLORADO AND THE
13 SOUTHERN UTE INDIAN TRIBE AND THE UTE MOUNTAIN UTE INDIAN
14 TRIBE ARE REAFFIRMED; AND

15 (II) A COMPREHENSIVE COLORADO "INDIAN CHILD WELFARE ACT"
16 IS ENACTED TO ENSURE CONSISTENT AND RELIABLE COMPLIANCE WITH THE
17 FEDERAL ICWA FOR THE PROTECTION OF INDIAN CHILDREN WITHIN
18 COLORADO AND TO ENSURE THAT INDIAN CHILDREN IN THIS STATE ARE
19 PROTECTED AS STATED SHOULD THE FEDERAL LAW BE APPEALED,
20 MODIFIED, OR OTHERWISE ANNULLED;

21 (b) THE STATE OF COLORADO RECOGNIZES ALL FEDERALLY
22 RECOGNIZED INDIAN TRIBES AS HAVING THE INHERENT AUTHORITY TO
23 DETERMINE THEIR OWN JURISDICTION FOR ANY AND ALL INDIAN CHILD
24 CUSTODY OR CHILD PLACEMENT PROCEEDINGS, REGARDLESS OF WHETHER
25 THE TRIBE'S MEMBERS ARE ON OR OFF THE RESERVATION AND REGARDLESS
26 OF THE PROCEDURAL POSTURE OF THE PROCEEDING;

27 (c) THE STATE OF COLORADO HAS LONG RECOGNIZED THE

1 IMPORTANCE OF INDIAN CHILDREN TO THEIR TRIBES, NOT ONLY AS
2 MEMBERS OF TRIBAL FAMILIES AND COMMUNITIES BUT ALSO AS THE
3 TRIBE'S GREATEST RESOURCE AS FUTURE MEMBERS AND LEADERS OF THE
4 TRIBE. THE VITALITY OF INDIAN CHILDREN IN COLORADO IS ESSENTIAL TO
5 THE HEALTH AND WELFARE OF BOTH THE STATE AND TRIBES, AND IS
6 ESSENTIAL TO THE FUTURE WELFARE AND CONTINUED EXISTENCE OF THE
7 TRIBES.

8 (d) IT IS THE POLICY OF THE STATE TO COOPERATE FULLY WITH
9 INDIAN TRIBES AND TRIBAL CITIZENS TO ENSURE THAT THE INTENT AND
10 PROVISIONS OF THE FEDERAL ICWA ARE ENFORCED; AND

11 (e) ADVANCING ICWA IS CONSISTENT WITH THE "COLORADO
12 CHILDREN'S CODE" AND WITH ARTICLE II OF THE STATE CONSTITUTION.

13 (3) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT THE
14 PURPOSE OF THIS ARTICLE 1.2 IS TO CODIFY THE FEDERAL "INDIAN CHILD
15 WELFARE ACT OF 1978" INTO STATE LAW AND TO PROVIDE ADDITIONAL
16 PROTECTIONS FOR INDIAN CHILDREN PURSUANT TO STATE LAW.

17 **19-1.2-103. Definitions.** AS USED IN THIS ARTICLE 1.2, UNLESS
18 THE CONTEXT OTHERWISE REQUIRES:

19 (1) "ACTIVE EFFORTS" MEANS EFFORTS THAT ARE AFFIRMATIVE,
20 ACTIVE, THOROUGH, TIMELY, AND INTENDED TO MAINTAIN OR REUNITE AN
21 INDIAN CHILD WITH THE INDIAN CHILD'S FAMILY BY PROVIDING REMEDIAL
22 SERVICES AND REHABILITATIVE PROGRAMS. "ACTIVE EFFORTS" REQUIRE
23 MORE THAN A REFERRAL TO A SERVICE AND MUST BE CONDUCTED IN
24 PARTNERSHIP WITH THE INDIAN CHILD, THE INDIAN CHILD'S PARENT OR
25 INDIAN CUSTODIAN, EXTENDED FAMILY MEMBERS, AND THE TRIBE.

26 (2) (a) "CHILD CUSTODY PROCEEDING" MEANS A CHILD CUSTODY
27 PROCEEDING WITHIN THE COURT'S JURISDICTION AND INCLUDES:

1 (I) FOSTER CARE PLACEMENTS, INCLUDING ANY ACTION REMOVING
2 AN INDIAN CHILD FROM THE INDIAN CHILD'S PARENT OR INDIAN
3 CUSTODIAN FOR TEMPORARY PLACEMENT IN A FOSTER HOME OR
4 INSTITUTION, OR THE HOME OF A GUARDIAN OR CONSERVATOR WHEN THE
5 INDIAN PARENT OR INDIAN CUSTODIAN CANNOT HAVE THE INDIAN CHILD
6 RETURNED UPON DEMAND BUT PARENTAL RIGHTS HAVE NOT BEEN
7 TERMINATED, INCLUDING, BUT NOT LIMITED TO, A HEARING HELD
8 PURSUANT TO SECTION 19-3-405, 19-3-507, 19-3-508, OR 19-3-702;

9 (II) TERMINATION OF PARENTAL RIGHTS, INCLUDING ANY ACTION
10 RESULTING IN THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP;

11 (III) PRE-ADOPTIVE PLACEMENT, INCLUDING THE TEMPORARY
12 PLACEMENT OF AN INDIAN CHILD IN A FOSTER HOME OR INSTITUTION
13 AFTER THE TERMINATION OF PARENTAL RIGHTS BUT PRIOR TO OR IN LIEU
14 OF ADOPTIVE PLACEMENT;

15 (IV) ADOPTIVE PLACEMENT, INCLUDING THE PERMANENT
16 PLACEMENT OF AN INDIAN CHILD FOR ADOPTION AND ANY ACTION
17 RESULTING IN A FINAL DECREE OF ADOPTION;

18 (V) A PARENTAGE DETERMINATION; AND

19 (VI) GUARDIANSHIP OR ALLOCATION OF PARENTAL
20 RESPONSIBILITIES TO A NONPARENT, INCLUDING AN ACTION TAKEN IN A
21 PROBATE OR DOMESTIC RELATIONS CASE REMOVING AN INDIAN CHILD
22 FROM THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN FOR TEMPORARY
23 PLACEMENT IN THE HOME OF A GUARDIAN, CONSERVATOR, OR NONPARENT
24 WHEN THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN CANNOT HAVE
25 THE INDIAN CHILD RETURNED UPON DEMAND BUT PARENTAL RIGHTS HAVE
26 NOT BEEN TERMINATED.

27 (b) AN ACTION THAT MAY CULMINATE IN ONE OF THE OUTCOMES

1 DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION IS A SEPARATE CHILD
2 CUSTODY PROCEEDING FROM AN ACTION THAT MAY CULMINATE IN A
3 DIFFERENT ONE OF THE OUTCOMES. THERE MAY BE SEVERAL CHILD
4 CUSTODY PROCEEDINGS INVOLVING AN INDIAN CHILD, AND WITHIN EACH
5 CHILD CUSTODY PROCEEDING, THERE MAY BE SEVERAL SEPARATE
6 HEARINGS.

7 (c) "CHILD CUSTODY PROCEEDING" DOES NOT INCLUDE:

8 (I) A PROCEEDING FOR THE CUSTODY OR SUPPORT OF, OR
9 PARENTING TIME WITH, AN INDIAN CHILD THAT IS SOLELY BETWEEN TWO
10 PARENTS;

11 (II) AN EMERGENCY PROCEEDING AS DESCRIBED IN SECTION
12 19-1.2-110; OR

13 (III) A DELINQUENCY PROCEEDING OTHER THAN THOSE BASED
14 SOLELY ON A STATUS OFFENSE.

15 (3) "COURT" MEANS A DISTRICT COURT, JUVENILE COURT, OR
16 PROBATE COURT THAT IS PRESIDING OVER A CHILD CUSTODY PROCEEDING.

17 (4) "CUSTODY" OR "CONTINUED CUSTODY" MEANS HAVING LEGAL
18 OR PHYSICAL CUSTODY, OR BOTH, OF AN INDIAN CHILD PURSUANT TO
19 APPLICABLE TRIBAL LAW, TRIBAL CUSTOM, OR STATE LAW. AN INDIVIDUAL
20 HAS CUSTODY OF AN INDIAN CHILD IF THE INDIVIDUAL IS THE INDIAN
21 CHILD'S PARENT, IF THE INDIVIDUAL HAS PHYSICAL CUSTODY THROUGH AN
22 ARRANGEMENT WITH THE INDIAN CHILD'S PARENT OUTSIDE OF THE
23 INVOLVEMENT OF A CHILD WELFARE OR CHILD PLACEMENT AGENCY, OR IF
24 THE INDIVIDUAL HAS LEGAL CUSTODY OF THE INDIAN CHILD PURSUANT TO
25 APPLICABLE TRIBAL LAW, TRIBAL CUSTOM, OR STATE LAW. ■ ■ ■

26 (5) (a) "DOMICILE" MEANS THE PLACE AN INDIVIDUAL REGARDS AS
27 HOME, WHERE THE INDIVIDUAL INTENDS TO REMAIN, OR TO WHICH, IF

1 ABSENT, THE INDIVIDUAL INTENDS TO RETURN.

2 (b) AN INDIAN CHILD'S DOMICILE, IN ORDER OF PRIORITY, IS THE
3 DOMICILE OF:

4 (I) THE INDIAN CHILD'S PARENTS OR, IF THE INDIAN CHILD'S
5 PARENTS DO NOT HAVE THE SAME DOMICILE, THE INDIAN CHILD'S PARENT
6 WHO HAS PHYSICAL CUSTODY OF THE INDIAN CHILD;

7 (II) THE INDIAN CHILD'S INDIAN CUSTODIAN; OR

8 (III) THE INDIAN CHILD'S GUARDIAN.

9 (6) "DUE DILIGENCE" MEANS THE EARNEST ENDEAVOR OF THE
10 COURT AND THE PETITIONING OR FILING PARTY TO INVESTIGATE THE BASIS
11 FOR A PARTY'S OR OTHER INDIVIDUAL'S ASSERTION THAT A CHILD MAY BE
12 AN INDIAN CHILD, AS DESCRIBED IN SECTION 19-1.2-108.

13 (7) "EMERGENCY PROCEEDING" MEANS ANY COURT ACTION THAT
14 INVOLVES THE EMERGENCY REMOVAL OR EMERGENCY PLACEMENT OF AN
15 INDIAN CHILD, INCLUDING REMOVAL PURSUANT TO SECTION 19-1.2-110,
16 19-1.2-124, 19-3-405, 14-10-129(4), OR 15-14-204(5) WITH OR WITHOUT
17 A PROTECTIVE CUSTODY ORDER, OR A TEMPORARY SHELTER CARE
18 PROCEEDING PURSUANT TO SECTION 19-3-401 OR 19-3-403.

19 (8) (a) "EXTENDED FAMILY MEMBER" HAS THE SAME MEANING AS
20 GIVEN IN THE TRIBAL LAW OR TRIBAL CUSTOM OF THE INDIAN CHILD'S
21 TRIBE.

22 (b) IF THE MEANING OF "EXTENDED FAMILY MEMBER" CANNOT BE
23 DETERMINED PURSUANT TO SUBSECTION (8)(a) OF THIS SECTION,
24 "EXTENDED FAMILY MEMBER" MEANS AN INDIVIDUAL WHO HAS ATTAINED
25 EIGHTEEN YEARS OF AGE AND WHO IS THE INDIAN CHILD'S GRANDPARENT,
26 AUNT, UNCLE, BROTHER, SISTER, BROTHER-IN-LAW, SISTER-IN-LAW, NIECE,
27 NEPHEW, FIRST OR SECOND COUSIN, GODPARENT, STEPPARENT, OR

1 STEPGRANDPARENT, OR AS DETERMINED BY THE INDIAN CHILD'S TRIBE
2 MEMBER. EVEN FOLLOWING TERMINATION OF A MARRIAGE, A GODPARENT,
3 STEPPARENT, OR STEPGRANDPARENT IS CONSIDERED AN "EXTENDED
4 FAMILY MEMBER".

5 (9) "INDIAN" MEANS AN INDIVIDUAL WHO IS A MEMBER OF AN
6 INDIAN TRIBE OR WHO IS AN ALASKA NATIVE AND A MEMBER OF A
7 REGIONAL CORPORATION, AS DEFINED IN THE "ALASKA NATIVE CLAIMS
8 SETTLEMENT ACT", 43 U.S.C. SEC. 1606.

9 (10) "INDIAN CHILD" MEANS AN UNMARRIED INDIVIDUAL WHO HAS
10 NOT ATTAINED EIGHTEEN YEARS OF AGE AND:

11 (a) IS A MEMBER OR CITIZEN OF AN INDIAN TRIBE; OR

12 (b) IS ELIGIBLE FOR MEMBERSHIP OR CITIZENSHIP IN AN INDIAN
13 TRIBE AS DETERMINED BY THAT INDIAN TRIBE IN WRITING OR ORALLY ON
14 THE RECORD AND IS THE BIOLOGICAL CHILD OF A MEMBER OF AN INDIAN
15 TRIBE.

16 (11) "INDIAN CHILD WELFARE ACT OF 1978" OR "ICWA" MEANS
17 THE FEDERAL LAW FOUND AT 25 U.S.C. SEC. 1901 ET SEQ. AND ITS
18 IMPLEMENTING REGULATIONS.

19 (12) "INDIAN CUSTODIAN" MEANS AN INDIAN, OTHER THAN THE
20 INDIAN CHILD'S PARENT, WHO HAS BEEN GRANTED LEGAL CUSTODY OR
21 GUARDIANSHIP OF THE INDIAN CHILD PURSUANT TO TRIBAL LAW, TRIBAL
22 CUSTOM, OR STATE LAW, OR TO WHOM TEMPORARY PHYSICAL CARE,
23 CUSTODY, AND CONTROL HAS BEEN TRANSFERRED BY THE INDIAN CHILD'S
24 PARENT OUTSIDE THE INVOLVEMENT OF A CHILD WELFARE OR CHILD
25 PLACEMENT AGENCY.

26 (13) "INDIAN ORGANIZATION" MEANS A GROUP, ASSOCIATION,
27 PARTNERSHIP, CORPORATION, OR OTHER LEGAL ENTITY OWNED OR

1 CONTROLLED BY INDIANS OR WITH A MAJORITY OF INDIAN MEMBERS.

2 (14) "INDIAN TRIBE" OR "TRIBE" MEANS AN INDIAN TRIBE, CLAN,
3 BAND, NATION, OR OTHER ORGANIZED GROUP OR COMMUNITY OF INDIANS
4 FEDERALLY RECOGNIZED AS ELIGIBLE FOR THE SERVICES PROVIDED TO
5 INDIANS BY THE UNITED STATES SECRETARY OF THE INTERIOR BECAUSE
6 OF THEIR STATUS AS INDIANS, INCLUDING ANY ALASKA NATIVE VILLAGE
7 AS DEFINED IN THE FEDERAL "ALASKA NATIVE CLAIMS SETTLEMENT
8 ACT", 43 U.S.C. SEC. 1602 (c).

9 (15) "MEMBER" OR "MEMBERSHIP" MEANS A DETERMINATION BY
10 AN INDIAN TRIBE THROUGH ITS TRIBAL LAW OR TRIBAL CUSTOM THAT AN
11 INDIVIDUAL IS A MEMBER OR CITIZEN OF THAT INDIAN TRIBE.

12 (16) "PARENT" MEANS:

13 (a) A BIOLOGICAL PARENT OF AN INDIAN CHILD, EXCEPT FOR AN
14 UNWED FATHER WHOSE PARENTAGE HAS NOT BEEN ACKNOWLEDGED OR
15 ESTABLISHED PURSUANT TO SECTION 19-1.2-105, THE "UNIFORM
16 PARENTAGE ACT", ARTICLE 4 OF THIS TITLE 19, OR TRIBAL LAW;

17 (b) AN INDIVIDUAL WHO HAS LAWFULLY ADOPTED AN INDIAN
18 CHILD, INCLUDING AN ADOPTION MADE PURSUANT TO TRIBAL LAW OR
19 TRIBAL CUSTOM; OR

20 (c) A PARENT WHOSE PARENTAGE HAS BEEN ACKNOWLEDGED OR
21 ESTABLISHED PURSUANT TO SECTION 19-1.2-105, THE "UNIFORM
22 PARENTAGE ACT", ARTICLE 4 OF THIS TITLE 19, OR TRIBAL LAW.

23 (17) "PARTY" OR "PARTIES" MEANS A PARTY TO A CHILD CUSTODY
24 PROCEEDING.

25 (18) "REASON TO KNOW" MEANS THAT A COURT OR A PETITIONING
26 OR FILING PARTY HAS REASON TO KNOW THAT A CHILD IS AN INDIAN
27 CHILD, AS DESCRIBED IN SECTION 19-1.2-108.

1 (19) "RESERVATION" MEANS:

2 (a) INDIAN COUNTRY, AS DEFINED IN 18 U.S.C. SEC. 1151, AND
3 ANY LANDS NOT COVERED PURSUANT TO THAT SECTION AND TITLE THAT
4 ARE HELD BY THE UNITED STATES IN TRUST FOR THE BENEFIT OF AN
5 INDIAN TRIBE OR INDIVIDUAL OR HELD BY AN INDIAN TRIBE OR INDIVIDUAL
6 SUBJECT TO A RESTRICTION BY THE UNITED STATES AGAINST ALIENATION;
7 OR

8 (b) FOR THE SOUTHERN UTE INDIAN RESERVATION, THOSE LANDS
9 INCLUDE ANY LANDS CONFIRMED PURSUANT TO PUB.L. 98-290 AND ANY
10 OTHER LAND SUBSEQUENTLY PLACED IN TRUST BY THE UNITED STATES
11 FOR THE SOUTHERN UTE INDIAN TRIBE'S BENEFIT.

12 (20) "TERMINATION OF PARENTAL RIGHTS" INCLUDES THE
13 TERMINATION OF PARENTAL RIGHTS PURSUANT TO SECTION 19-3-604 OR
14 THE TERMINATION OF PARENTAL RIGHTS RESULTING FROM AN ADOPTION
15 PROCEEDING PURSUANT TO SECTION 19-5-101, 19-5-105.5, OR 19-5-105.7.

16 (21) "TRIBAL COURT" MEANS A COURT WITH JURISDICTION OVER
17 INDIAN CHILD CUSTODY PROCEEDINGS THAT IS EITHER A COURT OF INDIAN
18 OFFENSES, A COURT ESTABLISHED AND OPERATED UNDER THE LAW OR
19 CUSTOM OF AN INDIAN TRIBE, OR ANY OTHER ADMINISTRATIVE BODY OF
20 A TRIBE THAT IS VESTED WITH AUTHORITY OVER INDIAN CHILD CUSTODY
21 PROCEEDINGS.

22 (22) "TRIBAL CUSTOMARY ADOPTION" MEANS THE ADOPTION OF
23 AN INDIAN CHILD BY AND THROUGH TRIBAL LAW OR TRIBAL CUSTOM OF
24 THE INDIAN CHILD'S TRIBE AND THAT MAY BE EFFECTED WITHOUT THE
25 TERMINATION OF PARENTAL RIGHTS.

26 **19-1.2-104. Applicability - incorporation of federal law.**

27 (1) UNLESS EXPLICITLY STATED OTHERWISE IN THIS ARTICLE 1.2, ALL

1 PROVISIONS OF THIS ARTICLE 1.2 APPLY TO ALL CHILD CUSTODY
2 PROCEEDINGS; ANY MATTER BROUGHT PURSUANT TO THE "UNIFORM
3 DISSOLUTION OF MARRIAGE ACT", ARTICLE 10 OF TITLE 14; THE
4 "COLORADO PROBATE CODE", ARTICLES 10 TO 17 OF TITLE 15; ALL OTHER
5 PRIVATE MATTERS THAT MEET THE DEFINITION OF A CHILD CUSTODY
6 PROCEEDING; AND THE "COLORADO CHILDREN'S CODE", THIS TITLE 19.

7 (2) IN A CASE FILED PURSUANT TO THIS ARTICLE 1.2 THAT
8 CONSTITUTES A CHILD CUSTODY PROCEEDING, THE COURT AND EACH
9 PARTY TO THE PROCEEDING SHALL ALSO COMPLY WITH THE FEDERAL
10 IMPLEMENTING REGULATIONS OF THE FEDERAL "INDIAN CHILD WELFARE
11 ACT OF 1978" THAT OUTLINE THE MINIMUM FEDERAL STANDARDS
12 GOVERNING ICWA'S IMPLEMENTATION TO ENSURE THAT ICWA IS APPLIED
13 IN COLORADO CONSISTENT WITH THE ICWA'S EXPRESS LANGUAGE,
14 CONGRESS'S INTENT IN ENACTING ICWA, AND TO PROMOTE THE STABILITY
15 AND SECURITY OF INDIAN CHILDREN, TRIBES, AND FAMILIES.

16 (3) ALL PROVISIONS OF THE FEDERAL "INDIAN CHILD WELFARE
17 ACT OF 1978" ARE INCORPORATED INTO THIS ARTICLE 1.2, EVEN IF NOT
18 SPECIFICALLY REFERENCED. THIS ARTICLE 1.2 MAY PROVIDE ADDITIONAL
19 PROTECTIONS BEYOND THOSE REQUIRED BY THE FEDERAL ICWA, IN
20 WHICH CASE THE PROVISIONS OF THIS ARTICLE 1.2 APPLY.

21 **19-1.2-105. Parentage of an Indian child - acknowledged or**
22 **established - applicability of article.** (1) PARENTAGE OF AN INDIAN
23 CHILD IS ACKNOWLEDGED OR ESTABLISHED FOR PURPOSES OF THIS
24 ARTICLE 1.2 IF THE INDIVIDUAL'S PARENTAGE HAS BEEN:

- 25 (a) ESTABLISHED PURSUANT TO ARTICLE 4 OF THIS TITLE 19;
- 26 (b) ESTABLISHED PURSUANT TO TRIBAL LAW; OR
- 27 (c) RECOGNIZED IN ACCORDANCE WITH TRIBAL CUSTOM.

1 (2) (a) FOR PURPOSES OF DETERMINING THE BIOLOGICAL PARENT
2 OF AN INDIAN CHILD, A COURT MAY ORDER GENETIC TESTS PURSUANT TO
3 SECTION 19-4-112 OR 13-25-126.

4 (b) IF AN INDIVIDUAL FAILS TO COMPLY WITH THE COURT'S ORDER
5 FOR GENETIC TESTS WITHIN A REASONABLE AMOUNT OF TIME, THE COURT
6 MAY ISSUE A SUBPOENA PURSUANT TO SECTION 19-4-112 OR ISSUE AN
7 ORDER TO COMPEL THE INDIVIDUAL TO APPEAR FOR GENETIC TESTS.

8 (c) IF THE GENETIC TESTS ORDERED PURSUANT TO THIS
9 SUBSECTION (2) DO NOT CONFIRM THAT AN INDIVIDUAL IS THE BIOLOGICAL
10 PARENT OF THE CHILD AS PROVIDED IN SECTION 19-4-105 (1)(f), OR IF THE
11 INDIVIDUAL HAS REFUSED TO CONSENT TO THE GENETIC TESTS, THE
12 INDIVIDUAL IS NOT ESTABLISHED AS THE CHILD'S BIOLOGICAL PARENT.

13 (3) THIS ARTICLE 1.2 APPLIES IN ITS ENTIRETY IF AN INDIVIDUAL IS
14 DETERMINED TO BE A PARENT OF AN INDIAN CHILD, REGARDLESS OF
15 WHETHER THE PARENT HAS HAD PRIOR CUSTODY OF THE INDIAN CHILD.

16 **19-1.2-106. Best interests of an Indian child - factors to**
17 **consider.** (1) IN A CHILD CUSTODY PROCEEDING INVOLVING AN INDIAN
18 CHILD, WHEN MAKING A DETERMINATION REGARDING THE BEST INTERESTS
19 OF THE INDIAN CHILD, THE COURT SHALL, IN CONSULTATION WITH THE
20 INDIAN CHILD'S TRIBE AND TRIBAL COMMUNITY, AS DETERMINED BY THE
21 INDIAN CHILD'S TRIBE, CONSIDER THE FOLLOWING:

22 (a) THE INDIAN CHILD'S MENTAL, PHYSICAL, AND EMOTIONAL
23 NEEDS, INCLUDING THE INDIAN CHILD'S PREFERENCES;

24 (b) THE PREVENTION OF UNNECESSARY OUT-OF-HOME PLACEMENT
25 OF THE INDIAN CHILD;

26 (c) THE PRIORITIZATION OF PLACEMENT OF THE INDIAN CHILD IN
27 ACCORDANCE WITH THE PLACEMENT PREFERENCES SET FORTH IN SECTION

1 19-1.2-120;

2 (d) THE VALUE TO THE INDIAN CHILD OF ESTABLISHING,
3 DEVELOPING, OR MAINTAINING A POLITICAL, CULTURAL, SOCIAL, AND
4 SPIRITUAL RELATIONSHIP WITH THE INDIAN CHILD'S TRIBE AND TRIBAL
5 COMMUNITY; AND

6 (e) THE IMPORTANCE TO THE INDIAN CHILD OF THE INDIAN TRIBE'S
7 OR TRIBAL COMMUNITY'S ABILITY TO MAINTAIN THE TRIBE'S OR TRIBAL
8 COMMUNITY'S EXISTENCE AND INTEGRITY FOR THE STABILITY AND
9 SECURITY OF INDIAN CHILDREN AND FAMILIES.

10

11 **19-1.2-107. Initial disclosures - inquiry and determination -**
12 **form of inquiry - due diligence - Indian child's tribe - written**
13 **findings. (1) Initial disclosures.** THE PETITIONING OR FILING PARTY
14 SHALL DISCLOSE IN THE COMPLAINT, PETITION, OR OTHER COMMENCING
15 PLEADING FILED WITH THE COURT THAT THE CHILD WHO IS THE SUBJECT OF
16 THE CHILD CUSTODY PROCEEDING IS AN INDIAN CHILD AND THE IDENTITY
17 OF THE INDIAN CHILD'S TRIBE OR TRIBES, OR EFFORTS THE PETITIONING OR
18 FILING PARTY HAS MADE IN DETERMINING WHETHER THE CHILD IS AN
19 INDIAN CHILD, INCLUDING, BUT NOT LIMITED TO:

20 (a) IF THE PETITIONING OR FILING PARTY INDICATES IN THE
21 COMPLAINT, PETITION, OR OTHER COMMENCING PLEADING THAT THE CHILD
22 WHO IS THE SUBJECT OF THE CHILD CUSTODY PROCEEDING IS AN INDIAN
23 CHILD, THE PETITIONING OR FILING PARTY SHALL FURTHER IDENTIFY WHAT
24 REASONABLE EFFORTS HAVE BEEN MADE TO SEND NOTICE TO THE
25 INDIVIDUALS IDENTIFIED IN SUBSECTION (3)(d) OF THIS SECTION;

26 (b) THE POSTAL RECEIPTS OR COPIES OF POSTAL RECEIPTS FROM
27 THE NOTICE SENT PURSUANT TO SUBSECTION (3)(d) OF THIS SECTION

1 INDICATING THAT THE NOTICE WAS PROPERLY SENT BY THE PETITIONING
2 OR FILING PARTY TO THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN
3 AND TO THE INDIAN CHILD'S TRIBE OR TRIBES. THE POSTAL RECEIPTS MUST
4 BE ATTACHED TO THE COMPLAINT, PETITION, OR OTHER COMMENCING
5 PLEADING FILED WITH THE COURT; EXCEPT THAT, IF NOTIFICATION HAS
6 NOT BEEN PERFECTED AT THE TIME THE INITIAL COMPLAINT, PETITION, OR
7 OTHER COMMENCING PLEADING IS FILED WITH THE COURT, OR IF THE
8 POSTAL RECEIPTS HAVE NOT BEEN RECEIVED BACK FROM THE POST OFFICE,
9 THE PETITIONING OR FILING PARTY SHALL FILE THE POSTAL RECEIPTS WITH
10 THE COURT UPON RECEIPT OF THE POSTAL RECEIPTS.

11 (c) ANY RESPONSES SENT BY A TRIBAL AGENT TO THE PETITIONING
12 OR FILING PARTY, A COUNTY DEPARTMENT, OR THE COURT, WHICH
13 RESPONSES MUST BE DISTRIBUTED TO THE PARTIES AND FILED WITH THE
14 COURT.

15 (2) **Indian child inquiry and determination.** AT THE
16 COMMENCEMENT OF EACH CHILD CUSTODY PROCEEDING, THE COURT
17 SHALL MAKE INQUIRIES TO DETERMINE WHETHER THE CHILD WHO IS THE
18 SUBJECT OF THE PROCEEDING IS AN INDIAN CHILD. IN DETERMINING
19 WHETHER THE CHILD IS AN INDIAN CHILD:

20 (a) THE COURT SHALL ASK EACH PARTICIPANT IN AN EMERGENCY,
21 VOLUNTARY, OR INVOLUNTARY CHILD CUSTODY PROCEEDING WHETHER
22 THE PARTICIPANT KNOWS OR HAS REASON TO KNOW THAT THE CHILD IS AN
23 INDIAN CHILD OR WHETHER THE PARTICIPANT HAS INFORMATION THAT IS
24 RELEVANT TO DETERMINING WHETHER THE CHILD IS AN INDIAN CHILD.
25 ANY RESPONSE TO THE INQUIRY MUST BE MADE ON THE RECORD. THE
26 COURT SHALL INSTRUCT THE PARTICIPANTS TO INFORM THE COURT IF A
27 PARTICIPANT SUBSEQUENTLY RECEIVES INFORMATION THAT PROVIDES

1 REASON TO KNOW THE CHILD IS AN INDIAN CHILD.

2 (b) NO LATER THAN THE FIRST APPEARANCE AFTER AN EXPEDITED
3 HEARING HELD PURSUANT TO SECTION 19-3-217 OR 19-3-403, EACH PARTY
4 TO THE CHILD CUSTODY PROCEEDING SHALL DISCLOSE TO THE COURT AND
5 THE PETITIONING AND FILING PARTIES INFORMATION INDICATING THAT THE
6 CHILD IS AN INDIAN CHILD, INCLUDING, BUT NOT LIMITED TO, PROVIDING
7 AN IDENTIFICATION CARD INDICATING THE CHILD'S MEMBERSHIP IN A
8 TRIBE. THE COURT SHALL ORDER THE PARTIES TO PROVIDE INFORMATION
9 LEARNED THEREAFTER TO THE COURT AND ALL PARTIES NO LATER THAN
10 SEVEN DAYS AFTER RECEIVING THE RELEVANT INFORMATION OR PRIOR TO
11 THE NEXT HEARING ON THE MATTER, WHICHEVER OCCURS FIRST.

12 (3) **Form of inquiry.** (a) AT THE COMMENCEMENT OF THE CHILD
13 CUSTODY PROCEEDING, THE PETITIONING OR FILING PARTY SHALL MAKE A
14 RECORD, EITHER IN WRITING OR ORALLY IN OPEN COURT ON THE RECORD,
15 OF THE PARTY'S GOOD FAITH EFFORTS TO DETERMINE WHETHER THE CHILD
16 IS AN INDIAN CHILD, INCLUDING, AT A MINIMUM, INQUIRIES MADE BY
17 CONSULTING WITH:

18 (I) THE CHILD, DIRECTLY OR THROUGH THE CHILD'S
19 REPRESENTATIVE;

20 (II) THE CHILD'S PARENT OR PARENTS;

21 (III) AN INDIVIDUAL HAVING CUSTODY OF THE CHILD OR WITH
22 WHOM THE CHILD RESIDES;

23 (IV) THE CHILD'S EXTENDED FAMILY MEMBERS;

24 (V) ANY OTHER INDIVIDUAL WHO MAY REASONABLY BE EXPECTED
25 TO HAVE INFORMATION REGARDING THE CHILD'S MEMBERSHIP OR
26 ELIGIBILITY FOR MEMBERSHIP IN AN INDIAN TRIBE; AND

27 (VI) AN INDIAN TRIBE WHEN INFORMATION FROM INQUIRIES MADE

1 PURSUANT TO SUBSECTIONS (3)(a)(I) TO (3)(a)(V) OF THIS SECTION
2 INDICATE THAT THERE IS A REASONABLE LIKELIHOOD THAT THE INDIAN
3 TRIBE MAY PROVIDE ADDITIONAL INFORMATION REGARDING WHETHER THE
4 CHILD IS A MEMBER OF THAT TRIBE OR WHETHER THE CHILD MAY BE
5 ELIGIBLE FOR MEMBERSHIP IN THAT TRIBE.

6 (b) THE COURT, UPON REVIEWING THE RECORD OF INQUIRIES MADE
7 PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION, HAS REASON TO KNOW
8 THAT A CHILD IS AN INDIAN CHILD IF:

9 (I) A PARTICIPANT IN THE CHILD CUSTODY PROCEEDING, AN
10 OFFICER OF THE COURT INVOLVED IN THE CHILD CUSTODY PROCEEDING, AN
11 INDIAN TRIBE, AN INDIAN ORGANIZATION, OR AN AGENCY INFORMS THE
12 COURT THAT THE CHILD IS AN INDIAN CHILD;

13 (II) A PARTICIPANT IN THE CHILD CUSTODY PROCEEDING, AN
14 OFFICER OF THE COURT INVOLVED IN THE CHILD CUSTODY PROCEEDING, AN
15 INDIAN TRIBE, AN INDIAN ORGANIZATION, OR AN AGENCY INFORMS THE
16 COURT THAT IT HAS DISCOVERED INFORMATION INDICATING THAT THE
17 CHILD IS AN INDIAN CHILD;

18 (III) THE CHILD WHO IS THE SUBJECT OF THE CHILD CUSTODY
19 PROCEEDING GIVES THE COURT REASON TO KNOW THAT THE CHILD IS AN
20 INDIAN CHILD;

21 (IV) THE COURT IS INFORMED THAT THE DOMICILE OR RESIDENCE
22 OF THE CHILD, THE CHILD'S PARENT, OR THE CHILD'S INDIAN CUSTODIAN IS
23 OR WAS ON A RESERVATION OF A FEDERALLY RECOGNIZED INDIAN TRIBE
24 OR IN AN ALASKA NATIVE VILLAGE;

25 (V) THE COURT IS INFORMED THAT THE CHILD IS OR HAS BEEN A
26 WARD OF A TRIBAL COURT.

27 (VI) THE COURT IS INFORMED THAT THE CHILD OR THE CHILD'S

1 PARENT POSSESSES AN IDENTIFICATION CARD OR OTHER SUFFICIENT
2 DOCUMENTATION INDICATING MEMBERSHIP IN AN INDIAN TRIBE;

3 (VII) THE COURT IS INFORMED THAT THE PARENT OR CHILD
4 RECEIVED HEALTH SERVICES FROM AN INDIAN HEALTH SERVICE OR TRIBAL
5 HEALTH FACILITY;

6 (VIII) THE COURT OR THE PETITIONING OR FILING PARTY RECEIVES
7 ANY OTHER REASONABLY CREDIBLE INFORMATION, REGARDLESS OF
8 ADMISSIBILITY, THAT A PARENT OR THE CHILD HAS AN IDENTIFIABLE
9 CONNECTION WITH A SPECIFIC FEDERALLY RECOGNIZED TRIBE OR TRIBES
10 BEYOND A GENERALIZED ASSERTION OF HERITAGE;

11 (IX) THE COURT IS INFORMED THAT THERE ARE SCHOOL RECORDS
12 INDICATING THAT THE CHILD IS AN ENROLLED MEMBER OF AN INDIAN
13 TRIBE; OR

14 (X) AFTER PERFORMING DUE DILIGENCE PURSUANT TO SUBSECTION
15 (4) OF THIS SECTION, INFORMATION IS PRESENTED TO THE COURT THAT
16 SUBSECTIONS (3)(b)(I) TO (3)(b)(IX) OF THIS SECTION APPLY OR THAT THE
17 CHILD IS AN INDIAN CHILD.

18 (c) THE COURT SHALL MAKE SPECIFIC FINDINGS, EITHER IN WRITING
19 OR ORALLY ON THE RECORD, REGARDING ITS REASON TO KNOW THAT THE
20 CHILD IS AN INDIAN CHILD.

21 (d) IF THE COURT KNOWS, OR HAS REASON TO KNOW AS DESCRIBED
22 IN SUBSECTION (3)(b) OF THIS SECTION, THAT THE CHILD WHO IS THE
23 SUBJECT OF THE CHILD CUSTODY PROCEEDING IS AN INDIAN CHILD, THE
24 PETITIONING OR FILING PARTY SHALL SEND NOTICE BY REGISTERED OR
25 CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE PARENT OF THE
26 CHILD, THE CHILD'S INDIAN CUSTODIAN, AND THE TRIBAL AGENT OF THE
27 INDIAN CHILD'S TRIBE OR TRIBES, OR, IF THERE IS NOT A DESIGNATED

1 TRIBAL AGENT, THE PETITIONING OR FILING PARTY SHALL CONTACT THE
2 INDIAN TRIBE FOR DIRECTION TO THE APPROPRIATE OFFICE OR INDIVIDUAL.
3 IN PROVIDING THE NOTICE, THE COURT AND EACH PARTY SHALL COMPLY
4 WITH THE FEDERAL ICWA AND THIS ARTICLE 1.2.

5 (4) (a) **Due diligence.** IF THE COURT RECEIVES INFORMATION THAT
6 THE CHILD MAY HAVE INDIAN HERITAGE BUT THE COURT LACKS
7 SUFFICIENT INFORMATION TO DETERMINE THAT THERE IS REASON TO KNOW
8 THAT THE CHILD IS AN INDIAN CHILD PURSUANT TO SUBSECTION (3) OF
9 THIS SECTION, THE COURT SHALL DIRECT THE PETITIONING OR FILING
10 PARTY TO EXERCISE DUE DILIGENCE IN GATHERING ADDITIONAL
11 INFORMATION PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION, ENSURE
12 THAT THE DUE DILIGENCE REQUIREMENTS ARE FOLLOWED, AND ENSURE
13 THAT ALL INFORMATION KNOWN TO THE PARTIES IS DISCLOSED IN WRITING
14 OR ORALLY ON THE RECORD. THE COURT SHALL DIRECT THE PETITIONING
15 OR FILING PARTY TO MAKE A RECORD, EITHER IN WRITING OR ORALLY ON
16 THE RECORD, OF THE DUE DILIGENCE EFFORTS TAKEN TO DETERMINE
17 WHETHER THERE IS REASON TO KNOW THAT THE CHILD IS AN INDIAN
18 CHILD.

19 (b) IN PERFORMING DUE DILIGENCE, THE PETITIONING OR FILING
20 PARTY SHALL, AT A MINIMUM:

21 (I) ASK EACH PARTY, INCLUDING THE CHILD DIRECTLY OR
22 THROUGH THE CHILD'S REPRESENTATIVE, WHAT INFORMATION THE PARTY
23 HAS REGARDING THE CHILD'S INDIAN HERITAGE, IF ANY;

24 (II) ASK OR EARNESTLY ATTEMPT TO ASK EACH PARENT WHAT
25 INFORMATION THE PARENT HAS REGARDING THE CHILD'S INDIAN
26 HERITAGE, IF ANY; WHERE AND HOW THE PARENT RECEIVED THE
27 INFORMATION; AND WHAT, IF ANY, OTHER INFORMATION SOURCES THE

1 PARENT BELIEVES MAY HAVE ADDITIONAL INFORMATION REGARDING THE
2 CHILD'S INDIAN HERITAGE, IF ANY, INCLUDING OTHER RELATIVES AND
3 THEIR CONTACT INFORMATION, IF KNOWN OR REASONABLY OBTAINED;

4 (III) CONDUCT SEARCHES FOR FAMILY AND DOCUMENT-IDENTIFIED
5 FAMILY RELATIVES OR KIN WHO MAY HAVE INFORMATION REGARDING THE
6 CHILD'S INDIAN HERITAGE, IF ANY;

7 (IV) ASK OR ATTEMPT TO ASK IDENTIFIED FAMILY RELATIVES OR
8 KIN FOR INFORMATION THE RELATIVES OR KIN HAVE REGARDING THE
9 CHILD'S INDIAN HERITAGE, IF ANY, AND WHERE AND HOW THE RELATIVES
10 OR KIN RECEIVED THAT INFORMATION;

11 (V) REVIEW COURT AND AGENCY RECORDS IDENTIFIED BY THE
12 PARENTS AND PROVIDED TO THE PETITIONER OR FILING PARTY, OR TO
13 WHICH THE PETITIONER OR FILING PARTY HAS PREVIOUSLY BEEN GRANTED
14 ACCESS THROUGH THE STATE AUTOMATED CHILD WELFARE SYSTEM OR
15 THE ICON SYSTEM AT THE STATE JUDICIAL DEPARTMENT, FOR ALL CHILD
16 CUSTODY PROCEEDINGS RELATED TO THE CHILD AND PARENTS FOR
17 INFORMATION REGARDING THE CHILD'S INDIAN HERITAGE, IF ANY; AND

18 (VI) CONTACT THE TRIBAL REPRESENTATIVE OR REPRESENTATIVES
19 BY EMAIL, PHONE CALL, LETTER, OR ANY OTHER MEANS AGREED TO BY THE
20 PARTIES REGARDING WHETHER THE CHILD MAY BE ELIGIBLE FOR TRIBAL
21 MEMBERSHIP WHEN INFORMED THAT A PARENT, CHILD, OR SPECIFIC
22 EXTENDED FAMILY MEMBER HAS A POTENTIAL CONNECTION WITH A
23 FEDERALLY RECOGNIZED TRIBE OR TRIBES.

24 (c) IN PERFORMING DUE DILIGENCE, THE PETITIONING OR FILING
25 PARTY MAY, IF A KNOWN CONNECTION HAS NOT BEEN IDENTIFIED
26 PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION BUT THE COURT OR
27 PETITIONING OR FILING PARTY RECEIVES A REASONABLY CREDIBLE

1 ASSERTION OF THE CHILD'S INDIAN HERITAGE WITHOUT IDENTIFICATION OF
2 A SPECIFIC TRIBE OR TRIBES BUT NARROWED TO A REGION OF THE UNITED
3 STATES, ASK EITHER RELEVANT TRIBES IN THAT IDENTIFIED REGION OR THE
4 RELEVANT BUREAU OF INDIAN AFFAIRS OFFICE IF THE RELEVANT TRIBES OR
5 BUREAU HAVE INFORMATION RELEVANT TO THE DETERMINATION THAT
6 THE CHILD IS AN INDIAN CHILD.

7 (d) SUBSECTION (4)(b) OF THIS SECTION DOES NOT PREVENT A
8 PETITIONING PARTY FROM SENDING A WRITTEN INQUIRY TO AN ASSERTED
9 TRIBE FOR THE PURPOSE OF SATISFYING THE DUE DILIGENCE
10 REQUIREMENTS PURSUANT TO SUBSECTION (4)(b)(VI) OF THIS SECTION. A
11 WRITTEN INQUIRY MUST NOT BE CONSTRUED AS FORMAL NOTICE AND IS
12 NOT CONSIDERED A DETERMINATION THAT THERE IS REASON TO KNOW THE
13 CHILD IS AN INDIAN CHILD.

14 (5) (a) **Indian child's tribe.** IF THE CHILD IS AN INDIAN CHILD, THE
15 INDIAN CHILD'S TRIBE IS:

16 (I) THE TRIBE OF WHICH THE INDIAN CHILD IS A MEMBER OR
17 ELIGIBLE FOR MEMBERSHIP IF THE INDIAN CHILD IS A MEMBER OF OR IS
18 ELIGIBLE FOR MEMBERSHIP IN ONLY ONE TRIBE;

19 (II) THE TRIBE OF WHICH THE INDIAN CHILD IS A MEMBER IF THE
20 INDIAN CHILD IS A MEMBER OF ONE TRIBE BUT IS ELIGIBLE FOR
21 MEMBERSHIP IN ONE OR MORE OTHER TRIBES; OR

22 (III) IF THE INDIAN CHILD IS A MEMBER OF MORE THAN ONE TRIBE
23 OR IF THE INDIAN CHILD IS NOT A MEMBER OF ANY TRIBE BUT IS ELIGIBLE
24 FOR MEMBERSHIP IN MORE THAN ONE TRIBE:

25 (A) THE TRIBE DESIGNATED BY AN AGREEMENT BETWEEN THE
26 TRIBES OF WHICH THE INDIAN CHILD IS A MEMBER OR IN WHICH THE INDIAN
27 CHILD IS ELIGIBLE FOR MEMBERSHIP; OR

1 (B) IF THE TRIBES ARE UNABLE TO AGREE ON THE DESIGNATION OF
2 THE INDIAN CHILD'S TRIBE, THE TRIBE DESIGNATED BY THE COURT.

3 (b) WHEN DESIGNATING AN INDIAN CHILD'S TRIBE PURSUANT TO
4 SUBSECTION (5)(a)(III)(A) OF THIS SECTION, THE COURT SHALL, AFTER A
5 HEARING, DESIGNATE THE TRIBE WITH WHICH THE INDIAN CHILD HAS THE
6 MORE SIGNIFICANT CONTACTS, TAKING INTO CONSIDERATION:

7 (I) THE PREFERENCE OF THE INDIAN CHILD'S PARENT;

8 (II) THE DURATION OF THE INDIAN CHILD'S RESIDENCY AT THEIR
9 CURRENT OR PRIOR DOMICILE OR RESIDENCE ON OR NEAR THE
10 RESERVATION OF EACH TRIBE;

11 (III) THE TRIBAL MEMBERSHIP OF THE INDIAN CHILD'S PARENT OR
12 INDIAN CUSTODIAN;

13 (IV) THE INTERESTS ASSERTED BY EACH TRIBE;

14 (V) WHETHER A TRIBE HAS PREVIOUSLY ADJUDICATED A CASE
15 INVOLVING THE INDIAN CHILD; AND

16 (VI) THE SELF-IDENTIFICATION OF THE INDIAN CHILD IF THE COURT
17 DETERMINES THAT THE INDIAN CHILD IS OF SUFFICIENT AGE AND CAPACITY
18 TO MEANINGFULLY SELF-IDENTIFY.

19 (6) **Written findings.** THE COURT SHALL MAKE WRITTEN FINDINGS
20 DETERMINING WHETHER THE PETITIONING OR FILING PARTY:

21 (a) SATISFIED ITS INQUIRY AND DUE DILIGENCE REQUIREMENTS
22 CONCERNING WHETHER THE CHILD IS AN INDIAN CHILD OR WHETHER
23 THERE IS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD;

24 (b) VERIFIED WHETHER THE CHILD IS IN FACT A MEMBER OF A
25 TRIBE, OR A BIOLOGICAL PARENT OF THE CHILD IS A MEMBER OF A TRIBE,
26 AND THE CHILD IS ELIGIBLE FOR MEMBERSHIP;

27 (c) DOCUMENTED ALL CONTACT WITH:

1 (I) THE RESPECTIVE TRIBE OR TRIBES. THIS CONTACT MUST
2 INCLUDE AT LEAST TWO CONTACTS OR GOOD FAITH ATTEMPTS TO
3 CONTACT THE TRIBE OR TRIBES WITHIN SEVENTY DAYS AFTER THE
4 FINDING, UNLESS THE TRIBE OR TRIBES PROVIDED WRITTEN
5 DOCUMENTATION INDICATING MEMBERSHIP, ELIGIBILITY, OR INELIGIBILITY
6 OF THE CHILD.

7 (II) THE BUREAU OF INDIAN AFFAIRS TO SEEK ASSISTANCE WITH
8 CONTACTING THE TRIBE OR TRIBES, IF GOOD FAITH ATTEMPTS TO CONTACT
9 THE TRIBE OR TRIBES HAVE BEEN UNSUCCESSFUL; AND

10 (d) TREATED THE CHILD AS AN INDIAN CHILD, UNLESS AND UNTIL
11 IT IS DETERMINED ON THE RECORD THAT THE CHILD DOES NOT MEET THE
12 DEFINITION OF AN INDIAN CHILD.

13 **19-1.2-108. Formal notice - language, accessibility, and content**
14 **requirements.** (1) NOTICES REQUIRED BY THIS ARTICLE 1.2 **IN A CHILD**
15 **CUSTODY PROCEEDING** MUST BE PROVIDED IN CLEAR, ACCESSIBLE, AND
16 UNDERSTANDABLE LANGUAGE AND INCLUDE THE FOLLOWING
17 INFORMATION:

18 (a) THE INDIAN CHILD'S NAME, DATE OF BIRTH, AND PLACE OF
19 BIRTH;

20 (b) TO THE EXTENT KNOWN, ALL NAMES, INCLUDING MAIDEN,
21 MARRIED, AND FORMER NAMES OR ALIASES OF THE INDIAN CHILD'S
22 PARENTS, THE PARENTS' BIRTHPLACES, AND THE PARENTS' TRIBAL
23 ENROLLMENT INFORMATION;

24 (c) TO THE EXTENT KNOWN, THE NAMES, DATES OF BIRTH, PLACES
25 OF BIRTH, AND TRIBAL ENROLLMENT INFORMATION OF OTHER DIRECT
26 LINEAL ANCESTORS OF THE INDIAN CHILD;

27 (d) THE NAME OF EACH INDIAN TRIBE OF WHICH THE INDIAN CHILD

1 IS A MEMBER OR IN WHICH THE INDIAN CHILD MAY BE ELIGIBLE FOR
2 MEMBERSHIP;

3 (e) TO THE EXTENT KNOWN, INFORMATION REGARDING THE INDIAN
4 CHILD'S DIRECT LINEAL ANCESTORS, AN ANCESTRAL CHART FOR EACH
5 BIOLOGICAL PARENT, AND THE INDIAN CHILD'S TRIBAL AFFILIATION AND
6 BLOOD QUANTUM;

7 (f) A COPY OF THE PETITION OR MOTION INITIATING THE
8 PROCEEDING AND, IF A HEARING HAS BEEN SCHEDULED, INFORMATION ON
9 THE DATE, TIME, AND LOCATION OF THE HEARING;

10 (g) THE NAME OF THE PETITIONING OR FILING PARTY AND THE
11 NAME AND ADDRESS OF THE PARTY'S ATTORNEY;

12 (h) A STATEMENT THAT THE INDIAN CHILD'S PARENT OR INDIAN
13 CUSTODIAN HAS THE RIGHT TO PARTICIPATE IN THE PROCEEDING
14 PURSUANT TO SECTION 19-1.2-113;

15 (i) A STATEMENT THAT THE INDIAN CHILD'S TRIBE HAS THE RIGHT
16 TO INTERVENE OR PARTICIPATE IN THE PROCEEDING AS A PARTY OR IN AN
17 ADVISORY CAPACITY PURSUANT TO SECTION 19-1.2-113;

18 (j) A STATEMENT THAT IF THE COURT DETERMINES THAT THE
19 INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN IS UNABLE TO AFFORD
20 COUNSEL, THE PARENT OR INDIAN CUSTODIAN HAS THE RIGHT TO
21 COURT-APPOINTED COUNSEL;

22 (k) A STATEMENT THAT THE INDIAN CHILD'S PARENT, INDIAN
23 CUSTODIAN, OR TRIBE HAS THE RIGHT, UPON REQUEST, TO UP TO TWENTY
24 ADDITIONAL DAYS TO PREPARE FOR THE PROCEEDING;

25 (l) A STATEMENT THAT THE INDIAN CHILD'S PARENT, INDIAN
26 CUSTODIAN, OR TRIBE HAS THE RIGHT TO PETITION THE COURT TO
27 TRANSFER THE CHILD CUSTODY PROCEEDING TO THE TRIBAL COURT;

1 (m) A STATEMENT DESCRIBING THE POTENTIAL LEGAL
2 CONSEQUENCES OF THE PROCEEDING ON FUTURE PARENTAL AND
3 CUSTODIAL RIGHTS OF THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN;

4 (n) THE MAILING ADDRESS AND TELEPHONE NUMBERS OF THE
5 COURT AND CONTACT INFORMATION FOR ALL PARTIES TO THE PROCEEDING
6 AND THE INDIVIDUALS NOTIFIED PURSUANT TO THIS SECTION; AND

7 (o) A STATEMENT THAT THE INFORMATION CONTAINED IN THE
8 NOTICE IS CONFIDENTIAL AND MUST NOT BE SHARED WITH ANY INDIVIDUAL
9 WHO DOES NOT NEED THE INFORMATION TO EXERCISE RIGHTS PURSUANT
10 TO THIS ARTICLE 1.2.

11 (2) IF THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN HAS
12 LIMITED ENGLISH PROFICIENCY AND MAY NOT UNDERSTAND THE
13 CONTENTS OF THE NOTICE PROVIDED PURSUANT TO THIS SECTION, THE
14 COURT SHALL PROVIDE LANGUAGE ACCESS SERVICES AS REQUIRED BY
15 TITLE VI OF THE FEDERAL "CIVIL RIGHTS ACT OF 1964", 42 U.S.C. SEC.
16 2000e ET SEQ., AND OTHER APPLICABLE FEDERAL AND STATE LAWS. IF THE
17 COURT IS UNABLE TO SECURE TRANSLATION OR INTERPRETATION SUPPORT,
18 THE COURT SHALL CONTACT OR DIRECT A PARTY TO CONTACT THE INDIAN
19 CHILD'S TRIBE OR THE LOCAL OFFICE OF THE FEDERAL BUREAU OF INDIAN
20 AFFAIRS FOR ASSISTANCE IDENTIFYING A QUALIFIED TRANSLATOR OR
21 INTERPRETER.

22 (3) (a) A HEARING THAT REQUIRES NOTICE PURSUANT TO THIS
23 SECTION MUST NOT BE HELD UNTIL AT LEAST TEN DAYS AFTER THE LATEST
24 RECEIPT OF THE NOTICE BY THE INDIAN CHILD'S PARENT, INDIAN
25 CUSTODIAN, TRIBE, OR, IF APPLICABLE, THE FEDERAL BUREAU OF INDIAN
26 AFFAIRS. UPON REQUEST, THE COURT SHALL GRANT THE INDIAN CHILD'S
27 PARENT, INDIAN CUSTODIAN, OR TRIBE UP TO TWENTY-ONE ADDITIONAL

1 DAYS AFTER THE DATE UPON WHICH NOTICE WAS RECEIVED BY THE INDIAN
2 CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE TO PREPARE FOR
3 PARTICIPATION IN THE HEARING.

4 (b) THIS SUBSECTION (3) DOES NOT PREVENT A COURT, DURING AN
5 EMERGENCY PROCEEDING BEFORE THE EXPIRATION OF THE WAITING
6 PERIOD DESCRIBED IN SUBSECTION (3)(a) OF THIS SECTION, FROM
7 REVIEWING THE REMOVAL OF AN INDIAN CHILD FROM THE INDIAN CHILD'S
8 PARENT OR INDIAN CUSTODIAN TO DETERMINE WHETHER THE REMOVAL OR
9 PLACEMENT IS NO LONGER NECESSARY TO PREVENT IMMINENT PHYSICAL
10 HARM OR DANGER TO THE INDIAN CHILD.

11 **19-1.2-109. Enrollment of an Indian child with a tribe.**

12 (1) UNLESS AN INDIAN CHILD'S PARENT OBJECTS, THE PETITIONING OR
13 FILING PARTY OR THE INDIAN TRIBE SHALL ASSIST IN ENROLLING AN
14 INDIAN CHILD WHO IS IN THE COURT'S JURISDICTION IN A TRIBE WITH
15 WHICH THE CHILD IS ELIGIBLE FOR ENROLLMENT. IF THE INDIAN CHILD IS
16 ELIGIBLE TO BE ENROLLED IN MORE THAN ONE TRIBE, THE COURT SHALL
17 DETERMINE MEMBERSHIP PURSUANT TO SECTION 19-1.2-107.

18 (2) IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION, WHEN
19 THE PETITIONING OR FILING PARTY, INCLUDING A COUNTY DEPARTMENT OR
20 A CHILD PLACEMENT AGENCY, HAS REASON TO KNOW THAT THE CHILD IS
21 AN INDIAN CHILD, THE PETITIONING OR FILING PARTY SHALL, AT A
22 MINIMUM, STATE IN WRITING OR ORALLY ON THE RECORD THE RELEVANT
23 TRIBE OR TRIBES WITH WHICH THE CHILD MAY BE ELIGIBLE FOR
24 ENROLLMENT TO DETERMINE IF THE CHILD IS IN FACT ELIGIBLE FOR
25 ENROLLMENT. THE NOTIFICATION TO THE RELEVANT TRIBE OR TRIBES MAY
26 BE DONE IN CONJUNCTION WITH THE NOTICE REQUIREMENTS SET FORTH IN
27 SECTION 19-1.2-107 (1)(b).

1 (3) IN A CHILD CUSTODY PROCEEDING, WHEN THE PETITIONING OR
2 FILING PARTY HAS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD
3 AND THAT THE INDIAN CHILD IS ELIGIBLE FOR ENROLLMENT IN A TRIBE,
4 THE PETITIONING OR FILING PARTY SHALL NOTIFY THE INDIAN CHILD AND
5 THE INDIAN CHILD'S PARENT OF THE PARENT'S RIGHT TO OBJECT TO THE
6 PETITIONING OR FILING PARTY'S ASSISTANCE PURSUANT TO SUBSECTION (1)
7 OF THIS SECTION.

8 **19-1.2-110. Emergency proceeding - emergency removal -**
9 **termination of emergency - duration.** (1) IF AN INDIVIDUAL OR AGENCY
10 TAKES A CHILD INTO PROTECTIVE CUSTODY, THE INDIVIDUAL OR AGENCY
11 SHALL, AT THE COMMENCEMENT OF THE EMERGENCY PROCEEDING, MAKE
12 A GOOD FAITH EFFORT TO:

13 (a) DETERMINE WHETHER THE INDIVIDUAL OR AGENCY HAS
14 REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD PURSUANT TO
15 SECTION 19-1.2-108 (3); AND

16 (b) CONTACT BY TELEPHONE, EMAIL, FACSIMILE, OR OTHER MEANS
17 OF IMMEDIATE COMMUNICATION ANY TRIBE OF WHICH THE CHILD IS OR
18 MAY BE A MEMBER OR ELIGIBLE FOR MEMBERSHIP TO DETERMINE THE
19 CHILD'S TRIBAL AFFILIATION. NOTIFICATION MUST INCLUDE THE BASIS FOR
20 THE CHILD'S REMOVAL; THE TIME, DATE, AND PLACE OF THE INITIAL
21 HEARING; AND A STATEMENT THAT THE TRIBE HAS THE RIGHT TO
22 PARTICIPATE IN THE PROCEEDING AS A PARTY OR IN AN ADVISORY
23 CAPACITY PURSUANT TO SECTION 19-1.2-113.

24 (2) AN EMERGENCY REMOVAL OR PLACEMENT OF AN INDIAN CHILD
25 PURSUANT TO THIS SECTION TERMINATES IMMEDIATELY WHEN THE
26 REMOVAL OR PLACEMENT IS NO LONGER NECESSARY TO PREVENT
27 IMMINENT PHYSICAL HARM OR DANGER TO THE INDIAN CHILD. IN SUCH A

1 REMOVAL OR PLACEMENT, THE COURT SHALL:

2 (a) MAKE A FINDING ON THE RECORD THAT THE EMERGENCY
3 REMOVAL OR PLACEMENT IS NECESSARY TO PREVENT IMMINENT PHYSICAL
4 HARM OR DANGER TO THE INDIAN CHILD;

5 (b) PROMPTLY HOLD A HEARING ON WHETHER THE EMERGENCY
6 REMOVAL OR PLACEMENT CONTINUES TO BE NECESSARY WHEN NEW
7 INFORMATION INDICATES THAT THE EMERGENCY SITUATION HAS ENDED;

8 (c) AT ANY COURT HEARING DURING THE EMERGENCY
9 PROCEEDING, DETERMINE WHETHER THE EMERGENCY REMOVAL OR
10 PLACEMENT IS NO LONGER NECESSARY TO PREVENT IMMINENT PHYSICAL
11 HARM OR DANGER TO THE INDIAN CHILD; AND

12 (d) IMMEDIATELY TERMINATE, OR ENSURE THAT THE INDIVIDUAL
13 OR AGENCY THAT TOOK THE CHILD INTO PROTECTIVE CUSTODY
14 IMMEDIATELY TERMINATES, THE EMERGENCY PROCEEDING ONCE THE
15 COURT OR AGENCY POSSESSES SUFFICIENT EVIDENCE TO DETERMINE THAT
16 THE EMERGENCY REMOVAL OR PLACEMENT IS NO LONGER NECESSARY TO
17 PREVENT IMMINENT PHYSICAL HARM OR DANGER TO THE INDIAN CHILD.

18 (3) A PETITION FOR A COURT ORDER AUTHORIZING THE
19 EMERGENCY REMOVAL OR CONTINUED EMERGENCY PLACEMENT OF AN
20 INDIAN CHILD, AND ITS ACCOMPANYING DOCUMENTS, MUST CONTAIN A
21 STATEMENT OF THE RISK OF IMMINENT PHYSICAL HARM OR DANGER TO THE
22 INDIAN CHILD AND ANY EVIDENCE THAT THE EMERGENCY REMOVAL OR
23 PLACEMENT CONTINUES TO BE NECESSARY TO PREVENT THE IMMINENT
24 PHYSICAL HARM OR DANGER TO THE INDIAN CHILD. THE PETITION, AND ITS
25 ACCOMPANYING DOCUMENTS, MUST ALSO CONTAIN THE FOLLOWING
26 INFORMATION:

27 (a) THE NAME, AGE, AND LAST-KNOWN ADDRESS OF THE INDIAN

1 CHILD;

2 (b) THE NAME AND LAST-KNOWN ADDRESS OF THE INDIAN CHILD'S
3 PARENTS OR INDIAN CUSTODIAN, IF ANY;

4 (c) THE STEPS TAKEN TO PROVIDE NOTICE TO THE INDIAN CHILD'S
5 PARENTS, CUSTODIAN, AND TRIBE ABOUT THE EMERGENCY PROCEEDING;

6 (d) IF THE INDIAN CHILD'S PARENTS OR INDIAN CUSTODIAN IS
7 UNKNOWN, A DETAILED EXPLANATION OF WHAT EFFORTS HAVE BEEN
8 MADE TO LOCATE AND CONTACT THEM, INCLUDING CONTACT WITH THE
9 APPROPRIATE FEDERAL BUREAU OF INDIAN AFFAIRS REGIONAL DIRECTOR;

10 (e) THE RESIDENCE AND DOMICILE OF THE INDIAN CHILD;

11 (f) IF EITHER THE RESIDENCE OR DOMICILE OF THE INDIAN CHILD
12 IS BELIEVED TO BE ON A RESERVATION OR IN AN ALASKA NATIVE VILLAGE,
13 THE NAME OF THE TRIBE AFFILIATED WITH THAT RESERVATION OR
14 VILLAGE;

15 (g) THE TRIBAL AFFILIATION OF THE INDIAN CHILD AND THE
16 CHILD'S PARENTS OR INDIAN CUSTODIAN;

17 (h) A SPECIFIC AND DETAILED ACCOUNT OF THE CIRCUMSTANCES
18 THAT LED THE INDIVIDUAL OR AGENCY RESPONSIBLE FOR THE EMERGENCY
19 REMOVAL OF THE INDIAN CHILD TO TAKE THAT ACTION;

20 (i) IF THE INDIAN CHILD IS BELIEVED TO RESIDE OR BE DOMICILED
21 ON A RESERVATION WHERE THE TRIBE EXERCISES EXCLUSIVE JURISDICTION
22 OVER CHILD CUSTODY MATTERS, A STATEMENT OF EFFORTS MADE TO
23 CONTACT THE TRIBE AND TRANSFER THE INDIAN CHILD TO THE TRIBE'S
24 JURISDICTION; AND

25 (j) A STATEMENT OF THE EFFORTS THAT HAVE BEEN TAKEN TO
26 ASSIST THE INDIAN CHILD'S PARENTS OR INDIAN CUSTODIAN SO THAT THE
27 INDIAN CHILD MAY BE SAFELY RETURNED TO THE CUSTODY OF THE

1 PARENTS OR INDIAN CUSTODIAN.

2 (4) AN EMERGENCY REMOVAL REGARDING AN INDIAN CHILD MUST
3 NOT BE CONTINUED FOR MORE THAN THIRTY DAYS, UNLESS THE COURT
4 DETERMINES THAT RESTORING THE INDIAN CHILD TO THE PARENT OR
5 INDIAN CUSTODIAN WOULD SUBJECT THE INDIAN CHILD TO IMMINENT
6 PHYSICAL HARM OR DANGER, AND:

7 (a) THE COURT HAS APPROVED A MOTION TO TRANSFER THE CASE
8 TO A TRIBAL COURT BUT HAS NOT BEEN ABLE TO TRANSFER THE
9 PROCEEDING TO THE JURISDICTION OF THE APPROPRIATE INDIAN TRIBE; OR

10 (b) DESPITE DILIGENT EFFORTS, THE COURT HAS BEEN UNABLE TO
11 HOLD A HEARING BASED ON THE CRITERIA SET FORTH IN SECTION
12 19-1.2-123. IN SUCH A CASE, THE COURT SHALL SCHEDULE THE HEARING
13 WITHIN SEVEN DAYS AFTER THE DETERMINATION MADE PURSUANT TO THIS
14 SUBSECTION (4).

15 **19-1.2-111. Active efforts - when required - characteristics.**

16 (1) IF THERE IS REASON TO KNOW THAT A CHILD WHO IS THE SUBJECT OF
17 A CHILD CUSTODY PROCEEDING IS AN INDIAN CHILD, ACTIVE EFFORTS ARE
18 REQUIRED AND THE COURT SHALL MAKE AN INITIAL DETERMINATION
19 WHETHER ACTIVE EFFORTS HAVE BEEN MADE TO PREVENT REMOVAL OF
20 THE INDIAN CHILD FROM THE FAMILY. IF THE INDIAN CHILD HAS BEEN
21 REMOVED FROM THE FAMILY, THE COURT SHALL DETERMINE WHETHER
22 ACTIVE EFFORTS HAVE BEEN MADE TO REUNITE THE FAMILY.

23 (2) ACTIVE EFFORTS REQUIRE A HIGHER STANDARD OF CONDUCT
24 THAN REASONABLE EFFORTS.

25 (3) ACTIVE EFFORTS MUST:

26 (a) BE DOCUMENTED IN DETAIL IN WRITING OR ORALLY ON THE
27 RECORD;

1 (b) IF THE INDIAN CHILD IS ALLEGED TO BE WITHIN THE
2 JURISDICTION OF THE COURT PURSUANT TO SECTION 19-1.2-116, INCLUDE
3 ACTIVELY ASSISTING THE INDIAN CHILD'S PARENT OR PARENTS OR INDIAN
4 CUSTODIAN THROUGH THE STEPS OF A CASE PLAN AND ACCESSING OR
5 DEVELOPING THE RESOURCES NECESSARY TO SATISFY THE CASE PLAN;

6 (c) INCLUDE PROVIDING ASSISTANCE IN A MANNER CONSISTENT
7 WITH THE PREVAILING SOCIAL AND CULTURAL STANDARDS AND WAY OF
8 LIFE OF THE INDIAN CHILD'S TRIBE;

9 (d) BE CONDUCTED IN PARTNERSHIP WITH THE INDIAN CHILD AND
10 THE INDIAN CHILD'S PARENTS, EXTENDED FAMILY MEMBERS, INDIAN
11 CUSTODIAN, AND TRIBE; AND

12 (e) BE TAILORED TO THE FACTS AND CIRCUMSTANCES OF THE CASE.

13 (4) ACTIVE EFFORTS MAY INCLUDE, AS APPLICABLE, THE
14 FOLLOWING:

15 (a) CONDUCTING A COMPREHENSIVE ASSESSMENT OF THE
16 CIRCUMSTANCES OF THE INDIAN CHILD'S FAMILY, WITH A FOCUS ON
17 REUNIFICATION AS THE PRIMARY AND MOST DESIRABLE GOAL;

18 (b) IDENTIFYING APPROPRIATE SERVICES AND HELPING THE INDIAN
19 CHILD'S PARENTS OVERCOME BARRIERS TO REUNIFICATION, INCLUDING
20 ACTIVELY ASSISTING THE INDIAN CHILD'S PARENTS WITH OBTAINING THE
21 IDENTIFIED SERVICES;

22 (c) IDENTIFYING, NOTIFYING, AND INVITING REPRESENTATIVES OF
23 THE INDIAN CHILD'S TRIBE TO PARTICIPATE IN PROVIDING SUPPORT AND
24 SERVICES TO THE INDIAN CHILD'S FAMILY AND IN FAMILY TEAM MEETINGS,
25 PERMANENCY PLANNING, RESOLUTION OF PLACEMENT ISSUES, REVIEWS,
26 OR OTHER CASE-MANAGEMENT-RELATED MEETINGS;

27 (d) CONDUCTING OR CAUSING TO BE CONDUCTED A DILIGENT

1 SEARCH FOR THE INDIAN CHILD'S EXTENDED FAMILY MEMBERS AND
2 CONTACTING AND CONSULTING WITH THE INDIAN CHILD'S EXTENDED
3 FAMILY MEMBERS AND ADULT RELATIVES TO PROVIDE FAMILY STRUCTURE
4 AND SUPPORT FOR THE INDIAN CHILD AND THE INDIAN CHILD'S PARENTS;

5 (e) OFFERING AND EMPLOYING CULTURALLY APPROPRIATE FAMILY
6 PRESERVATION STRATEGIES AND FACILITATING THE USE OF REMEDIAL AND
7 REHABILITATIVE SERVICES PROVIDED BY THE INDIAN CHILD'S TRIBE;

8 (f) TAKING STEPS TO KEEP THE INDIAN CHILD AND THE INDIAN
9 CHILD'S SIBLINGS TOGETHER, WHENEVER POSSIBLE;

10 (g) SUPPORTING REGULAR FAMILY TIME WITH THE INDIAN CHILD'S
11 PARENTS OR INDIAN CUSTODIAN IN THE MOST NATURAL SETTING POSSIBLE,
12 AS WELL AS TRIAL HOME VISITS DURING A PERIOD OF REMOVAL,
13 CONSISTENT WITH THE NEED TO ENSURE THE HEALTH, SAFETY, AND
14 WELFARE OF THE INDIAN CHILD;

15 (h) IDENTIFYING AND MAKING APPROPRIATE REFERRALS TO
16 COMMUNITY RESOURCES, INCLUDING HOUSING, FINANCIAL ASSISTANCE,
17 EMPLOYMENT TRAINING, TRANSPORTATION, MENTAL HEALTH CARE,
18 HEALTH CARE, SUBSTANCE ABUSE PREVENTION AND TREATMENT,
19 PARENTING TRAINING, TRANSPORTATION, PEER SUPPORT SERVICES
20 NECESSARY TO MAINTAIN THE CHILD IN THE HOME OR TO REHABILITATE
21 THE FAMILY SO THAT THE CHILD CAN SAFELY RETURN HOME, AND
22 ACTIVELY ASSISTING THE INDIAN CHILD'S PARENTS OR, WHEN
23 APPROPRIATE, THE INDIAN CHILD'S FAMILY, IN UTILIZING AND ACCESSING
24 SUCH RESOURCES;

25 (i) MONITORING PROGRESS AND PARTICIPATION OF THE INDIAN
26 CHILD'S PARENTS, INDIAN CUSTODIAN, OR EXTENDED FAMILY MEMBERS IN
27 THE SERVICES DESCRIBED IN SUBSECTIONS (4)(b), (4)(c), (4)(e), AND (4)(h)

1 OF THIS SECTION;

2 (j) CONSIDERING ALTERNATIVE WAYS TO ADDRESS THE NEEDS OF
3 THE INDIAN CHILD'S PARENTS, INDIAN CUSTODIAN, AND, WHEN
4 APPROPRIATE, THE INDIAN CHILD'S FAMILY IF THE SERVICES DESCRIBED IN
5 THIS SECTION ARE UNAVAILABLE OR THE OPTIMUM SERVICES DO NOT EXIST
6 OR ARE NOT AVAILABLE;

7 (k) PROVIDING POST-REUNIFICATION SERVICES AND MONITORING
8 WHILE THE INDIAN CHILD REMAINS IN THE COURT'S JURISDICTION;

9 (l) CONTACTING THE INDIAN CHILD'S TRIBE TO DETERMINE WHAT,
10 IF ANY, TRIBAL RESOURCES ARE AVAILABLE; AND

11 (m) ANY OTHER EFFORTS THAT ARE APPROPRIATE TO THE INDIAN
12 CHILD'S CIRCUMSTANCES.

13 (5) IN A CHILD CUSTODY PROCEEDING BROUGHT PURSUANT TO
14 ARTICLE 3 OF THIS TITLE 19, IF THE COURT FINDS THAT A COUNTY
15 DEPARTMENT DID NOT PROVIDE ACTIVE EFFORTS TO MAKE IT POSSIBLE FOR
16 THE INDIAN CHILD TO SAFELY RETURN HOME, AT A PERMANENCY HEARING
17 THE COURT SHALL NOT CHANGE THE PERMANENCY PLAN TO SOMETHING
18 OTHER THAN TO REUNITE THE FAMILY.

19 (6) UNLESS STIPULATED BY THE PARTIES AND NOT OBJECTED TO BY
20 THE INDIAN CHILD'S TRIBE, IN ANY PROCEEDING BROUGHT PURSUANT TO
21 ARTICLE 3 OF THIS TITLE 19, IF THE COURT FINDS THAT A COUNTY
22 DEPARTMENT DID NOT PROVIDE ACTIVE EFFORTS TO MAKE IT POSSIBLE FOR
23 THE INDIAN CHILD TO SAFELY RETURN HOME, THE COURT SHALL NOT SET
24 A DATE FOR A PERMANENT ORDERS HEARING, INCLUDING, BUT NOT
25 LIMITED TO, GUARDIANSHIP, ALLOCATION OF PARENTAL RESPONSIBILITIES,
26 OR TERMINATION OF PARENTAL RIGHTS, UNTIL THE COUNTY DEPARTMENT
27 PROVIDES ACTIVE EFFORTS FOR THE NUMBER OF DAYS THAT ACTIVE

1 EFFORTS WERE NOT PREVIOUSLY PROVIDED.

2 **19-1.2-112. Right to counsel - appointment of counsel - access**
3 **to records.** (1) IF THERE IS REASON TO KNOW THAT A CHILD WHO IS THE
4 SUBJECT OF A CHILD CUSTODY PROCEEDING IS AN INDIAN CHILD:

5 (a) THE COURT SHALL APPOINT COUNSEL TO REPRESENT THE
6 INDIAN CHILD IN ACCORDANCE WITH APPLICABLE LAW; AND

7 (b) THE COURT SHALL APPOINT COUNSEL TO REPRESENT THE
8 INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN PURSUANT TO SECTION
9 19-3-202 IF THE PARENT OR INDIAN CUSTODIAN IS A RESPONDENT IN A
10 DEPENDENCY AND NEGLECT ACTION BROUGHT PURSUANT TO ARTICLE 3 OF
11 THIS TITLE 19. IN ANY REMOVAL, PLACEMENT, OR TERMINATION OF
12 PARENTAL RIGHTS PROCEEDING, OUTSIDE OF A DEPENDENCY AND NEGLECT
13 PROCEEDING, IN WHICH THE COURT DETERMINES THAT AN INDIAN CHILD'S
14 PARENT OR INDIAN CUSTODIAN IS INDIGENT, THE COURT SHALL APPOINT
15 COUNSEL TO THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN THROUGH
16 THE OFFICE OF THE STATE COURT ADMINISTRATOR.

17 **19-1.2-113. Right to intervene and appear.**

18 (1) NOTWITHSTANDING THIS ARTICLE 1.2 TO THE CONTRARY, A TRIBE, OR
19 INDIAN CUSTODIAN WHO IS NOT OTHERWISE A PARTY TO A CHILD CUSTODY
20 PROCEEDING BROUGHT PURSUANT TO THIS ARTICLE 1.2, HAS THE RIGHT TO
21 INTERVENE AT ANY POINT IN A CHILD CUSTODY PROCEEDING AND A TRIBE
22 MAY BE REPRESENTED BY ANY AUTHORIZED INDIVIDUAL, REGARDLESS OF
23 WHETHER THE INDIVIDUAL IS LICENSED TO PRACTICE LAW.

24 (2) AN ATTORNEY WHO IS NOT BARRED FROM PRACTICING LAW IN
25 COLORADO MAY APPEAR IN ANY CHILD CUSTODY PROCEEDING INVOLVING
26 AN INDIAN CHILD WITHOUT ASSOCIATING WITH LOCAL COUNSEL OR
27 WITHOUT PAYING A FEE TO APPEAR PRO HAC VICE IF THE ATTORNEY

1 ESTABLISHES TO THE SATISFACTION OF THE COLORADO STATE BAR THAT:

2 (a) THE ATTORNEY WILL APPEAR IN A COURT IN COLORADO FOR
3 THE LIMITED PURPOSE OF PARTICIPATING IN A CHILD CUSTODY
4 PROCEEDING PURSUANT TO THIS ARTICLE 1.2;

5 (b) THE ATTORNEY REPRESENTS AN INDIAN CHILD'S PARENT,
6 INDIAN CUSTODIAN, OR TRIBE; AND

7 (c) THE INDIAN CHILD'S TRIBE HAS AFFIRMED THE INDIAN CHILD'S
8 MEMBERSHIP OR ELIGIBILITY FOR MEMBERSHIP PURSUANT TO TRIBAL LAW.

9 (3) NOTWITHSTANDING THIS ARTICLE 1.2 TO THE CONTRARY,
10 PURSUANT TO SUBSECTION (1) OF THIS SECTION, AN INDIAN CUSTODIAN OR
11 TRIBE MAY NOTIFY THE COURT, IN WRITING OR ORALLY ON THE RECORD,
12 THAT THE INDIAN CUSTODIAN OR TRIBE WITHDRAWS AS A PARTY TO THE
13 PROCEEDING.

14 **19-1.2-114. Right to examine documents - compliance**
15 **regarding an Indian child.** (1) IF THERE IS REASON TO KNOW THAT A
16 CHILD WHO IS THE SUBJECT OF A CHILD CUSTODY PROCEEDING IS AN
17 INDIAN CHILD, EACH PARTY HAS THE RIGHT TO TIMELY EXAMINE ALL
18 REPORTS OR OTHER DOCUMENTS AS OUTLINED IN THE APPLICABLE RULES
19 OF DISCOVERY UNLESS PRECLUDED PURSUANT TO STATE OR FEDERAL LAW.

20 (2) REGARDLESS OF WHETHER A TRIBE IS A PARTY IN ANY CHILD
21 CUSTODY PROCEEDING INVOLVING AN INDIAN CHILD, THE INDIAN CHILD'S
22 TRIBE MUST HAVE ACCESS TO ALL REPORTS OR OTHER DOCUMENTS
23 REGARDING THE INDIAN CHILD. ANY REPORTS OR OTHER DOCUMENTS
24 REGARDING THE INDIAN CHILD MUST BE PROVIDED, UPON REQUEST, TO THE
25 TRIBE FREE OF COST.

26 **19-1.2-115. Qualified expert witnesses.** (1) IN A CHILD CUSTODY
27 PROCEEDING THAT REQUIRES THE TESTIMONY OF A QUALIFIED EXPERT

1 WITNESS, THE PETITIONING OR FILING PARTY SHALL SEEK A QUALIFIED
2 EXPERT WITNESS FROM THE INDIAN CHILD'S TRIBE AND MAY, WHEN
3 APPROPRIATE, CONTACT THE FEDERAL BUREAU OF INDIAN AFFAIRS AND
4 REQUEST THAT THE TRIBE OR BUREAU IDENTIFY ONE OR MORE
5 INDIVIDUALS WHO MEET THE CRITERIA DESCRIBED IN SUBSECTION (3) OR
6 (4) OF THIS SECTION AND MAKE A RECORD OF THAT CONTACT EITHER IN
7 WRITING OR ORALLY ON THE RECORD.

8 (2) AT A HEARING PURSUANT TO SECTION 19-1.2-123 OR
9 19-1.2-125, IF THE COURT HAS FOUND THAT THERE IS REASON TO KNOW
10 THAT A CHILD IS AN INDIAN CHILD, AT LEAST ONE EXPERT WITNESS MUST
11 BE QUALIFIED TO TESTIFY REGARDING:

12 (a) WHETHER THE CONTINUED CUSTODY OF THE INDIAN CHILD BY
13 THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN IS LIKELY TO RESULT
14 IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE INDIAN CHILD; AND

15 (b) THE PREVAILING SOCIAL AND CULTURAL STANDARDS AND
16 CHILD-REARING PRACTICES OF THE INDIAN CHILD'S TRIBE.

17 (3) FOR THE PURPOSES OF THIS SECTION, A QUALIFIED EXPERT
18 WITNESS IS NOT REQUIRED TO HAVE KNOWLEDGE OF SOCIAL AND
19 CULTURAL STANDARDS OF THE INDIAN CHILD'S TRIBE ONLY IF SUCH
20 KNOWLEDGE IS PLAINLY IRRELEVANT TO THE PARTICULAR
21 CIRCUMSTANCES AT ISSUE IN THE PROCEEDING. THE INDIAN CHILD'S TRIBE
22 MAY DESIGNATE AN INDIVIDUAL AS BEING QUALIFIED TO TESTIFY TO THE
23 PREVAILING SOCIAL AND CULTURAL STANDARDS OF THE INDIAN CHILD'S
24 TRIBE.

25 (4) IF THE INDIAN CHILD'S TRIBE HAS NOT IDENTIFIED A QUALIFIED
26 EXPERT WITNESS, THE FOLLOWING INDIVIDUALS, IN ORDER OF PRIORITY,
27 MAY TESTIFY AS A QUALIFIED EXPERT WITNESS:

1 (a) A MEMBER OF THE INDIAN CHILD'S TRIBE OR ANOTHER
2 INDIVIDUAL WHO IS RECOGNIZED BY THE TRIBE AS KNOWLEDGEABLE
3 ABOUT TRIBAL CUSTOMS REGARDING FAMILY ORGANIZATION AND
4 CHILD-REARING PRACTICES;

5 (b) AN INDIVIDUAL WHO HAS SUBSTANTIAL EXPERIENCE IN THE
6 DELIVERY OF CHILD AND FAMILY SERVICES TO INDIANS AND EXTENSIVE
7 KNOWLEDGE OF PREVAILING SOCIAL AND CULTURAL STANDARDS AND
8 CHILD-REARING PRACTICES IN THE INDIAN CHILD'S TRIBE; OR

9 (c) AN INDIVIDUAL WHO HAS SUBSTANTIAL EXPERIENCE IN THE
10 DELIVERY OF CHILD AND FAMILY SERVICES TO INDIANS AND EXTENSIVE
11 KNOWLEDGE OF PREVAILING SOCIAL AND CULTURAL STANDARDS AND
12 CHILD-REARING PRACTICES IN INDIAN TRIBES WITH CULTURAL
13 SIMILARITIES TO THE INDIAN CHILD'S TRIBE.

14 (5) AN INDIAN CHILD'S TRIBE MUST BE PROVIDED THE
15 OPPORTUNITY TO QUESTION THE QUALIFIED EXPERT WITNESS IN ALL
16 HEARINGS INVOLVING THE INDIAN CHILD, REGARDLESS OF WHETHER THE
17 INDIAN CHILD'S TRIBE HAS INTERVENED PURSUANT TO SECTION
18 19-1.2-113.

19 (6) FOR THE PURPOSES OF THIS SECTION, A PETITIONING OR FILING
20 PARTY OR AN EMPLOYEE OF THE PETITIONING OR FILING PARTY MAY NOT
21 SERVE AS A QUALIFIED EXPERT WITNESS.

22 **19-1.2-116. Jurisdiction.** (1) EXCEPT AS OTHERWISE PROVIDED
23 IN THIS SECTION, THE COURT'S JURISDICTION PURSUANT TO THIS ARTICLE
24 1.2 IN A CASE INVOLVING AN INDIAN CHILD IS CONCURRENT WITH THE
25 INDIAN CHILD'S TRIBE.

26 (2) THE INDIAN CHILD'S TRIBE HAS EXCLUSIVE JURISDICTION IN A
27 CASE INVOLVING AN INDIAN CHILD IF:

1 (a) THE INDIAN CHILD IS A WARD OF A TRIBAL COURT OF THE
2 TRIBE; OR

3 (b) THE INDIAN CHILD RESIDES OR IS DOMICILED ON THE TRIBE'S
4 RESERVATION.

5 (3) NOTWITHSTANDING SUBSECTION (2) OF THIS SECTION, THE
6 COURT HAS TEMPORARY EMERGENCY JURISDICTION OVER AN INDIAN
7 CHILD WHO IS TAKEN INTO PROTECTIVE CUSTODY PURSUANT TO SECTION
8 19-1.2-110 OR 19-3-201, OR PART 4 OF ARTICLE 3 OF THIS TITLE 19.

9 **19-1.2-117. Determination of domicile and residence - tribal**
10 **court jurisdiction.** (1) IN A CHILD CUSTODY PROCEEDING INVOLVING AN
11 INDIAN CHILD, THE COURT SHALL DETERMINE AND ISSUE AN ORDER
12 REGARDING THE INDIAN CHILD'S DOMICILE OR RESIDENCE AND WHETHER
13 THE INDIAN CHILD IS UNDER A TRIBAL COURT'S JURISDICTION.

14 (2) THE PETITIONING OR FILING PARTY SHALL COORDINATE WITH
15 THE INDIAN CHILD'S TRIBE AS NECESSARY TO ASSIST THE COURT IN
16 MAKING A DETERMINATION PURSUANT TO THIS SECTION. IF IT IS UNCLEAR
17 WHICH TRIBE IS THE INDIAN CHILD'S TRIBE, THE PETITIONING OR FILING
18 PARTY SHALL COORDINATE WITH EACH TRIBE WITH WHICH THERE IS
19 REASON TO KNOW THAT THE INDIAN CHILD MAY BE A MEMBER OR ELIGIBLE
20 FOR MEMBERSHIP TO ASSIST THE COURT IN MAKING THE DETERMINATION.

21 **19-1.2-118. Motion to transfer to tribal court - objection.**
22 (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5) OF THIS SECTION,
23 THE COURT SHALL TRANSFER A CHILD CUSTODY PROCEEDING BROUGHT
24 PURSUANT TO THIS ARTICLE 1.2 THAT INVOLVES AN INDIAN CHILD IF, AT
25 ANY TIME DURING THE PROCEEDING, THE INDIAN CHILD'S PARENT, INDIAN
26 CUSTODIAN, OR TRIBE PETITIONS THE COURT TO TRANSFER THE
27 PROCEEDING TO THE TRIBAL COURT, UNLESS GOOD CAUSE IS SHOWN TO

1 DENY THE TRANSFER.

2 (2) UPON RECEIPT OF A TRANSFER MOTION, THE COURT SHALL
3 CONTACT THE INDIAN CHILD'S TRIBE AND REQUEST A TIMELY RESPONSE
4 REGARDING WHETHER THE TRIBE INTENDS TO DECLINE THE TRANSFER.

5 (3) (a) IF A PARTY OBJECTS IN WRITING TO THE TRANSFER MOTION,
6 THE COURT SHALL SET A HEARING ON THE OBJECTIONS TO THE MOTION. IN
7 DETERMINING WHETHER THERE IS GOOD CAUSE TO DENY TRANSFER OF
8 JURISDICTION TO A TRIBAL COURT, THE COURT SHALL ENGAGE IN A
9 FACT-SPECIFIC INQUIRY, DETERMINED ON A CASE-BY-CASE BASIS AS SET
10 FORTH IN SUBSECTION (4) OF THIS SECTION.

11 (b) AT THE HEARING, THE OBJECTING PARTY HAS THE BURDEN OF
12 PROOF OF ESTABLISHING BY CLEAR AND CONVINCING EVIDENCE THAT
13 GOOD CAUSE EXISTS TO DENY THE TRANSFER.

14 (c) IF THE INDIAN CHILD'S TRIBE CONTESTS THE ASSERTION THAT
15 GOOD CAUSE EXISTS TO DENY THE TRANSFER, THE COURT SHALL GIVE THE
16 TRIBE'S ARGUMENT SUBSTANTIAL WEIGHT.

17 (d) WHEN MAKING A DETERMINATION WHETHER GOOD CAUSE
18 EXISTS TO DENY THE TRANSFER MOTION, THE COURT MUST NOT CONSIDER:

19 (I) WHETHER THE PROCEEDING IS AT AN ADVANCED STAGE;

20 (II) WHETHER THERE HAS BEEN A PRIOR PROCEEDING INVOLVING
21 THE INDIAN CHILD IN WHICH A TRANSFER MOTION WAS NOT FILED;

22 (III) WHETHER THE TRANSFER COULD AFFECT THE PLACEMENT OF
23 THE INDIAN CHILD;

24 (IV) THE INDIAN CHILD'S CULTURAL CONNECTIONS WITH THE
25 TRIBE OR THE TRIBE'S RESERVATION;

26 (V) THE SOCIOECONOMIC CONDITIONS OF THE INDIAN CHILD'S
27 TRIBE OR ANY NEGATIVE PERCEPTION OF THE TRIBE'S OR THE FEDERAL

1 BUREAU OF INDIAN AFFAIRS'S SOCIAL SERVICES OR JUDICIAL SYSTEMS; OR

2 (VI) WHETHER THE TRANSFER SERVES THE BEST INTERESTS OF THE
3 INDIAN CHILD.

4 (4) ABSENT EXTRAORDINARY CIRCUMSTANCES, GOOD CAUSE TO
5 DENY TRANSFER TO A TRIBAL COURT MUST BE BASED ON ONE OR BOTH OF
6 THE FOLLOWING FACTORS:

7 (a) THE INDIAN CHILD'S TRIBE DOES NOT HAVE A TRIBAL COURT OR
8 ANY OTHER ADMINISTRATIVE BODY THAT IS VESTED WITH AUTHORITY
9 OVER CHILD CUSTODY PROCEEDINGS TO WHICH THE CASE CAN BE
10 TRANSFERRED, AND NO OTHER TRIBAL COURT HAS BEEN DESIGNATED BY
11 THE INDIAN CHILD'S TRIBE TO HEAR CHILD CUSTODY PROCEEDINGS; OR

12 (b) THE EVIDENCE NECESSARY TO DECIDE THE CASE COULD NOT BE
13 ADEQUATELY PRESENTED IN THE TRIBAL COURT WITHOUT UNDUE
14 HARDSHIP TO THE PARTIES OR THE WITNESSES, AND THE TRIBAL COURT IS
15 UNABLE TO MITIGATE THE HARDSHIP BY ANY MEANS PERMITTED IN THE
16 TRIBAL COURT'S RULES. WITHOUT EVIDENCE OF UNDUE HARDSHIP, TRAVEL
17 DISTANCE ALONE IS NOT A BASIS FOR DENYING A TRANSFER MOTION.

18 (5) (a) THE COURT SHALL DENY THE TRANSFER MOTION IF:

19 (I) THE TRIBE DECLINES THE TRANSFER IN WRITING OR ORALLY ON
20 THE RECORD;

21 (II) ONE OF THE INDIAN CHILD'S PARENTS OBJECTS TO THE
22 TRANSFER; OR

23 (III) AFTER A HEARING, THE COURT FINDS BY CLEAR AND
24 CONVINCING EVIDENCE THAT GOOD CAUSE EXISTS TO DENY THE TRANSFER.

25 (b) NOTWITHSTANDING SUBSECTION (5)(a)(II) OF THIS SECTION,
26 THE OBJECTION OF THE INDIAN CHILD'S PARENT DOES NOT PRECLUDE THE
27 TRANSFER IF:

1 (I) THE OBJECTING PARENT DIES OR THE OBJECTING PARENT'S
2 PARENTAL RIGHTS ARE TERMINATED AND HAVE NOT BEEN RESTORED; AND

3 (II) THE INDIAN CHILD'S REMAINING PARENT, INDIAN CUSTODIAN,
4 OR TRIBE FILES A NEW TRANSFER MOTION SUBSEQUENT TO THE DEATH OR
5 TERMINATION OF PARENTAL RIGHTS OF THE OBJECTING PARENT.

6 (6) IF THE COURT DENIES A TRANSFER MOTION PURSUANT TO THIS
7 SECTION, THE COURT SHALL DOCUMENT THE BASIS FOR THE DENIAL IN A
8 WRITTEN ORDER.

9 **19-1.2-119. Requirements if transfer to tribal court granted.**

10 (1) UPON GRANTING A MOTION TO TRANSFER PURSUANT TO SECTION
11 19-1.2-118, THE COURT SHALL EXPEDITIOUSLY:

12 (a) NOTIFY THE TRIBAL COURT OF THE PENDING DISMISSAL OF THE
13 CHILD CUSTODY PROCEEDING;

14 (b) TRANSFER ALL INFORMATION REGARDING THE PROCEEDING,
15 INCLUDING PLEADINGS AND COURT RECORDS, TO THE TRIBAL COURT; AND

16 (c) IF THE INDIAN CHILD IS ALLEGED TO BE WITHIN THE
17 JURISDICTION OF THE COURT PURSUANT TO SECTION 19-1.2-116, DIRECT
18 THE PETITIONING OR FILING PARTY TO:

19 (I) COORDINATE WITH THE TRIBAL COURT AND THE INDIAN CHILD'S
20 TRIBE TO ENSURE THAT THE TRANSFER OF THE PROCEEDING AND THE
21 TRANSFER OF CUSTODY OF THE INDIAN CHILD IS ACCOMPLISHED WITH
22 MINIMAL DISRUPTION OF SERVICES TO THE INDIAN CHILD AND THE INDIAN
23 CHILD'S FAMILY; AND

24 (II) EXPEDITIOUSLY PROVIDE AT NO COST TO THE APPROPRIATE
25 TRIBAL AGENCY:

26 (A) ALL RECORDS AND ORIGINAL DOCUMENTS IN THE PETITIONING
27 OR FILING PARTY'S POSSESSION THAT ARE RELATED TO THE INDIAN CHILD,

1 INCLUDING A BIRTH CERTIFICATE, SOCIAL SECURITY CARD, CERTIFICATE OF
2 INDIAN BIRTH, AND OTHER SIMILAR DOCUMENTS;

3 (B) DOCUMENTATION RELATED TO THE INDIAN CHILD'S ELIGIBILITY
4 FOR STATE AND FEDERAL ASSISTANCE; AND

5 (C) THE ENTIRE CASE RECORD FOR THE INDIAN CHILD THAT THE
6 PETITIONING OR FILING PARTY POSSESSES.

7 (2) THE COURT SHALL DISMISS THE PROCEEDING WITH PREJUDICE
8 UPON CONFIRMATION FROM THE TRIBAL COURT THAT THE TRIBAL COURT
9 RECEIVED THE REQUIRED TRANSFERRED INFORMATION.

10 **19-1.2-120. Placement preferences - cultural compact -**
11 **confidentiality.** (1) IF THE PARENTAL RIGHTS OF AN INDIAN CHILD'S
12 PARENTS HAVE NOT BEEN TERMINATED AND THE INDIAN CHILD IS IN NEED
13 OF PLACEMENT OR CONTINUATION IN SUBSTITUTE CARE, THE INDIAN CHILD
14 MUST BE PLACED IN THE LEAST RESTRICTIVE SETTING THAT:

15 (a) MOST CLOSELY APPROXIMATES A FAMILY, TAKING INTO
16 CONSIDERATION SIBLING ATTACHMENT;

17 (b) ALLOWS THE INDIAN CHILD'S SPECIAL NEEDS, IF ANY, TO BE
18 MET;

19 (c) SUBJECT TO SUBSECTION (1)(d)(II)(C) OF THIS SECTION, IS IN
20 REASONABLE PROXIMITY TO THE INDIAN CHILD'S HOME, EXTENDED
21 FAMILY, OR SIBLINGS; AND

22 (d) (I) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION,
23 IS IN ACCORDANCE WITH THE ORDER OF PREFERENCE ESTABLISHED BY THE
24 INDIAN CHILD'S TRIBE; OR

25 (II) IF THE INDIAN CHILD'S TRIBE HAS NOT ESTABLISHED
26 PLACEMENT PREFERENCES, IS IN ACCORDANCE WITH THE FOLLOWING
27 ORDER OF PREFERENCE:

- 1 (A) THE CHILD'S NONCUSTODIAL PARENT;
- 2 (B) A MEMBER OF THE INDIAN CHILD'S EXTENDED FAMILY;
- 3 (C) A FOSTER HOME LICENSED, APPROVED, OR SPECIFIED BY THE
4 INDIAN CHILD'S TRIBE;
- 5 (D) ANOTHER MEMBER OF THE INDIAN CHILD'S TRIBE;
- 6 (E) ANOTHER INDIAN FAMILY WITH WHOM THE INDIAN CHILD HAS
7 A RELATIONSHIP;
- 8 (F) AN INDIAN FAMILY FROM A TRIBE THAT IS CULTURALLY
9 SIMILAR OR LINGUISTICALLY CONNECTED TO THE INDIAN CHILD'S TRIBE;
- 10 (G) A FOSTER HOME LICENSED OR APPROVED BY A LICENSING
11 AUTHORITY IN THIS STATE AND IN WHICH ONE OR MORE OF THE LICENSED
12 OR APPROVED FOSTER PARENTS IS AN INDIAN; OR
- 13 (H) AN INSTITUTION FOR CHILDREN THAT HAS A PROGRAM
14 SUITABLE TO MEET THE INDIAN CHILD'S NEEDS AND IS APPROVED BY AN
15 INDIAN TRIBE OR OPERATED BY AN INDIAN ORGANIZATION.
- 16 (2) IF THE PARENTAL RIGHTS OF THE INDIAN CHILD'S PARENTS
17 HAVE BEEN TERMINATED OR IF AN INDIAN CHILD IS IN NEED OF
18 GUARDIANSHIP PURSUANT TO PART 2 OF ARTICLE 14 OF TITLE 15 OR
19 ADOPTIVE PLACEMENT, EXCEPT AS PROVIDED FOR IN SUBSECTION (3) OF
20 THIS SECTION, THE INDIAN CHILD MUST BE PLACED:
- 21 (a) IN ACCORDANCE WITH THE ORDER OF PREFERENCE
22 ESTABLISHED BY THE INDIAN CHILD'S TRIBE; OR
- 23 (b) IF THE INDIAN CHILD'S TRIBE HAS NOT ESTABLISHED
24 PLACEMENT PREFERENCES, ACCORDING TO THE FOLLOWING ORDER OF
25 PREFERENCE:
- 26 (I) WITH A MEMBER OF THE INDIAN CHILD'S EXTENDED FAMILY;
- 27 (II) WITH OTHER MEMBERS OF THE INDIAN CHILD'S TRIBE;

1 (III) WITH A MEMBER OR CITIZEN OF AN INDIAN TRIBE IN WHICH
2 THE INDIAN CHILD IS ELIGIBLE FOR MEMBERSHIP OR CITIZENSHIP BUT THAT
3 IS NOT THE INDIAN CHILD'S TRIBE;

4 (IV) WITH ANOTHER INDIAN FAMILY WITH WHOM THE INDIAN
5 CHILD HAS A RELATIONSHIP;

6 (V) WITH AN INDIAN FAMILY FROM A TRIBE THAT IS CULTURALLY
7 SIMILAR OR LINGUISTICALLY CONNECTED TO THE INDIAN CHILD'S TRIBE;

8 OR

9 (VI) WITH ANOTHER INDIAN FAMILY.

10 (3)(a) A PARTY MAY FILE A MOTION WITH THE COURT REQUESTING
11 AUTHORITY TO PLACE THE INDIAN CHILD CONTRARY TO THE PLACEMENT
12 PREFERENCES SET FORTH IN SUBSECTION (1) OR (2) OF THIS SECTION. THE
13 MOTION MUST DETAIL THE REASONS THE PARTY ASSERTS THAT GOOD
14 CAUSE EXISTS FOR PLACEMENT CONTRARY TO THE PLACEMENT
15 PREFERENCES SET FORTH IN SUBSECTION (1) OR (2) OF THIS SECTION.

16 (b) UPON THE FILING OF AN OBJECTION TO A MOTION FILED
17 PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION, THE COURT SHALL SET
18 THE TIME FOR A HEARING ON THE OBJECTIONS.

19 (c) IF THE COURT DETERMINES THAT THE MOVING PARTY HAS
20 ESTABLISHED ITS BURDEN BY CLEAR AND CONVINCING EVIDENCE THAT
21 THERE IS GOOD CAUSE TO DEPART FROM THE PLACEMENT PREFERENCES
22 SET FORTH IN SUBSECTION (1) OR (2) OF THIS SECTION, THE COURT MAY
23 AUTHORIZE AN ALTERNATIVE PLACEMENT.

24 (d) THE COURT'S DETERMINATION PURSUANT TO SUBSECTION
25 (3)(c) OF THIS SECTION:

26 (I) MUST BE IN WRITING AND BASED ON ONE OR MORE OF THE
27 FOLLOWING FACTORS:

1 (A) THE PREFERENCES OF THE INDIAN CHILD, IF THE INDIAN CHILD
2 IS OF SUFFICIENT AGE AND CAPACITY TO UNDERSTAND THE DECISION THAT
3 IS BEING MADE;

4 (B) THE PRESENCE OF A SIBLING ATTACHMENT THAT CANNOT BE
5 MAINTAINED THROUGH A PLACEMENT CONSISTENT WITH THE PLACEMENT
6 PREFERENCES SET FORTH IN SUBSECTION (1) OR (2) OF THIS SECTION;

7 (C) ANY EXTRAORDINARY PHYSICAL, MENTAL, OR EMOTIONAL
8 NEEDS OF THE INDIAN CHILD THAT REQUIRE SPECIALIZED TREATMENT
9 SERVICES IF, DESPITE ACTIVE EFFORTS, THOSE SERVICES ARE UNAVAILABLE
10 IN THE COMMUNITY WHERE FAMILIES WHO MEET THE PLACEMENT
11 PREFERENCES SET FORTH IN SUBSECTION (1) OR (2) OF THIS SECTION
12 RESIDE;

13 (D) A FINDING BASED ON THE TESTIMONY OF THE CHILD
14 PLACEMENT AGENCY OR THE PETITIONING OR FILING PARTY THAT A
15 DILIGENT SEARCH HAS BEEN CONDUCTED AND THAT A PLACEMENT
16 MEETING THE PLACEMENT PREFERENCES SET FORTH IN SUBSECTION (1) OR
17 (2) OF THIS SECTION IS UNAVAILABLE, AS DETERMINED BY THE PREVAILING
18 SOCIAL AND CULTURAL STANDARDS OF THE INDIAN COMMUNITY IN WHICH
19 THE INDIAN CHILD'S PARENT OR EXTENDED FAMILY RESIDES OR MAINTAINS
20 SOCIAL AND CULTURAL TIES; OR

21 (E) THE PLACEMENT REQUEST OF THE INDIAN CHILD'S PARENT,
22 AFTER THE INDIAN CHILD'S PARENT HAS REVIEWED THE PLACEMENT
23 OPTIONS, IF ANY COMPLY WITH THE PLACEMENT PREFERENCES SET FORTH
24 IN SUBSECTION (1) OR (2) OF THIS SECTION;

25 (II) MUST ALLOW THE COURT TO RETAIN DISCRETION TO FIND THAT
26 GOOD CAUSE DOES NOT EXIST EVEN IF ONE OR MORE OF THE FACTORS IN
27 THIS SUBSECTION (3) ARE PRESENT;

1 (III) MUST, IN APPLYING THE PLACEMENT PREFERENCES SET FORTH
2 IN SUBSECTION (1) OR (2) OF THIS SECTION, GIVE WEIGHT TO THE INDIAN
3 CHILD'S PARENT'S REQUEST FOR ANONYMITY IF THE PLACEMENT IS AN
4 ADOPTIVE PLACEMENT TO WHICH THE INDIAN CHILD'S PARENT HAS
5 CONSENTED; AND

6 (IV) MAY NOT BE BASED:

7 (A) ON THE SOCIOECONOMIC CONDITIONS OF THE INDIAN CHILD'S
8 TRIBE;

9 (B) ON ANY PERCEPTION OF THE TRIBE'S OR FEDERAL BUREAU OF
10 INDIAN AFFAIRS' SOCIAL SERVICES OR JUDICIAL SYSTEMS;

11 (C) ON THE DISTANCE BETWEEN A PLACEMENT THAT MEETS THE
12 PLACEMENT PREFERENCES SET FORTH IN SUBSECTION (1) OR (2) OF THIS
13 SECTION THAT IS LOCATED ON OR NEAR A RESERVATION AND THE INDIAN
14 CHILD'S PARENT, EXCEPT IF THE PLACEMENT WOULD UNDERMINE
15 REUNIFICATION EFFORTS; OR

16 (D) SOLELY ON THE ORDINARY BONDING OR ATTACHMENT
17 BETWEEN THE INDIAN CHILD AND A NON-PREFERRED PLACEMENT ARISING
18 FROM TIME SPENT IN THE NON-PREFERRED PLACEMENT.

19 (4) THE COURT, ON THE COURT'S OWN MOTION OR THE MOTION OF
20 ANY PARTY, SHALL MAKE A DETERMINATION PURSUANT TO THIS SECTION
21 REGARDING THE INDIAN CHILD'S PLACEMENT IF THE COURT OR THE
22 MOVING PARTY HAS REASON TO KNOW THAT THE INDIAN CHILD WAS
23 PLACED CONTRARY TO THE PLACEMENT PREFERENCES SET FORTH IN
24 SUBSECTION (1) OR (2) OF THIS SECTION WITHOUT GOOD CAUSE. A MOTION
25 MADE PURSUANT TO THIS SUBSECTION (4) MAY BE MADE IN WRITING OR
26 ORALLY ON THE RECORD.

27 (5) TO ENSURE THAT THIS ARTICLE 1.2 IS FULLY IMPLEMENTED AND

1 THAT ALL INDIAN CHILDREN HAVE THE OPPORTUNITY TO MAINTAIN
2 STRONG CONNECTIONS TO THEIR CULTURE, IF THE HOUSEHOLD INTO WHICH
3 AN INDIAN CHILD IS PLACED FOR ADOPTION OR GUARDIANSHIP DOES NOT
4 INCLUDE A PARENT WHO IS A MEMBER OF THE INDIAN CHILD'S TRIBE, THE
5 COURT SHALL REQUIRE THE PARTIES TO THE ADOPTION TO ENTER A
6 CULTURAL COMPACT AT THE DISCRETION OF THE INDIAN CHILD'S TRIBE, OR
7 OTHERWISE DEVELOP A PLAN THAT DOCUMENTS THE PARTIES' AGREEMENT
8 REGARDING HOW THE INDIAN CHILD WILL CONTINUE TO ACTIVELY
9 PARTICIPATE IN THE INDIAN CHILD'S CULTURAL LEARNING AND ACTIVITIES,
10 AND ENGAGEMENT WITH FAMILY MEMBERS. EACH CULTURAL COMPACT OR
11 PLAN MUST BE SPECIFIC TO THE INDIAN CHILD; MUST CONSIDER THE
12 INDIAN CHILD'S MENTAL, PHYSICAL, AND EMOTIONAL NEEDS, INCLUDING
13 THE INDIAN CHILD'S PREFERENCES; AND MUST TAKE INTO ACCOUNT THE
14 INDIAN CHILD'S UNDERSTANDING AS THE INDIAN CHILD GROWS AND
15 MATURES. THE CULTURAL COMPACT OR PLAN IS CONSIDERED A
16 POST-ADOPTION CONTACT AGREEMENT IN ACCORDANCE WITH SECTION
17 19-5-208 (4.5) AND ENFORCEABLE IN ACCORDANCE WITH SECTION
18 19-5-217.

19 (6) A CONFIDENTIALITY REQUIREMENT, IF ANY, DOES NOT RELIEVE
20 THE COURT OR ANY PETITIONERS IN AN ADOPTION PROCEEDING FROM THE
21 DUTY TO COMPLY WITH THE PLACEMENT PREFERENCES SET FORTH IN THIS
22 SECTION IF THE CHILD IS AN INDIAN CHILD.

23 **19-1.2-121. Order to vacate judgment.** (1) A PETITION TO
24 VACATE AN ORDER OR A JUDGMENT INVOLVING AN INDIAN CHILD
25 REGARDING JURISDICTION IN ACCORDANCE WITH SECTIONS 19-1.2-116
26 AND 19-1.2-118, PLACEMENT, GUARDIANSHIP, OR THE TERMINATION OF
27 PARENTAL RIGHTS MAY BE FILED IN A PENDING CHILD CUSTODY

1 PROCEEDING INVOLVING THE INDIAN CHILD OR, IF A CHILD CUSTODY
2 PROCEEDING IS NOT PENDING, IN ANY STATE OR LOCAL COURT OF
3 COMPETENT JURISDICTION BY:

4 (a) THE INDIAN CHILD WHO WAS ALLEGED TO BE WITHIN THE
5 COURT'S JURISDICTION PURSUANT TO SECTION 19-1.2-116;

6 (b) THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN FROM
7 WHOSE CUSTODY THE INDIAN CHILD WAS REMOVED OR WHOSE PARENTAL
8 RIGHTS WERE TERMINATED; OR

9 (c) THE INDIAN CHILD'S TRIBE.

10 (2) (a) THE COURT SHALL VACATE AN ORDER OR JUDGMENT
11 INVOLVING AN INDIAN CHILD REGARDING JURISDICTION IN ACCORDANCE
12 WITH SECTIONS 19-1.2-116 AND 19-1.2-118, PLACEMENT, GUARDIANSHIP,
13 OR THE TERMINATION OF PARENTAL RIGHTS IF THE COURT DETERMINES
14 THAT ANY PROVISION OF THIS ARTICLE 1.2 HAS BEEN VIOLATED.

15 (b) IF THE VACATED ORDER OR JUDGMENT RESULTED IN THE
16 REMOVAL OR PLACEMENT OF THE INDIAN CHILD, THE COURT SHALL ORDER
17 THE CHILD RETURNED TO THE INDIAN CHILD'S PARENT OR INDIAN
18 CUSTODIAN AS SOON AS POSSIBLE, AND THE COURT'S ORDER MUST INCLUDE
19 A TRANSITION PLAN FOR THE PHYSICAL CUSTODY OF THE CHILD, UNLESS
20 THE COURT DETERMINES THAT A HEARING IS TO BE HELD WITHIN
21 TWENTY-EIGHT DAYS IN ACCORDANCE WITH 25 U.S.C. SEC. 1912 (e) AND
22 SECTION 19-1.2-123 TO DETERMINE IF THE RETURN OF THE INDIAN CHILD
23 IS APPROPRIATE. THE TRANSITION PLAN MAY INCLUDE PROTECTIVE
24 CUSTODY PURSUANT TO SECTION 19-3-405.

25 (c) IF THE VACATED ORDER OR JUDGMENT TERMINATED PARENTAL
26 RIGHTS, THE COURT SHALL ORDER THE PREVIOUSLY TERMINATED
27 PARENTAL RIGHTS TO BE RESTORED.

1 (d) IF THE STATE OR ANY OTHER PARTY AFFIRMATIVELY ASKS THE
2 COURT TO RECONSIDER THE ISSUES UNDER THE VACATED ORDER OR
3 JUDGMENT, THE COURT'S FINDINGS OR DETERMINATIONS MUST BE
4 READJUDICATED BY THE COURT THAT IS RECONSIDERING WHETHER THERE
5 HAS BEEN ABUSE OR NEGLECT SUFFICIENT TO ALLOW THE INDIAN CHILD TO
6 BE REMOVED PURSUANT TO THIS ARTICLE 1.2.

7 **19-1.2-122. Determination of whether an Indian child has been**
8 **improperly removed or retained - remedy.** (1) THE COURT, ON THE
9 COURT'S OWN MOTION OR ON THE MOTION OF ANY PARTY, SHALL
10 EXPEDITIOUSLY DETERMINE WHETHER AN INDIAN CHILD WHO IS ASSERTED
11 TO BE WITHIN THE COURT'S JURISDICTION PURSUANT TO SECTION
12 19-1.2-116 HAS BEEN IMPROPERLY REMOVED OR IMPROPERLY RETAINED
13 FOLLOWING A VISIT OR TEMPORARY RELINQUISHMENT OF CUSTODY. A
14 MOTION PURSUANT TO THIS SECTION MAY BE MADE ORALLY OR IN
15 WRITING.

16 (2) IF THE COURT FINDS THAT THE INDIAN CHILD HAS BEEN
17 IMPROPERLY REMOVED OR IMPROPERLY RETAINED, THE COURT SHALL
18 ORDER THE PETITIONING OR FILING PARTY TO IMMEDIATELY RETURN THE
19 INDIAN CHILD TO THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN AND
20 DISMISS THE PROCEEDING, UNLESS THE COURT DETERMINES THAT DOING
21 SO WOULD SUBJECT THE INDIAN CHILD TO SUBSTANTIAL AND IMMEDIATE
22 DANGER OR A THREAT OF SUBSTANTIAL AND IMMEDIATE DANGER. IN SUCH
23 A CASE, THE COURT SHALL HOLD A HEARING WITHIN TWENTY-EIGHT DAYS
24 IN ACCORDANCE WITH 25 U.S.C. SEC. 1912 (e) AND SECTION 19-1.2-123
25 TO DETERMINE IF THE RETURN OF THE INDIAN CHILD IS APPROPRIATE.

26 **19-1.2-123. Foster care placement.** (1) FOR A COURT TO ORDER
27 FOSTER CARE PLACEMENT IN A CHILD CUSTODY PROCEEDING INVOLVING

1 AN INDIAN CHILD:

2 (a) THE COURT MUST FIND BY CLEAR AND CONVINCING EVIDENCE,
3 INCLUDING THE TESTIMONY OF ONE OR MORE QUALIFIED EXPERT
4 WITNESSES, THAT THE INDIAN CHILD'S CONTINUED CUSTODY BY THE
5 INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN IS LIKELY TO RESULT IN
6 SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE INDIAN CHILD; AND

7 (b) THE COURT MUST DETERMINE THAT THE EVIDENCE REQUIRED
8 BY SUBSECTION (1)(a) OF THIS SECTION SHOWS A CAUSAL RELATIONSHIP
9 BETWEEN THE PARTICULAR CONDITIONS IN THE INDIAN CHILD'S DOMICILE
10 OR RESIDENCE AND THE LIKELIHOOD THAT THE CONTINUED CUSTODY OF
11 THE INDIAN CHILD IN THAT DOMICILE OR RESIDENCE WILL RESULT IN
12 SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE INDIAN CHILD WHO IS
13 THE SUBJECT OF THE CHILD CUSTODY PROCEEDING.

14 (2) WITHOUT A CAUSAL RELATIONSHIP SHOWN PURSUANT TO
15 SUBSECTION (1)(b) OF THIS SECTION, IF THE EVIDENCE SHOWS ONLY THE
16 EXISTENCE OF COMMUNITY OR FAMILY POVERTY, ISOLATION, SINGLE
17 PARENTHOOD, CUSTODIAN AGE, CROWDED OR INADEQUATE HOUSING,
18 SUBSTANCE ABUSE, OR NONCONFORMING SOCIAL BEHAVIOR, SUCH
19 EVIDENCE DOES NOT BY ITSELF CONSTITUTE THE CLEAR AND CONVINCING
20 EVIDENCE REQUIRED FOR A FINDING THAT CONTINUED CUSTODY IS LIKELY
21 TO RESULT IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE INDIAN
22 CHILD.

23 **19-1.2-124. Tribal customary adoption.** (1) IF THE INDIAN
24 CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE PROVIDES NOTICE TO THE
25 COURT AND THE PARTIES IN WRITING OR ORALLY ON THE RECORD THAT
26 THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE IS PURSUING
27 A TRIBAL CUSTOMARY ADOPTION AS A RESOLUTION TO THE CHILD

1 CUSTODY PROCEEDING, THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN,
2 OR TRIBE MUST SECURE A MOTION TO TRANSFER THE CASE TO TRIBAL
3 COURT PURSUANT TO SECTION 19-1.2-118 WITHIN SIXTY-THREE DAYS
4 AFTER RECEIVING THE NOTICE. IF THE INDIAN CHILD'S PARENT, INDIAN
5 CUSTODIAN, OR TRIBE DOES NOT SECURE A MOTION TO TRANSFER THE
6 CASE WITHIN SIXTY-THREE DAYS, THE COURT MAY CONSIDER OTHER
7 PERMANENCY OR PLACEMENT OPTIONS PURSUANT TO THIS ARTICLE 1.2 AS
8 A RESOLUTION TO THE CHILD CUSTODY PROCEEDING. FAILURE TO SECURE
9 THE MOTION TO TRANSFER THE CASE WITHIN SIXTY-THREE DAYS DOES NOT
10 PREVENT THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE FROM
11 FILING A MOTION TO TRANSFER THE CASE TO A TRIBAL COURT AT A LATER
12 DATE.

13 (2) UPON THE REQUEST OF THE INDIAN CHILD'S TRIBE OR ANOTHER
14 PARTY TO THE CASE IN WHICH THE TRIBAL CUSTOMARY ADOPTION WAS
15 ISSUED, THE COURT SHALL CERTIFY A TRIBAL CUSTOMARY ADOPTION
16 ORDER AND TREAT THE ORDER IN ACCORDANCE WITH THE FULL FAITH AND
17 CREDIT PROVISIONS SET FORTH IN SECTION 19-1.2-131.

18 **19-1.2-125. Termination of parental rights - tribal customary**
19 **adoption exemption.** (1) UPON THE FILING OF A MOTION TO TERMINATE
20 THE PARENT-CHILD LEGAL RELATIONSHIP, THE COURT SHALL MAKE A
21 FINDING, SUBJECT TO THE PROCEDURES DESCRIBED IN SECTION 19-1.2-108
22 (3), REGARDING WHETHER THERE IS REASON TO KNOW THAT THE CHILD IS
23 AN INDIAN CHILD.

24 (2) (a) IF THERE IS A FINDING THAT THERE IS REASON TO KNOW
25 THAT THE CHILD IS AN INDIAN CHILD, IN ADDITION TO THE STATUTORY
26 CRITERIA OUTLINED IN SECTION 19-3-604 AND PART 1 OF ARTICLE 5 OF
27 THIS TITLE 19, THE COURT SHALL MAKE FINDINGS, SUPPORTED BY

1 EVIDENCE BEYOND A REASONABLE DOUBT, INCLUDING THE TESTIMONY OF
2 ONE OR MORE QUALIFIED EXPERT WITNESSES, THAT THE PARENTS'
3 CONTINUED CUSTODY OF THE INDIAN CHILD IS LIKELY TO RESULT IN
4 SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE CHILD.

5 (b) THE COURT MAY NOT ENTER AN ORDER TERMINATING
6 PARENTAL RIGHTS OF AN INDIAN CHILD UNLESS:

7 (I) THE COURT HAS OFFERED THE PARTIES THE OPPORTUNITY TO
8 PARTICIPATE IN MEDIATION;

9 (II) ACTIVE EFFORTS TO REUNITE THE INDIAN FAMILY DID NOT
10 ELIMINATE THE NECESSITY FOR TERMINATION BASED ON SERIOUS
11 EMOTIONAL OR PHYSICAL DAMAGE TO THE INDIAN CHILD; AND

12 (III) THE COURT HAS CONSIDERED AND ELIMINATED ANY LESS
13 DRASTIC ALTERNATIVES TO TERMINATION, INCLUDING, BUT NOT LIMITED
14 TO, ALLOCATION OF PARENTAL RESPONSIBILITIES, GUARDIANSHIP, AND
15 TRIBAL CUSTOMARY ADOPTION.

16 (3) THE EVIDENCE REQUIRED PURSUANT TO THIS SECTION MUST
17 SHOW A CAUSAL RELATIONSHIP BETWEEN THE PARTICULAR CONDITIONS IN
18 THE INDIAN CHILD'S HOME AND THE LIKELIHOOD THAT CONTINUED
19 CUSTODY OF THE INDIAN CHILD BY THE INDIAN CHILD'S PARENT OR
20 PARENTS WILL RESULT IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO
21 THE PARTICULAR INDIAN CHILD WHO IS THE SUBJECT OF THE CHILD
22 CUSTODY PROCEEDING. EVIDENCE THAT SHOWS THE EXISTENCE OF
23 COMMUNITY OR FAMILY POVERTY, ISOLATION, SINGLE PARENTHOOD,
24 CUSTODIAN AGE, CROWDED OR INADEQUATE HOUSING, SUBSTANCE ABUSE,
25 OR NONCONFORMING SOCIAL BEHAVIOR DOES NOT, BY ITSELF, ESTABLISH
26 A CAUSAL RELATIONSHIP AS REQUIRED BY THIS SECTION.

27 (4) A PETITIONING OR FILING PARTY FILING A MOTION TO

1 TERMINATE PARENTAL RIGHTS OF AN INDIAN CHILD SHALL DOCUMENT IN
2 THE MOTION WHAT EFFORTS HAVE BEEN MADE TO EXPLORE TRIBAL
3 CUSTOMARY ADOPTION PURSUANT TO SECTION 19-1.2-124.

4 (5) IF REQUESTED BY THE TRIBE, THE TERMINATION ORDER MUST
5 INCLUDE A PROVISION THAT THE PETITIONING OR FILING PARTY MAINTAIN
6 CONNECTIONS BETWEEN THE INDIAN CHILD AND THE INDIAN CHILD'S
7 TRIBE.

8 (6) THE RIGHTS OF ONE PARENT MAY BE TERMINATED WITHOUT
9 AFFECTING THE RIGHTS OF THE OTHER PARENT.

10 **19-1.2-126. Voluntary consent - foster care placement,**
11 **relinquishment of parental rights, or adoption - requirements - when**
12 **not valid.** (1) WHEN A PARENT OR INDIAN CUSTODIAN VOLUNTARILY
13 CONSENTS TO A FOSTER CARE, PRE-ADOPTIVE OR ADOPTIVE PLACEMENT,
14 OR TO TERMINATE PARENTAL RIGHTS, THE CONSENT IS NOT VALID UNLESS
15 EXECUTED IN WRITING AND RECORDED BEFORE A JUDGE OF A COURT OF
16 COMPETENT JURISDICTION AND ACCOMPANIED BY THE JUDGE'S
17 CERTIFICATE THAT THE TERMS AND CONSEQUENCES OF THE CONSENT
18 WERE FULLY EXPLAINED IN DETAIL AND FULLY UNDERSTOOD BY THE
19 PARENT OR INDIAN CUSTODIAN. THE COURT SHALL ALSO CERTIFY THAT
20 EITHER THE PARENT OR INDIAN CUSTODIAN FULLY UNDERSTOOD THE
21 EXPLANATION IN ENGLISH OR THAT IT WAS INTERPRETED INTO A
22 LANGUAGE THAT THE PARENT OR INDIAN CUSTODIAN UNDERSTOOD. ANY
23 CONSENT GIVEN PRIOR TO, OR WITHIN TEN DAYS AFTER, BIRTH OF THE
24 INDIAN CHILD IS NOT VALID.

25 (2) A PARENT OR INDIAN CUSTODIAN MAY WITHDRAW CONSENT TO
26 A FOSTER CARE PLACEMENT PURSUANT TO STATE LAW AT ANY TIME, AND,
27 UPON SUCH WITHDRAWAL, THE INDIAN CHILD MUST BE RETURNED TO THE

1 PARENT OR INDIAN CUSTODIAN.

2 (3) IN A VOLUNTARY PROCEEDING FOR TERMINATION OF PARENTAL
3 RIGHTS TO, OR ADOPTIVE PLACEMENT OF, AN INDIAN CHILD, THE CONSENT
4 OF THE INDIAN CHILD'S PARENT MAY BE WITHDRAWN FOR ANY REASON AT
5 ANY TIME PRIOR TO THE ENTRY OF A FINAL DECREE OF TERMINATION OF
6 PARENTAL RIGHTS OR ADOPTION, AS THE CASE MAY BE, AND THE INDIAN
7 CHILD MUST BE RETURNED TO THE INDIAN CHILD'S PARENT.

8 **19-1.2-127. Tribal-state agreements - purpose - requirements.**

9 (1) (a) THE STATE DEPARTMENT SHALL CONTINUE TO MAKE GOOD FAITH
10 EFFORTS TO FOLLOW AND REVISE TRIBAL-STATE CHILD WELFARE
11 AGREEMENTS WITH THE SOUTHERN UTE INDIAN TRIBE AND THE UTE
12 MOUNTAIN UTE INDIAN TRIBE. THE STATE DEPARTMENT SHALL REVISE A
13 TRIBAL-STATE CHILD WELFARE AGREEMENT UPON THE REQUEST OF, AND
14 IN CONJUNCTION WITH, THE REQUESTING INDIAN TRIBE.

15 (b) THE STATE DEPARTMENT MAY ALSO ENTER INTO A
16 TRIBAL-STATE CHILD WELFARE AGREEMENT WITH ANY INDIAN TRIBE
17 OUTSIDE OF COLORADO THAT HAS A SIGNIFICANT NUMBER OF MEMBER
18 CHILDREN OR MEMBERSHIP-ELIGIBLE CHILDREN RESIDING IN THIS STATE.

19 (2) THE PURPOSES OF A TRIBAL-STATE CHILD WELFARE
20 AGREEMENT ARE TO PROMOTE THE CONTINUED EXISTENCE AND INTEGRITY
21 OF THE INDIAN TRIBE AS A POLITICAL ENTITY AND TO PROTECT THE VITAL
22 INTERESTS OF INDIAN CHILDREN IN SECURING AND MAINTAINING
23 POLITICAL, CULTURAL, AND SOCIAL RELATIONSHIPS WITH THEIR TRIBE AND
24 FAMILY.

25 (3) A TRIBAL-STATE CHILD WELFARE AGREEMENT MAY INCLUDE
26 AGREEMENTS REGARDING DEFAULT JURISDICTION OVER CASES IN WHICH
27 THE STATE COURTS AND TRIBAL COURTS HAVE CONCURRENT

1 JURISDICTION; THE TRANSFER OF CASES BETWEEN STATE COURTS AND
2 TRIBAL COURTS; THE ASSESSMENT, REMOVAL, PLACEMENT, CUSTODY, AND
3 ADOPTION OF INDIAN CHILDREN; AND ANY OTHER CHILD WELFARE
4 SERVICES PROVIDED TO INDIAN CHILDREN.

5 (4) A TRIBAL-STATE CHILD WELFARE AGREEMENT MUST:

6 (a) PROVIDE FOR THE COOPERATIVE DELIVERY OF CHILD WELFARE
7 SERVICES TO INDIAN CHILDREN IN COLORADO, INCLUDING THE
8 UTILIZATION, TO THE EXTENT AVAILABLE, OF SERVICES PROVIDED BY THE
9 INDIAN TRIBE OR AN ORGANIZATION WHOSE MISSION IS TO SERVE THE
10 AMERICAN INDIAN OR ALASKA NATIVE POPULATION TO IMPLEMENT THE
11 TERMS OF THE TRIBAL-STATE CHILD WELFARE AGREEMENT; AND

12 (b) IF SERVICES PROVIDED BY THE INDIAN TRIBE OR AN
13 ORGANIZATION WHOSE MISSION IS TO SERVE THE AMERICAN INDIAN OR
14 ALASKA NATIVE POPULATION ARE UNAVAILABLE, PROVIDE FOR THE STATE
15 DEPARTMENT'S USE OF COMMUNITY SERVICES AND RESOURCES DEVELOPED
16 SPECIFICALLY FOR INDIAN FAMILIES AND THAT HAVE THE DEMONSTRATED
17 CAPACITY TO PROVIDE CULTURALLY RELEVANT AND EFFECTIVE SERVICES
18 TO INDIAN CHILDREN.

19 **19-1.2-128. Collateral attack.** (1) AFTER THE ENTRY OF A FINAL
20 DECREE OF ADOPTION OF AN INDIAN CHILD, THE INDIAN CHILD'S PARENT
21 MAY WITHDRAW CONSENT UPON THE GROUNDS THAT CONSENT WAS
22 OBTAINED THROUGH FRAUD OR DURESS AND MAY PETITION THE COURT TO
23 VACATE THE DECREE.

24 (2) UPON A FINDING THAT CONSENT WAS OBTAINED THROUGH
25 FRAUD OR DURESS, THE COURT SHALL VACATE THE DECREE OF ADOPTION
26 AND ORDER THE RETURN OF THE INDIAN CHILD TO THE INDIAN CHILD'S
27 PARENT.

1 (3) AN ADOPTION THAT HAS BEEN EFFECTIVE FOR AT LEAST TWO
2 YEARS SHALL NOT BE INVALIDATED PURSUANT TO THIS SECTION UNLESS
3 OTHERWISE PERMITTED BY STATE LAW.

4 **19-1.2-129. Report.** (1) THE STATE DEPARTMENT SHALL COMPILE
5 ANY INFORMATION THAT RELATES TO THE IMPLEMENTATION OF THIS
6 ARTICLE 1.2 AND IS REQUIRED PURSUANT TO 45 CFR 1355.44 CONCERNING
7 THE ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM.

8 (2) (a) ON OR BEFORE JULY 1, 2027, AND EVERY ODD-NUMBERED
9 YEAR THEREAFTER, THE JUDICIAL DEPARTMENT SHALL PROVIDE THE
10 FOLLOWING INFORMATION FOR THE PRIOR TWO-YEAR PERIOD TO THE
11 STATE DEPARTMENT:

12 (I) THE NUMBER OF INDIAN CHILDREN INVOLVED IN DEPENDENCY
13 AND NEGLECT PROCEEDINGS;

14 (II) THE DATES OUT-OF-HOME PLACEMENT WERE ORDERED FOR
15 INDIAN CHILDREN IN PROTECTIVE CUSTODY;

16 (III) THE RATIO OF INDIAN CHILDREN TO NON-INDIAN CHILDREN IN
17 PROTECTIVE CUSTODY; AND

18 (IV) THE NUMBER OF CASES THAT WERE TRANSFERRED TO A
19 TRIBAL COURT PURSUANT TO SECTIONS 19-1.2-118 AND 19-1.2-119.

20 (b) ON OR BEFORE SEPTEMBER 15, 2027, AND EVERY
21 ODD-NUMBERED YEAR THEREAFTER, THE STATE DEPARTMENT SHALL
22 COMPILE THE FOLLOWING INFORMATION FOR THE PRIOR TWO-YEAR
23 PERIOD:

24 (I) WHICH TRIBES THE INDIAN CHILDREN WHO WERE IN
25 PROTECTIVE CUSTODY WERE MEMBERS OF OR ELIGIBLE FOR MEMBERSHIP
26 IN;

27 

- 1 (II) THE NUMBER OF INDIAN CHILDREN IN FOSTER CARE;
- 2 (III) THE NUMBER OF INDIAN CHILDREN PLACED IN ADOPTIVE
- 3 HOMES FROM THE CHILD WELFARE SYSTEM; AND
- 4 (IV) THE NUMBER OF AVAILABLE PLACEMENTS AND COMMON
- 5 BARRIERS TO RECRUITMENT AND RETENTION OF APPROPRIATE
- 6 PLACEMENTS.

7 (c) NO LATER THAN DECEMBER 1, 2027, AND EVERY

8 EVEN-NUMBERED YEAR THEREAFTER, THE STATE DEPARTMENT SHALL

9 REPORT THE FINDINGS OF THE INFORMATION COMPILED PURSUANT TO

10 SUBSECTIONS (2)(a) AND (2)(b) OF THIS SECTION TO THE HOUSE OF

11 REPRESENTATIVES HEALTH AND HUMAN SERVICES COMMITTEE, THE HOUSE

12 OF REPRESENTATIVES JUDICIARY COMMITTEE, THE SENATE HEALTH AND

13 HUMAN SERVICES COMMITTEE, AND THE SENATE JUDICIARY COMMITTEE,

14 OR THEIR SUCCESSOR COMMITTEES.

15 (2) NOTWITHSTANDING THE REQUIREMENT IN SECTION 24-1-136

16 (11)(a)(I), THE REPORT REQUIRED PURSUANT TO THIS SECTION CONTINUES

17 INDEFINITELY.

18 **19-1.2-130. Conflict of laws.** (1) IF ANY PROVISION OF THIS

19 SECTION 1.2 IS FOUND TO PROVIDE A LOWER STANDARD OF PROTECTION TO

20 THE RIGHTS OF AN INDIAN CHILD OR THE INDIAN CHILD'S PARENT, INDIAN

21 CUSTODIAN, OR TRIBE THAN THE FEDERAL "INDIAN CHILD WELFARE ACT

22 OF 1978":

23 (a) THE HIGHER STANDARD OF PROTECTION IN THE FEDERAL

24 "INDIAN CHILD WELFARE ACT OF 1978" CONTROLS; AND

25 (b) THE CONFLICTING PROVISION DOES NOT RENDER ANY

26 REMAINING PROVISIONS OF THIS ARTICLE 1.2 INOPERATIVE THAT PROVIDE

27 A HIGHER STANDARD OF PROTECTION THAN THE FEDERAL "INDIAN CHILD

1 WELFARE ACT OF 1978".

2 **19-1.2-131. Full faith and credit.** THE COURT SHALL GIVE FULL
3 FAITH AND CREDIT TO THE PUBLIC ACTS, RECORDS, AND JUDICIAL
4 PROCEEDINGS OF AN INDIAN TRIBE APPLICABLE TO AN INDIAN CHILD
5 CUSTODY PROCEEDING, INCLUDING, BUT NOT LIMITED TO, TRIBAL
6 CUSTOMARY ADOPTIONS, TO THE SAME EXTENT THAT THE STATE GIVES
7 FULL FAITH AND CREDIT TO THE PUBLIC ACTS, RECORDS, AND JUDICIAL
8 PROCEEDINGS OF ANY OTHER GOVERNMENTAL ENTITY. BY GRANTING FULL
9 FAITH AND CREDIT PURSUANT TO THIS SECTION, A TRIBAL COURT ORDER
10 IS ENFORCEABLE PURSUANT TO SECTIONS 13-53-102 AND 13-53-103.

11 **19-1.2-132. Rules.** THE DEPARTMENT OF HUMAN SERVICES AND
12 THE JUDICIAL DEPARTMENT MAY ADOPT RULES AS NECESSARY TO
13 IMPLEMENT THIS ARTICLE 1.2.

14 **SECTION 3.** In Colorado Revised Statutes, 19-3-702, **amend**
15 (4)(e) introductory portion; and **add** (4)(e)(III.5) as follows:

16 **19-3-702. Permanency hearing.** (4) (e) If the court finds that
17 there is not a substantial probability that the child or youth will be
18 returned to a parent or legal guardian within six months and the child or
19 youth appears to be adoptable and meets the criteria for adoption in
20 section 19-5-203, the court may order ~~the~~ A county department of human
21 or social services to show cause why it should not file a motion to
22 terminate the parent-child legal relationship pursuant to part 6 of this
23 article 3. Cause may include, but is not limited to, any of the following
24 conditions:

25 (III.5) THE COURT, IN A PROCEEDING INVOLVING AN INDIAN CHILD,
26 HAS DETERMINED THAT ACTIVE EFFORTS, AS DEFINED IN SECTION
27 19-1.2-103 AND DESCRIBED IN SECTION 19-1.2-111, HAVE NOT BEEN

1 MADE;

2 **SECTION 4.** In Colorado Revised Statutes, 19-1-103, **amend**
3 (83), (84), and (85) as follows:

4 **19-1-103. Definitions.** As used in this title 19 or in the specified
5 portion of this title 19, unless the context otherwise requires:

6 (83) "Indian child" ~~means an unmarried person who is younger~~
7 ~~than eighteen years of age and who is either:~~ HAS THE SAME MEANING AS
8 SET FORTH IN SECTION 19-1.2-103.

9 (a) ~~A member of an Indian tribe; or~~

10 (b) ~~Eligible for membership in an Indian tribe and who is the~~
11 ~~biological child of a member of an Indian tribe.~~

12 (84) "Indian child's tribe" ~~means:~~ HAS THE MEANING DETERMINED
13 PURSUANT TO SECTION 19-1.2-108.

14 (a) ~~The Indian tribe in which an Indian child is a member or~~
15 ~~eligible for membership; or~~

16 (b) ~~In the case of an Indian child who is a member of or eligible~~
17 ~~for membership in more than one tribe, the Indian tribe with which the~~
18 ~~Indian child has the most significant contacts.~~

19 (85) "Indian tribe" ~~means an Indian tribe, band, nation, or other~~
20 ~~organized group or community of Indians recognized as eligible for the~~
21 ~~federal governmental services provided to Indians because of their status~~
22 ~~as Indians~~ HAS THE SAME MEANING AS SET FORTH IN SECTION 19-1.2-103.

23 **SECTION 5.** In Colorado Revised Statutes, 19-2.5-502, **amend**
24 (5)(a) introductory portion and (5)(b) as follows:

25 **19-2.5-502. Petition initiation - petition form and content.**

26 (5) (a) Pursuant to ~~section 19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19, in
27 ~~those~~ delinquency proceedings to which the federal "Indian Child Welfare

1 Act of 1978", 25 U.S.C. sec. 1901 et seq., ~~as amended~~, applies, including,
2 but not limited to, status offenses such as the illegal possession or
3 consumption of ethyl alcohol or marijuana by an underage ~~person~~
4 INDIVIDUAL or illegal possession of marijuana paraphernalia by an
5 underage person, as described in section 18-13-122, and possession of
6 handguns by juveniles, as described in section 18-12-108.5, the petition
7 must:

8 (b) If notices were sent to the INDIAN CHILD'S parent or Indian
9 custodian ~~of the child~~ and to the Indian child's tribe pursuant to ~~section~~
10 ~~19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19, the postal receipts must be
11 attached to the petition and filed with the court or filed within fourteen
12 days after the filing of the petition, as specified in ~~section 19-1-126(1)(c)~~
13 ARTICLE 1.2 OF THIS TITLE 19.

14 **SECTION 6.** In Colorado Revised Statutes, 19-3-502, **amend**
15 (2.7)(a) introductory portion and (2.7)(b) as follows:

16 **19-3-502. Petition form and content - limitations on claims in**
17 **dependency or neglect actions.** (2.7) (a) Pursuant to ~~the provisions of~~
18 ~~section 19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19, the petition must:

19 (b) If notices were sent to the INDIAN CHILD'S parent or Indian
20 custodian ~~of the child~~ and to the Indian child's tribe pursuant to ~~section~~
21 ~~19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19, the postal receipts ~~shall~~ **MUST** be
22 attached to the petition and filed with the court or filed within ~~ten~~
23 **FOURTEEN** days after the filing of the petition, as specified in ~~section~~
24 ~~19-1-126(1)(c)~~ ARTICLE 1.2 OF THIS TITLE 19.

25 **SECTION 7.** In Colorado Revised Statutes, 19-3-602, **amend**
26 (1.5)(a) introductory portion and (1.5)(b) as follows:

27 **19-3-602. Motion for termination - separate hearing - right to**

1 **counsel - no jury trial.** (1.5) (a) Pursuant to ~~the provisions of section~~
2 ~~19-1-126~~ SECTION 19-1.2-125, the motion for termination must:

3 (b) If notices were sent to the INDIAN CHILD'S parent or Indian
4 custodian ~~of the child~~ and to the Indian child's tribe, pursuant to ~~section~~
5 ~~19-1-126~~ SECTION 19-1.2-108, the postal receipts, or copies thereof, ~~shall~~
6 MUST be attached to the motion for termination and filed with the court
7 or filed within ~~ten~~ FOURTEEN days after the filing of the motion for
8 termination, as specified in ~~section 19-1-126 (1)(c)~~ SECTION 19-1.2-125.

9 **SECTION 8.** In Colorado Revised Statutes, 19-5-103, **amend**
10 (1.5)(a) introductory portion and (1.5)(b) as follows:

11 **19-5-103. Relinquishment procedure - petition - hearings.**

12 (1.5) (a) Pursuant to ~~the provisions of section 19-1-126~~ ARTICLE 1.2 OF
13 THIS TITLE 19, the petition for relinquishment ~~shall~~ MUST:

14 (b) If notices were sent to the INDIAN CHILD'S parent or Indian
15 custodian ~~of the child~~ and to the Indian child's tribe pursuant to ~~section~~
16 ~~19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19, the postal receipts ~~shall~~ MUST be
17 attached to the petition and filed with the court or filed within fourteen
18 days after the filing of the petition, as specified in ~~section 19-1-126 (1)(c)~~
19 ARTICLE 1.2 OF THIS TITLE 19.

20 **SECTION 9.** In Colorado Revised Statutes, 19-5-105.5, **amend**
21 (7.3) as follows:

22 **19-5-105.5. Termination of parent-child legal relationship**
23 **upon a finding that the child was conceived as a result of sexual**
24 **assault - legislative declaration - definitions.** (7.3) If the child is an
25 Indian child, the court shall ensure compliance with the federal "Indian
26 Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., and the
27 provisions of ~~section 19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19.

1 **SECTION 10.** In Colorado Revised Statutes, 19-5-105.7, **amend**
2 (11)(b) as follows:

3 **19-5-105.7. Termination of parent-child legal relationship in**
4 **a case of an allegation that a child was conceived as a result of sexual**
5 **assault but in which no conviction occurred - legislative declaration**
6 **- definitions.** (11) (b) If the child is an Indian child, the court shall
7 ensure compliance with the federal "Indian Child Welfare Act of 1978",
8 25 U.S.C. sec. 1901 et seq., and ~~the provisions of section 19-1-126~~
9 ARTICLE 1.2 OF THIS TITLE 19.

10 **SECTION 11.** In Colorado Revised Statutes, 19-5-208, **amend**
11 (2.5)(a) introductory portion and (2.5)(b) as follows:

12 **19-5-208. Petition for adoption - open adoption - post-adoption**
13 **contact agreement.** (2.5) (a) Pursuant to ~~the provisions of section~~
14 ~~19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19, the petition for adoption must:

15 (b) If notices were sent to the INDIAN CHILD'S parent or Indian
16 custodian ~~of the child~~ and to the Indian child's tribe pursuant to ~~section~~
17 ~~19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19, the postal receipts, or copies
18 thereof, ~~shall~~ **MUST** be attached to the petition for adoption and filed with
19 the court or filed within ~~ten~~ **FOURTEEN** days after the filing of the petition
20 for adoption, as specified in ~~section 19-1-126 (1)(c)~~ ARTICLE 1.2 OF THIS
21 TITLE 19.

22 **SECTION 12. Safety clause.** The general assembly finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, or safety or for appropriations for
25 the support and maintenance of the departments of the state and state
26 institutions.