The Laws, They are A’Changin-
Changes to the Nebraska ICWA
and BIA Guidelines

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What is Nebraska Appleseed?
Nebraska Appleseed is a nonprofit organization that
fights for justice and opportunity for all Nebraskans.

What we do
We take a systemic approach to complex issues:

• Child welfare
• Affordable healthcare
• Immigration policy
• Poverty

We take our work wherever it does the most good – at the
courthouse, at the statehouse, or in our community.
**Roadmap**

- Background on federal and state ICWA
- Procedural changes
- Substantive changes
- Changes made only in the finalized BIA Regulations
- Technical questions and answers
- Panel discussion with tribal professionals and representatives.

**My Background**

- I do not self-identify as Native American.
- I have had the opportunity to work with and learn from tribal members and other community partners on ICWA issues.
- With many others, I was involved in the efforts to pass LB 566 in 2015.
- My focus and experience with ICWA is in the context of foster care cases.

**Background on Federal ICWA**

- The federal Indian Child Welfare Act (ICWA) was passed by Congress in 1978.
- Codified at 25 U.S.C. 1901-1963
- Passed in response to concerns that Indian children were disproportionately removed from their homes and placed in non-Indian foster or adoptive homes and institutions.
  - At the time of ICWA’s enactment, 25-35% of all Indian children had been removed from their Tribes and families and placed in adoptive homes; about 90% of those adoptions were in non-Indian homes. *Mississippi Choctaw Indian Band v. Holyfield*, 490 U.S. 30 (1989).
- Tribes feared for their survival.
The BIA Guidelines

- The BIA published guidelines for state courts on the requirements in ICWA in 1979.
- Located at 44 Fed. Reg. 67584 (Nov. 26 1979)
- The 1979 guidelines provided instruction on:
  - Whether the ICWA applies in a case
  - Notice to Tribes
  - Provisions for removal of an Indian child
  - Requests to transfer a case to tribal court
  - Placement preferences for Indian children
  - Requirements for the adjudication and termination stages of a case
- Nebraska Appellate courts have generally looked to the BIA guidelines in interpreting the ICWA. *In re Interest of Zylena R.*, 284 Neb. 834 (2012).

New BIA Guidelines

- The BIA published new guidelines for state courts on ICWA requirements on February 25, 2015.
- The 2015 guidelines provide additional instruction on:
  - Active efforts
  - Custody of the child
  - Imminent physical damage or harm
  - Whether the ICWA applies in a case
  - Emergency removal practices
  - Transfer of jurisdiction to tribal court
  - Requirements for the adjudication and termination stages of a case
- The new BIA Guidelines immediately superseded and replaced the old BIA guidelines and also include guidance for human service or placing agencies.

New BIA Regulations

- The BIA published finalized regulations for state courts on ICWA requirements on June 8, 2016.
- Located at 25 CFR 23 (June 8, 2016).
- The 2016 Regulations focus on:
  - Applicability
  - Inquiry
  - Emergency Proceedings
  - Notice
  - Qualified Expert Witnesses
  - Placement Preferences
  - Voluntary Proceedings
- The new regulations go into effect on December 12, 2016, and unlike the former guidelines, are fully enforceable and are to be afforded Chevron deference.
The Nebraska Indian Child Welfare Act

- The Nebraska Legislature enacted the NICWA in 1985.
- Similar provisions as the federal Act
  - Purpose of Act. The purpose of the Nebraska Indian Child Welfare Act is to clarify state policies and procedures regarding the implementation by the State of Nebraska of the Federal Indian Child Welfare Act, 25 U.S.C. 1901 et seq. It shall be the policy of the state to cooperate fully with Indian Tribes in Nebraska in order to ensure that the intent and provisions of the Federal Indian Child Welfare Act are enforced.

The Nebraska Indian Child Welfare Act in 2015

- The Nebraska Legislature enacted LB 566 in 2015.
- LB 566 modifies and clarifies key procedural and substantive provisions of the NICWA.
  - It shall be the policy of the state to cooperate fully with Indian Tribes in Nebraska in order to ensure that the intent and provisions of the federal Indian Child Welfare Act are enforced. This cooperation includes recognizing by the state that Indian Tribes have a continuing and compelling interest in an Indian child whether or not the Indian child is in the physical or legal custody of a parent, an Indian custodian, or an Indian extended family member at the commencement of an Indian child custody proceeding or the Indian child has resided or is domiciled on an Indian reservation. The state is committed to protecting the essential tribal relations and best interests of an Indian child by promoting practices consistent with the federal Indian Child Welfare Act and other applicable law designed to prevent the Indian child’s voluntary or involuntary out-of-home placement.

Tribal Presence

- Four Tribes have governmental headquarters within Nebraska’s borders: the Omaha Tribe, the Ponca Tribe, the Santee Sioux Nation, and the Winnebago Tribe.
- Several Tribes have reservation land in Nebraska
  - The Omaha and Winnebago Tribes have reservation land in Thurston County; the Santee Sioux Nation has reservation land in Knox County; and the Ponca Tribe has 12 counties that are designated as service areas by federal law.
  - In addition, the Oglala Sioux Tribe’s Pine Ridge Reservation extends into Sheridan County and the Sac and Fox Nation and the Iowa Tribe’s reservation lands each extend into Richardson County.
- In addition, many members of other Tribes reside in Nebraska, representing over 200 Tribes.
Procedural Changes

• Inquiry
• Legal Representation of Tribes
• Participation of Multiple Tribes
• Additional Notice Requirements

Inquiry: LB 566

• The court’s Inquiry
  – In any case where a petition alleges the child is within the meaning of Neb. Rev. Stat. § 43-247(3)(a), or a petition to terminate parental rights is filed, the court must inquire as to whether any party believes an Indian child is involved in the proceedings.

• The Hotline’s Inquiry
  – The Child Abuse and Neglect Hotline operated by DHHS must inquire as to whether the individual calling believes an Indian child is involved in the intake. The hotline worker must immediately document the suspected involvement of an Indian child and report that information to his or her supervisor.

Inquiry: New BIA Regulations

• The court’s Inquiry
  – The court is required to ask each party to the case whether the party knows or has reason to know that the child is an Indian child. This inquiry is made at the commencement of the proceeding and all responses should be on the record. The court must inform parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.
  – If there is reason to know that an Indian child is involved in the proceedings, but there is not definitive evidence available, the court must:
    • Confirm that the agency or other party used due diligence and worked with all of the Tribes to verify whether child’s status; and
    • Treat the child as an Indian child until it is determined on the record that they are not.
**Inquiry: New BIA Regulations**

- A court is deemed to "reasonably know about the existence of an Indian child in a case if:
  - A party or officer of the court informs the court that the child is an Indian child;
  - A party or officer of the court informs the court that it has discovered information indicating the child is an Indian child;
  - The child gives the court reason to know they are an Indian child;
  - The court is informed that the child, parent, or Indian custodian resides or is domiciled on a reservation or Alaska Native village;
  - The court is informed that the child is or has been a ward of a Tribal court; or
  - The court is informed that either parent or the child possesses an I.D. indicating tribal membership.

- In seeking verification of the child’s status in voluntary proceedings, the court (and Tribe) must keep information relevant to the inquiry under seal.

25 CFR 23.107(c)–(d)

**Legal Representation of Tribes: LB 566**

- An Indian child’s Tribe, or Tribes, have a right to intervene and fully participate in any “child custody proceeding.”
- A Tribe is not required to be represented by legal counsel in order to intervene and participate in an ICWA case.
- A Tribe is not required to associate with local counsel or pay Pro Hac Vice fees in order to participate in an ICWA proceeding.
- See also In re Interest of Elias L., 277. Neb. 1023 (2009) (concluding that a Tribe’s right to intervene under the ICWA preempts Nebraska’s laws regulating the unauthorized practice of law).

Neb. Rev. Stat. § 43-1505(3)

**The Indian Child’s Tribe**

- The ICWA previously defined Indian child’s Tribe as:
  - “the Indian Tribe in which an Indian child is a member or eligible for membership or (b) in the case of an Indian child who is a member of or eligible for membership in more than one Tribe, the Indian Tribe with which the Indian child has the more significant contacts”

Multiple Tribes in a Case: LB 566

- LB 566 allows for the participation of multiple Tribes in a case and for one Tribe to be the Indian child’s “Primary Tribe.”
- An Indian child’s primary Tribe takes precedence over other Tribes in issues of transfer, placement preferences, and in filing a petition to invalidate.
- The applicable Tribes get to choose which Tribe is the primary Tribe and if they cannot reach an agreement the court will select the primary Tribe based on the child’s contacts with the Tribes.

Neb. Rev. Stat. § 43-1504

Multiple Tribes in a Case: New BIA Regulations

- If the Indian child is a member or eligible for membership in only one Tribe, that Tribe must be designated as the Indian child’s Tribe.
- If the Indian child meets the definition of Indian child through more than one Tribe, deference should be given to the Tribe in which the child is already a member, unless agreed to by the Tribes.
- If an Indian child meets the definition of Indian child through more than one Tribe and is a member in multiple or no Tribes, the court must provide the Tribes with the opportunity to determine which Tribe should be the Indian child’s Tribe.
- If the Tribes cannot reach an agreement, the court determines the Tribe by determining which Tribe has more significant contacts with child by taking into consideration:
  - Parental preference;
  - Length of domicile on or near a reservation;
  - Tribal membership of custodial parent or Indian custodian;
  - Interest asserted by each Tribe;
  - Whether there was a previous adjudication of the child by one of the Tribes; and
  - Self-identification of a sufficiently mature child.

25 CFR 23.109

Notice

- The ICWA previously discussed notice as follows:
  - “In any involuntary proceeding in a state court, when the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child’s Tribe, by certified or registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the Tribe cannot be determined, such notice shall be given to the secretary in like manner, who may provide the requisite notice to the parent or Indian custodian and the Tribe. No foster care placement or termination of parental rights proceedings shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the Tribe or the secretary.”

Neb. Rev. Stat. § 43-1505
**Notice: LB 566**

LB 566 clarifies how the notice requirement is satisfied in ICWA cases by:

- requiring that all notice be completed by registered mail with return receipt requested
- requiring that a notice contain information additional to the requirements in [the former] 25 C.F.R. 23.11, including:
  - A statement indicating what attempts have been made to locate the names and last known addresses of the Indian child, parents, paternal and maternal grandparents, and Indian custodians, if the names and addresses cannot be located.
  - The tribal affiliation of the parents or Indian custodian
  - A statement about whether the child’s domicile is on a reservation
  - Identification of tribal court custody orders

LB 566 requires that the notice must be filed with the court within three days of issuance.

LB 566 requires that notice be sent in voluntary foster care cases.

Neb. Rev. Stat. § § 43-1505(4) and 43-1506(2)

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**Notice: New BIA Regulations**

When a court knows or has reason to know that an Indian child is involved in a case, the court must ensure:

- The party seeking placement promptly sends notice by registered or certified mail to each Tribe in which the child may be eligible for membership, the child’s parents, and the Indian custodian.
- The notice must be filed with the court with proof of service and include:
  - The child’s name, birthdate, and birthplace;
  - All known names of the parents, the parents’ birthdates and birthplaces, and Tribal enrollment numbers if known;
  - If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors;
  - The name of each Indian Tribe in which the child is a member (or may be eligible for membership)
  - A copy of the petition and information about the forthcoming hearing if scheduled;

25 CFR 23.111

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**Notice: New BIA Regulations**

The notice must also set out:

- The name and address of the petitioner and their attorney;
- The right of the parent or Indian custodian to intervene;
- The Tribe’s right to intervene;
- That the parent or Indian custodian is entitled to counsel;
- The right to request an additional 20 days to prepare for the proceedings;
- The right of the parent or Indian custodian and Tribe to petition for transfer;
- The mailing addresses and phone numbers of the court and all parties;
- The potential legal consequences of the court action;
- That all parties must keep the information in the notice confidential

If the identity of the parents, Indian custodian, or Tribe can’t be ascertained than the notice must be sent to the BIA.

If there is reason to know that the parent or Indian custodian has limited English proficiency the court must provide language access services.

If the parent or Indian custodian appears in court without counsel, the court must inform them of their right to counsel, right to transfer the case, right to request additional time, and right to intervene (if not already a party).

25 CFR 23.111
Substantive Changes

• Best Interests
• Voluntary Foster Care Proceedings
• Active Efforts
• Placement Preferences
• Qualified Expert Witnesses ("QEW")
• Emergency Foster Care Placement

Best Interests: LB 566

• LB 566 provides a definition of “Best Interests of the Indian Child” which includes:
  – Complying with the Federal Indian Child Welfare Act
  – Complying with the Nebraska Indian Child Welfare Act
  – Complying with other applicable laws designed to prevent the voluntary or involuntary out-of-home placement of an Indian child
  – Trying, to the greatest extent possible, to place the child in a foster or adoptive home that:
    • Reflects the unique values of the Indian child’s tribal culture
    • Is able to assist the child in establishing, developing, and maintaining a political, cultural and social relationship with the Indian child’s Tribe or Tribes and tribal community

Neb. Rev. Stat. § 43-1503(2)

Best Interests: New BIA Regulations

• The comments to the BIA regulations consistently reference that compliance with the ICWA is in the child’s best interests, but reject an independent best interests analysis.
  – “Congress, however, also recognized that talismanic reliance on the “best interests” standard would not actually serve Indian children’s best interests, as that “legal principle is vague, at best”…[i]nstead of a vague standard, Congress provided specific procedural and substantive protections through pre-established, objective rules that avoid decisions being made based on the subjective values that Congress was worried about.”
• The BIA regulations do not use the term “best interests.”

25 CFR 23 Discussion of Rule and Comments
Voluntary Foster Care: LB 566

- LB 566 adds a "voluntary foster care placement" to the list of applicable proceedings that are covered by the ICWA.
  - This only includes a non-court proceeding in which the Department or the State is facilitating a voluntary foster care placement or "in-home services" to families at risk of entering the foster care system.
- The full protections of the ICWA do not apply to this proceeding, instead only the following protections apply:
  - Active efforts
  - Notice (within 5 days of services starting)
  - Intervention (or participation in the provision of services)
  - Placement preferences
  - Additional procedural assurances for relinquishments and terminations arising out of voluntary foster care placements

Voluntary Proceedings: New BIA Regulations

- "Voluntary proceeding means a child-custody proceeding that is not an involuntary proceeding, such as a proceeding for foster-care, preadoptive, or adoptive placement that either parent, both parents, or the Indian custodian has, or his or her or their free will, without a threat of removal by a State agency, consented to for the the Indian child, or a proceeding for voluntary termination of parental rights."

Voluntary Proceedings: New BIA Regulations

- In a voluntary proceeding:
  - The State court must require the parties to state on the record whether there is reason to believe the child is an Indian child;
  - If there is reason to believe the child is an Indian child, the State court must ensure that the party seeking placement has taken all reasonable steps to verify the child's status (including contacting the Tribe);
  - A consenting parent's request for anonymity must be respected by the Tribe and State court;
  - ICWA's placement preferences apply;
  - The parent or Indian custodian's consent must consent to a placement in writing and recorded in a court of competent jurisdiction pursuant to § 25 CFR 23.125—23.1.28


25 CFR 23.124
**Active Efforts**

- The ICWA previously did not define active efforts, but stated:
  - “Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”

  Neb. Rev. Stat. § 43-1505(4)

**Active Efforts: LB 566**

- LB 566 provides a definition of what constitutes active efforts. The list includes:
  - A concerted level of casework, prior to and after the removal of an Indian child, consistent with the prevailing social and cultural conditions and way of life of the Indian child’s Tribe;
  - A request to convene traditional and customary support and services;
  - Actively engaging, assisting, and monitoring the family’s access to and progress in culturally appropriate resources;
  - Identification of and provision of information to the Indian child’s extended family members concerning appropriate community, state, and federal resources;
  - Identification of and attempts to engage tribal representatives;
  - Consultation with extended family members to identify family or tribal support services; and
  - Exhaustion of all available tribally appropriate family preservation alternatives.

  [Neb. Rev. Stat. § 43-1503(1)]

**Active Efforts: LB 566**

- LB 566 also provides additional provisions to ensure evidence of active efforts are put before the court in every ICWA case
  - The Department or the State is required to provide a written report of its attempts to provide active efforts at every hearing involving an Indian child. Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that:
    - 1) active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; or
    - 2) unite the parent or Indian custodian with the Indian child; and
    - 3) that these efforts have proved unsuccessful.

  [Neb. Rev. Stat. § 43-1505(4)]
Active Efforts: LB 566

Any written evidence showing that active efforts have been made shall be admissible in a proceeding under the Nebraska Indian Child Welfare Act.

Prior to the court ordering placement of the child in foster care or the termination of parental rights, the court shall make a determination that:

• active efforts have been provided; or
• that the party seeking placement or termination has demonstrated that attempts were made to provide active efforts to the extent possible under the circumstances.

Active Efforts: New BIA Regulations

The new BIA regulations provide a non-exclusive list of what may be encompassed by active efforts. The list includes:

• Conducting a comprehensive assessment of the Indian child’s family;
• Identifying appropriate services for the parents;
• Identifying, notifying, and inviting representatives of the Indian child’s Tribe to participate in providing services and participate in planning;
• Conducting a diligent search for extended family members and consulting with extended family members;
• Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child’s Tribe;
• Taking steps to keep siblings together when possible;
• Supporting regular visits with parents or Indian custodians in the most natural setting possible;
• Identifying community resources like housing, financial, transportation, mental health, substance abuse, and peer support services;
• Monitoring progress in services;
• Considering alternative ways to address the needs of the Indian family; and
• Providing post-reunification services.

Placement Preferences

The first placement preference for Indian children, for both adoptive and foster care placements under the ICWA, has always been extended family members.

ICWA has always allowed Tribes to create their own definition of extended family.

If no tribal law definition exists, the ICWA defines extended family members as:

• “a person who has reached the age of eighteen and who is the Indian child’s parent, grandparent, aunt or uncle, clan member, band member, sibling, brother-in-law or sister-in-law, niece or nephew, cousin, or stepparent”

This definition may include both Indian and non-Indian relatives

Legislative history indicates that, where possible, an Indian child should remain in the Indian community, but the section “is not to be read as precluding the placement of an Indian child with a non-Indian [relative] family.”

Placement Preferences: LB 566
Adoptive Placement Preferences

• In any adoptive placement of an Indian child under state law, a preference shall be given, in the absence of good cause to the contrary, to a placement with the following in descending priority order:
  – A member of the Indian child’s extended family;
  – Other members of the Indian child’s Tribe or Tribes;
  – Other Indian families; or
  – A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child’s Tribe or Tribes.

Neb. Rev. Stat. § 43-1508(1)

Placement Preferences: LB 566
Foster Placement Preferences

• In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with one of the following in descending priority order:
  – A member of the Indian child’s extended family;
  – Other members of the Indian child’s Tribe or Tribes;
  – A foster home licensed, approved, or specified by the Indian child’s Tribe or Tribes;
  – An Indian foster home licensed or approved by an authorized non-Indian licensing authority;
  – A non-Indian foster home licensed or approved by an Indian Tribe or Tribes;
  – A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child’s Tribe;
  – An Indian facility or program for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child’s needs; or
  – A non-Indian facility or program for children approved by an Indian Tribe.

Neb. Rev. Stat. § 43-1508(2)

Placement Preferences: LB 566
Good Cause to Deviate

• LB 566 codifies the old BIA guidelines requirements for finding good cause to deviate from the ICWA’s placement preferences.
  – Good cause to deviate includes:
    • The request of the biological parents or the Indian child when the Indian child is at least twelve years of age;
    • The extraordinary physical or emotional needs of the Indian child as established by testimony of a qualified expert witness; or
    • The unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria.
  – The burden to show there is good cause to deviate from the placement preferences must be met by clear and convincing evidence by the party urging that the preferences not be followed.

Neb. Rev. Stat. § 43-1508(4)
Placement Preferences: BIA Regulations Good Cause to Deviate

• The BIA regulations update and add additional details in considering whether there is good cause to deviate from the placement preferences.
  – A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations:
    • The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
    • The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
    • The presence of a sibling attachment that can be maintained only through a particular placement; and
    • The unavailability of a suitable placement after a diligent search.
  – A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.
  – A placement may not depart from the preferences based solely on ordinary or attachment or bonding that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

Qualified Expert Witnesses: LB 566

• LB 566 defines a Qualified Expert Witness as one of the following persons in descending priority order:
  – A member of the Indian child’s Tribe or Tribes who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family and childrearing practices;
  – A member of another Tribe who is recognized to be a qualified expert witness by the Indian child’s Tribe or Tribes based on his or her knowledge of the delivery of child and family services to Indians and the Indian child’s Tribe or Tribes;
  – A lay expert witness that possesses substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child’s Tribe or Tribes;
  – A professional person having substantial education and experience in the area of his or her specialty who can demonstrate knowledge of the prevailing social and cultural standards and childrearing practices within the Indian child’s Tribe or Tribes; and
  – Any other professional person having substantial education in the area of his or her specialty.

• A court may still assess the credibility of individual qualified expert witnesses.

Qualified Expert Witnesses: New BIA Guidelines

• The New BIA Regulations state that:
  – A qualified expert witness should be qualified to testify as to the prevailing social and cultural standards of the Indian child’s Tribe.
  – A person may be designated by the Indian child’s Tribe as being qualified to testify to the prevailing social and cultural standards of the child's Tribe.
  – The court or any party may request the assistance of the Indian child’s Tribe or the BIA office service the child's Tribe in locating a QEW.
  – The social worker regularly assigned to the child may not serve as a QEW in child-custody proceedings concerning the child.
Emergency Foster Care Placement: LB 566

*Foster care placement which shall mean any action removing an Indian child from his or her parent or Indian custodian for temporary or emergency placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated*  


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Emergency Foster Care Placement: New BIA Regulations

- The New BIA Regulations state that:
  - Emergency removals must terminate immediately when no longer necessary to prevent imminent physical damage or harm to the child.
  - The court must:
    - Make a finding on the record that the removal or placement is necessary to prevent imminent physical damage or harm to the child;
    - Promptly hold a hearing on whether the emergency removal continues to be necessary when information indicates the emergency has ended;
    - At any court hearing during the emergency proceeding, determine whether the removal is no longer necessary to prevent imminent physical damage or harm to the child, and
    - Immediately terminate the emergency proceeding if there is sufficient evidence to determine the placement is no longer necessary.

80 Fed. Reg. 10146, B.8

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Emergency Foster Care Placement: New BIA Regulations

- An emergency proceeding should not be continued for more than 30 days unless the court determines:
  - Reunification would subject the child to imminent physical damage or harm;
  - The court has been unable to transfer the case to the Tribe; and
  - It has not been possible to initiate a "child custody proceeding."

- An emergency proceeding can be terminated by one or more of the following actions:
  - Initiation of a child-custody proceeding;
  - Transfer to a Tribal Court; or
  - Reunification.

- A petition for a court order authorizing the removal, or its accompanying documents, should contain:
  - A statement of the risk to the child and any evidence that the placement continues to be necessary and a detailed account of the situation that led to the removal;
  - The name, Tribal affiliation, and last addresses of the child, parents, and Indian custodian;
  - The age, residence, and domicile of the child, and if child is domiciled on a reservation a statement of efforts made to contact/transfer the case to the Tribe;
  - The steps taken to provide notice to the parents, Indian custodians, and Tribe, or a detailed explanation of the efforts made to locate and contact them; and
  - A statement of the efforts to assist the Indian family.

25 CFR 23.113
Questions?

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**Indian Child Welfare Act (ICWA) Requirements**  
**Judicial Bench Guide**  

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<tbody>
<tr>
<td>Definition of Indian Child</td>
<td>Indian child shall mean any unmarred person who is under age eighteen and is either (a) a member of an Indian Tribe or (b) is eligible for membership in an Indian Tribe and is the biological child of a member of an Indian Tribe. (Neb. Rev. Stat. § 43-1503(8))</td>
</tr>
<tr>
<td>Indian Child’s Tribe or Tribes</td>
<td>The Indian child’s Tribe or Tribes means a Tribe in which an Indian child is a member or eligible for membership. In the case of an Indian child who is a member of or eligible for membership in more than one Tribe, the Indian child’s primary Tribe is determined by the procedures enumerated at Neb. Rev. Stat. § 43-1504. (Neb. Rev. Stat. § 43-1503(5))</td>
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<tr>
<td>Best Interests</td>
<td>Must comply with Federal ICWA, Nebraska ICWA and other applicable laws designed to prevent the voluntary or involuntary out-of-home placement of an Indian child and try to the greatest extent possible to place an Indian child in a foster or adoptive home that is consistent with the intent of the law. (Neb. Rev. Stat. § 43-1503(2))</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Tribes have exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled on a reservation, or over any child who is a ward of the Tribal court regardless of residence or domicile. Tribes have concurrent jurisdiction with state courts as to Indian children who reside or are domiciled off the reservation. (Neb. Rev. Stat § 43-1504)</td>
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<tr>
<td>Notice</td>
<td>Notice is required to be completed in clear and understandable language and sent by registered mail to all of the child’s Tribes, parents, and if applicable the Indian Custodian. The notice must include the information describe in 25 C.F.R. 23.11 and also be sent in voluntary foster care cases. Must also include information about: 1) attempts to locate certain familial information, 2) Tribal familial affiliation, 3) domicile and 4) Tribal court orders. Notice must be filed in court within three days of issuance in involuntary court proceedings. (Neb. Rev. Stat. §§ 43-1505(4), 43-1505.01, 43-1506(2)), (80 Fed. Reg. 10146, B.6)</td>
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<td>Voluntary Services/ Alternative Response</td>
<td>The Nebraska ICWA applies to voluntary services such as Alternative Response and any other non-court involved proceedings in which DHHS or the State is facilitating a voluntary foster care placement or in-home services to families at risk of entering the foster care system. Only some protections of the ICWA will apply in voluntary foster care cases, including active efforts, notice, intervention, placement preferences, and additional procedural assurances for relinquishments and TPRs arising from a voluntary foster care placement. (Neb. Rev. Stat. §§ 43-1503(1), 43-1504, 43-1505, 43-1506)</td>
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<tr>
<td>Good Cause to Deviate from Placement Preferences</td>
<td>There are four reasons to deviate from the placement preferences including: 1) request of the biological parents, 2) request of the Indian child when the child is at least twelve years of age, 3) extraordinary physical or emotional needs of the Indian child or 4) the unavailability of suitable families for placement after a diligent search has been made. Burden to show there is good cause to deviate must be met by clear and convincing evidence by the party urging preferences not be followed. (Neb. Rev. Stat. § 43-1508(4))</td>
</tr>
</tbody>
</table>
| Emergency Foster Care Placement | • ICWA applies in emergency foster care placements. (Neb. Rev. Stat. § 43-1503(3))  
• Should be severely limited, applying only in circumstances involving imminent physical damage or harm; ICWA applies in emergency placements regardless if Indian child is a resident of or domiciled on a reservation, the court must treat a child that is suspected to be an Indian child as an Indian child, and emergency removal/placement must be as short as possible (30 days). The removal must terminate as soon as the emergency situation ends. (80 Fed. Reg. 10146, B.8) |
| Transfer | • In any state court proceeding for the foster care placement of, or TPR to, an Indian child not domiciled or residing within the reservation of the Indian child’s Tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the Tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child’s Tribe: Provided, that such transfer shall be subject to declination by the Tribal court of such Tribe. (Neb. Rev. Stat. § 43-1504(2))  
• A Parent, Indian custodian or Tribe can petition to transfer. *Id.*  
• Right to transfer is available at any stage of a proceeding, including during an emergency removal and TPR. *(In re Interest of Zylena R., 284 Neb. 834 (2012)), (80 Fed. Reg. 10146, C.1.)*  
• Good cause may be found if either parent objects, Tribal court declines, or state court otherwise determines that good cause exists. (Neb. Rev. Stat. § 43-1504(2)), (80 Fed. Reg. 10146, C.3.) |
| Inquiry | • In any case where a petition alleges the child is within the meaning of Neb. Rev. Stat. § 43-247(3)(a), or a TPR petition is filed, the court must inquire as to whether any party believes an Indian child is involved in the proceedings. (Neb. Rev. Stat. § 43-279.01(4))  
• The court, DHHS, or the Administrative Office of Probation (Probation) are required to ask each party to the case whether there is reason to believe that an Indian child is involved in the child custody proceeding. The court may require DHHS or Probation to provide genograms, addresses, and domicile information for the child and his or her family; and confirmation that DHHS or Probation used active efforts to verify the child’s Tribal eligibility status. (80 Fed. Reg. 10146, B.2.)  
• The court, DHHS, or Probation are deemed to reasonably know about the existence of an Indian child in a case if a party Tribe, or agency provides information about the child’s eligibility; the child gives the agency or court reason to believe he or she is an Indian child; the domicile or residence of the child, parents, or Indian custodian is known to be in an Indian reservation or in a predominately Indian community; or an employee of the agency or officer of the court is involved in the proceeding has actual knowledge that the child may be an Indian child. (80 Fed. Reg. 10146, B.2.)  
• The Child Abuse and Neglect Hotline must inquire as to whether the individual calling believes an Indian child is involved. (Neb. Rev. Stat. § 43-1514) |
**Applicability**

ICWA is applicable to child custody proceedings, which includes foster care placement, termination of parental rights, pre-adoptive or adoptive placement, and voluntary foster care when an Indian child is involved. (Neb. Rev. Stat. § 43-1503(3)) *(In re Interest of Zylena R., 284 Neb. 834 (2012))*

**Right to extra time to prepare**

No foster care placement or TPR proceeding shall be held until at least 10 days after receipt of notice by parent or Indian custodian and the Tribe, or BIA. Court shall grant 20 days more to parent, Indian custodian or Tribe, upon request, to prepare for proceeding. *(Neb. Rev. Stat. § 43-1505(1))*

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**Active Efforts**

Include:

- a concerted level of casework, prior to and after the removal of an Indian child, consistent with prevailing social and cultural conditions and way of life of the Indian child’s Tribe;
- a request to convene traditional and customary support and services; actively engaging, assisting, and monitoring the family’s access to and progress in culturally appropriate resources;
- identification of and provision of information to the Indian child’s extended family members concerning appropriate community, state, and federal resources;
- identification of and attempts to engage Tribal representatives; consultation with extended family members to identify family or Tribal support services; and exhaustion of all available Tribally appropriate family preservation alternatives. *(Neb. Rev. Stat. § 43-1503(1))*

The Department, State, or, in some cases, Probation is required to provide written report of its attempts to provide active efforts at every hearing involving an Indian child. Any party seeking to effect a foster care placement of, or TPR to, an Indian child under state law shall satisfy the court that active efforts have been made to prevent the breakup of the Indian family, or unite the parent or custodian with Indian child, and that these efforts have proved unsuccessful. *(Neb. Rev. Stat. § 43-1505(4))*

Any written evidence showing that active efforts have been made shall be admissible. Prior to the court ordering placement of the child in foster care or TPR, the court shall make a determination that active efforts have been provided or the party has demonstrated attempts were made to provide active efforts to the extent possible under the circumstances. *(Neb. Rev. Stat. § 43-1505(4))*

An additional, non exhaustive, list of active efforts has also been provided by the BIA guidelines *(80 Fed. Reg. 10146, A.2.)*

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**Placement Preferences: Foster Care & Preadoptive**

In any foster care or preadoptive placement, preference shall be given, in the absence of good cause to the contrary, to a placement with the following **in descending priority order**:

- a member of the Indian child’s extended family;
- other members of the Indian child’s Tribe or Tribes;
- a foster home licensed, approved, or specified by the Indian child’s Tribe or Tribes;
- an Indian foster home licensed or approved by an authorized non-Indian licensing authority;
- a non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child’s Tribe;
- an Indian facility or program for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child’s needs;
- or a non-Indian facility or program for children approved by an Indian Tribe. *(Neb. Rev. Stat. § 43-1508(2))*

**Placement Preferences: Adoptive**

In any adoptive placement of an Indian child under state law, a preference shall be given, in the absence of good cause to the contrary, to a placement with the following **in descending priority order**:

- a member of the Indian child’s extended family;
- other members of the Indian child’s Tribe or Tribes; other Indian families;
- or; a non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child’s Tribe or Tribes. *(Neb. Rev. Stat. § 43-1508(1))*

**Qualified Expert Witness (QEW)**

In order to initiate a foster care placement proceeding, the moving party must show that the child is likely to suffer “serious emotional or physical damage” in the custody of the parent or Indian custodian, by clear and convincing evidence, through the testimony of a QEW. In a TPR proceeding, this showing must be made beyond a reasonable doubt. *(Neb. Rev. Stat. §§ 43-1505(5) and (6))*

A QEW must be one of the following persons **in descending priority order**:

- a member of the Indian child’s Tribe or Tribes who is recognized by the Tribal community as knowledgeable in Tribal customs as they pertain to family and childrearing practices;
- a member of another Tribe who is recognized to be a qualified expert witness by the Indian child’s Tribe or Tribes based on his or her knowledge of the delivery of child and family services to Indians and the Indian child’s Tribe or Tribes;
- a lay expert witness that possesses substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child’s Tribe or Tribes;
- a professional person having substantial education and experience in the area of his or her specialty who can demonstrate knowledge of the prevailing social and cultural standards and childrearing practices within the Indian child’s Tribe or Tribes;
- and any other professional person having substantial education in the area of his or her specialty. *(Neb. Rev. Stat. § 43-1503(15))*

**Note:** A court may still assess the credibility of individual QEW *Id.*

QEW should have specific knowledge of the Indian Tribe’s culture and customs. *(80 Fed. Reg. 10146, D)*

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Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 23

Indian Child Welfare Act Proceedings; Final Rule
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         Washington, DC 20240, (202) 273–4680; 1849 C Street NW., MS 3642, Washington, DC 20240, (202) 273–4680; elizabeth.appel@bia.gov.
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Note: This preamble uses the prefix “FR §” to denote regulatory sections in this final rule, and “FR §” to denote regulatory sections in the proposed rule published March 20, 2015 at 80 FR 14,480.

I. Executive Summary

A. Introduction

This final rule promotes the uniform application of Federal law designed to protect Indian children, their parents, and Indian Tribes. In conjunction with this final rule, the Solicitor is issuing an M Opinion addressing the implementation of the Indian Child Welfare Act by legislative rule. See M-37307. Congress enacted the Indian Child Welfare Act (ICWA), 25 U.S.C. 1901 et seq., in 1978 to address an “Indian child welfare crisis [{] of massive proportions”; an estimated 25 to 35 percent of all Indian children had been separated from their families and placed in adoptive homes, foster care, or institutions. H.R. Rep. No. 95–1386, at 9 (1978), reprinted in 1978 U.S.C.C.A.N. 7530, 7531. Although the crisis flowed from multiple causes, Congress found that nontribal public and private agencies had played a significant role, and that State agencies and courts had often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. 25 U.S.C. 1901(4)–(5). To address this failure, ICWA establishes minimum Federal standards for the removal of Indian children from their families and the placement of these children in foster or adoptive homes, and confirms Tribal jurisdiction over child-custody proceedings involving Indian children. 25 U.S.C. 1902.

Since its passage in 1978, ICWA has provided important rights and protections for Indian families, and has helped stem the widespread removal of Indian children from their families and Tribes. State legislatures, courts, and agencies have sought to interpret and implement this Federal law, and many States should be applauded for their affirmative efforts and support of the policies animating ICWA.

However, the Department has found that implementation and interpretation of the Act has been inconsistent across States and sometimes can vary greatly even within a State. This has led to significant variation in applying ICWA’s statutory terms and protections. This variation means that an Indian child and her parents in one State can receive different rights and protections under Federal law than an Indian child and her parents in another State. This disparate application of ICWA based on where the Indian child resides creates significant gaps in ICWA protections and is contrary to the uniform minimum Federal standards intended by Congress.

The need for consistent minimum Federal standards to protect Indian children, families, and Tribes still exists today. The special relationship between the United States and the Indian Tribes and their members upon which Congress based the statute continues in full force, as does the United States’ direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian Tribe. 25 U.S.C. 1901, 1901(2). Native American children, however, are still disproportionately more likely to be removed from their homes and communities than other children. See, e.g., Attorney General’s Advisory Committee on American Indian and Alaska Native Children Exposed to Violence, Ending Violence So Children Can Thrive 87 (Nov. 2014); National Council of Juvenile and Family Court Judges, Disproportionality Rates for Children of Color in Foster Care, Fiscal Year 2013 (June 2015). In addition, some State court interpretations of ICWA have essentially voided Federal protections for groups of Indian children to whom ICWA clearly applies. And commenters provided numerous anecdotal accounts where Indian children were unnecessarily removed from their families and placed in non-Indian settings; where the rights of Indian children, their parents, or their Tribes were not protected; or where significant delays occurred in Indian child-custody proceedings due to disputes or uncertainty about the interpretation of the Federal law.

B. Overview of Final Rule

The final rule updates definitions and notice provisions in the existing rule and adds a new subpart I to 25 CFR part 23 to address ICWA implementation by State courts. It promotes nationwide uniformity and provides clarity to the minimum Federal standards established by the statute. In many instances, the standards in this final rule reflect State interpretations and best practices, as reflected in State court decisions, State laws implementing ICWA, or State guidance documents. The rule provisions also reflect comments from organizations and individuals that serve children and families (including, in particular, Indian children) and have substantial expertise in child-welfare practices.

The final rule promotes compliance with ICWA from the earliest stages of a child-welfare proceeding. Early compliance promotes the maintenance of Indian families, and the reunification of Indian children with their families whenever possible, and reduces the need for disruption in placements. Timely notification of an Indian child’s Tribe also ensures that Tribal government agencies have meaningful opportunities to provide assistance and resources to the child and family. And early implementation of ICWA’s requirements conserves judicial resources by reducing the need for delays, duplication, and appeals.

In particular, the final rule addresses the following issues:

• **Applicability.** The final rule clarifies when ICWA applies, while making clear that there is no exception to applicability based on certain factors used by a minority of courts in defining and applying the so-called “existing Indian family,” or EIF, exception.

• **Initial Inquiry.** The final rule clarifies the steps involved in conducting a thorough inquiry at the beginning of child-custody proceedings as to whether the child is an “Indian child” subject to the Act.

• **Emergency proceedings.** Recognizing that emergency removal and placements are sometimes required to protect an Indian child’s safety and welfare, the final rule clarifies the distinction between the requirements for emergency proceedings and other child-custody proceedings involving Indian children and includes provisions that help to ensure that emergency removal and placements are as short as possible, and that, when necessary, proceedings subject to the full suite of ICWA protections are promptly initiated.

• **Notice.** The final rule describes uniform requirements for prompt notice to parents and Tribes in involuntary proceedings to facilitate compliance with statutory requirements.

• **Transfer.** The final rule clarifies the requirement that a State court determine whether the State or Tribe has jurisdiction and, where jurisdiction is concurrent, establishes standards to guide the determination whether good cause exists to deny transfer (including factors that cannot properly be considered) and addresses transfer of proceedings to Tribal court.

• **Qualified expert witnesses.** The final rule provides interpretation of the term “qualified expert witness.”

• **Placement preferences.** The final rule clarifies when and what placement preferences apply in foster care, pre-adoptive, and adoptive placements, provides presumptive standards for what may constitute good cause to depart from the placement preferences, and prohibits courts from considering
certain factors as the basis for departure from placement preferences.

- **Voluntary proceedings.** The final rule clarifies certain aspects of ICWA’s applicability to voluntary proceedings, including addressing the need to determine whether a child is an “Indian child” in voluntary proceedings and specifying the requirements for obtaining consent.

- **Information, recordkeeping, and other rights.** The final rule addresses the rights of adult adoptees to information and sets out what records States and the Secretary must maintain.

The Department carefully considered the comments on the proposed rule and made changes responsive to those comments. The reasons for the changes are described in the section-by-section analysis below. In particular, while the proposed rule would have been directed to both State courts and agencies, the Department has focused the final rule on the standards to be applied in State-court proceedings. Most ICWA provisions address what standards State courts must apply before they take actions such as exercising jurisdiction over an Indian child, ordering the removal of an Indian child from her parent, or ordering the placement of the Indian child in an adoptive home. The final rule follows ICWA in this regard.

Further, State courts are familiar with applying Federal law to the cases before them. Several ICWA provisions do apply, either directly or indirectly, to State and private agencies, see, e.g., 25 U.S.C. 1915(c); id. 1922; see also id. 1912(a). Nothing in this rule alters these obligations. And agencies need to be alert to the standards identified in the final rule, since these will determine what a court will require with respect to issues like notice to parents and Tribes (FR § 23.111), emergency proceedings (FR § 23.113), active efforts (FR § 23.120), and placement preferences (FR § 23.129–132).

The Department is cognizant that ICWA matters address some of the most fundamental elements of human life—children, familial ties, identity, and community. They often involve circumstances unique to the parties before the court and may require difficult and sometimes heart-wrenching decisions. The Department is also fully aware of the paramount importance of Indian children to their immediate and extended families, their communities, and their Tribes. In the final rule, the Department carefully balanced the need for more uniformity in the application of Federal law with the legitimate need for State courts to exercise discretion over how to apply the law to each case, while keeping in mind that Congress enacted ICWA in part to address a concern that State courts were exercising their discretion inappropriately, to the detriment of Indian children, parents, and Tribes. In some cases, the Department determined that particular standards or practices are better suited to guidelines; the Department anticipates issuing updated guidelines prior to the effective date of this rule (180 days from issuance). These considerations are discussed further in the section-by-section analysis below.

**II. Background**

**A. Background Regarding Passage of ICWA**

Congress enacted ICWA in 1978 to address the policies and practices that resulted in the “wholesale separation of Indian children from their families.” See H.R. Rep. No. 95–1386, at 9. After several years of investigation, Congress had found that an alarmingly high percentage of Indian families were broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies. 25 U.S.C. 1901(4). The congressional investigation, which resulted in hundreds of pages of legislative testimony compiled over the course of four years of hearings, deliberation, and debate, revealed “the wholesale separation of Indian children from their families.” H.R. Rep. No. 95–1386, at 9. The empirical and anecdotal evidence showed that Indian children were separated from their families at significantly higher rates than non-Indian children. In some States, between 25 and 35 percent of Indian children were living in foster care, adoptive care, or institutions. Id. Indian children removed from their homes were most often placed in non-Indian foster care and adoptive homes. AIPRC Report at 78–87. These separations contributed to a number of problems, including the erosion of a generation of Indians from Tribal communities, loss of Indian traditions and culture, and long-term emotional effects on Indian children caused by loss of their Indian identity. See 1974 Senate Hearing at 1–2, 45–51 (statements of Sen. James Abourezk, Chairman, Subcomm. on Indian Affairs and Dr. Joseph Westermeyer, Dep’t of Psychiatry, University of Minn.).

Congress found that removal of children and unnecessary termination of parental rights were utilized to separate Indian children from their Indian communities. The four leading factors contributing to the high rates of Indian child removal were a lack of culturally competent State child-welfare standards for assessing the fitness of Indian families; systematic due-process violations against both Indian children and their parents during child-custody procedures; economic incentives favoring removal of Indian children from their families and communities; and social conditions in Indian country. H.R. Rep. No. 95–1386, at 10–12.

Congress also found that many of these problems arose from State actions, i.e., the States, exercising their recognized jurisdiction over Indian child-custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. 25 U.S.C. 1901(5). The standards used by State and private child-welfare agencies to assess Indian parental fitness promoted unrealistic non-Indian socioeconomic norms and failed to account for legitimate cultural differences in Indian families. Time and again, “social workers, ignorant of Indian cultural values and social norms, mad[e] decisions that [we]re wholly inappropriate in the context of Indian family life and so they frequently discover[ed] neglect or abandonment where none exist[ed].” H.R. Rep. No. 95–1386, at 10. For example, Indian parents might leave their children in the care of extended-family members, sometimes for long periods of time. Social workers untutored in the ways of Indian family life assumed leaving children in the care of anyone outside the nuclear family amounted to neglect and grounds for terminating parental rights. Yet, the House report noted, this is an accepted practice for certain Tribes. Id.
Non-Indian socioeconomic values that State agencies and judges applied in the child-welfare context similarly were found to not account for the difference in family structure and child-rearing practice in Indian communities. Id. Layered together with cultural bias, the result, the House Report concluded, was unequal and incongruent application of child-welfare standards for Indian families. Id. For example, parental alcohol abuse was one of the most frequently advanced reasons for removing Indian children from their parents; however, in areas where Indians and non-Indians had similar rates of problem drinking, alcohol abuse was rarely used as grounds to remove children from non-Indian parents. Id.

Congress heard testimony that removing Indian children from their families had become a regular, encouraged practice. Congress came to understand that “agencies established to place children have an incentive to find children to place.” Id. at 11. Indian leaders alleged that federally subsidized foster care homes encouraged non-Indians to take in Indian children to supplement their incomes with foster care payments, and that some non-Indian families sought to foster Indian children in order to gain access to the child’s Federal trust account. See id.; See also 1974 Senate Hearing at 118. While economic incentives encouraged the removal of Indian children, the economic conditions in Indian country prevented Tribes from providing their own foster-care facilities and certified adoptive homes. Poverty and substandard housing were prolific on reservations, and obtaining State foster-care licenses required a standard of living that was often out of reach in Indian communities. Otherwise loving and supportive Indian families were accordingly prevented from becoming foster parents, which promoted the placement of Indian children in non-Indian homes away from their Tribes. See H.R. Rep. No. 95–1386, at 11.

In addition, State procedures for removing Indian children from their natural homes were commonly violated due process. Social workers sometimes obtained “voluntary” parental-rights waivers to gain access to Indian children using coercive and deceitful measures. 1974 Senate Hearing at 95. Sometimes Indian parents with little education, reading comprehension, and understanding of English signed “voluntary” waivers without knowing what rights they were forfeiting. H.R. Rep. No. 95–1386, at 11. Moreover, State court failure to protect the rights of Indian children and Indian parents. For example, in involuntary removal proceedings, the Indian parents and children rarely were represented by counsel and sometimes received little if any notice of the proceeding, and termination of parental rights was seldom supported by expert testimony. 1974 Senate Hearing at 67–68; H.R. Rep. No. 95–1386, at 11. Rather than helping Indian parents correct parenting issues, or acknowledging that the alleged problems were the result of cultural and socioeconomic differences, social workers claimed removal was in the child’s best interest. 1974 Senate Hearing at 62.

Congress understood that these issues significantly impacted children who lived off of reservations, not just on-reservation children. Congress was concerned with the effect of the removal of Indian children “whose families live in urban areas or with rural nonrecognized tribes,” noting that there were approximately 35,000 such children in foster care, adoptive homes, or institutions. 124 Cong. Rec. H38102; 123 Cong. Rec. H21043. In the Final Report of the American Indian Policy Review Commission, which was included as part of the Senate Report on ICWA, the Commission recommended legislation addressing the fact that, because “[m]any Indian families move back and forth from a reservation dwelling to border communities or even to distant communities, depending on employment and educational opportunities,” problems could arise when Tribal and State courts offered competing child-custody determinations and the legislation therefore had to address situations where “an Indian child is not domiciled on a reservation and [is] subject to the jurisdiction of non-Indian authorities.” S. Rep. No. 95–597, at 51–52 (1977).

Congress further recognized that the “wholesale removal of [Tribal] children by nontribal government and private agencies constitutes a serious threat to [Tribes’] existence as on-going, self-governing communities,” and that the “future and integrity of Indian tribes and Indian families are in danger because of this crisis.” 124 Cong. Rec. H38103. As one Tribal representative testified before Congress, “[t]he ultimate preservation and continuation of [Tribal] cultures depends on our children and their proper growth and development.” See 1977 Senate Hearing at 169. Commenters on the proposed legislation also noted that, because “[p]robably in no area is it more important that tribal sovereignty be respected than in an area as socially and culturally determinative as family relationships,” the “chances of Indian survival are significantly reduced if our children, the only real means for the transmission of the tribal heritage, are to be raised in non-Indian homes and denied exposure to the ways of their people.” Id. at 157. Thus, in addition to protecting individual Indian children and families, Congress was also concerned about preserving the integrity of Tribes as self-governing, sovereign entities and ensuring that Tribes could survive both culturally and politically. See 124 Cong. Rec. H38102. B. Overview of ICWA’s Provisions

In light of the information presented about State child-custody practices for Indian children, Congress passed ICWA to “protect the rights of the Indian child as an Indian and the rights of the Indian community and tribe in retaining its children in its society.” H.R. Rep. No. 95–1386, at 23. Congress further declared that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families. 25 U.S.C. 1902. And although Congress described the “failure of State officials, agencies, and procedures to take into account the special problems and circumstances of Indian families and the legitimate interest of the Indian tribe in preserving and protecting the Indian family as the wellspring of its own future,” H.R. Rep. No. 95–1386, at 19, the legislature carefully considered the traditional role of the States in the arena of child welfare outside Indian reservations, and crafted a statute that would balance the interests of the United States, the individual States, Indian Tribes, and Indians, noting:

While the committee does not feel that it is necessary or desirable to oust the States of their traditional jurisdiction over Indian children falling within their geographic limits, it does feel the need to establish minimum Federal standards and procedural safeguards in State Indian child-custody proceedings designed to protect the rights of the child as an Indian, the Indian family and the Indian tribe. H.R. Rep. No. 95–1386, at 19.

ICWA therefore applies to “child-custody proceedings,” defined as foster-care placements, terminations of parental rights, and pre-adoptive and adoptive placements, involving an “Indian child,” defined as any unmarried person who is under age eighteen and either is: (a) A member of an Indian tribe; or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. 25 U.S.C. 1903. In such proceedings, Congress accorded Tribes
“numerous prerogatives . . . through the ICWA’s substantive provisions . . . as a means of protecting not only the interests of individual Indian children and their families, but also of the tribes themselves.” Miss. Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 49 (1989). In addition, ICWA provides important procedural and substantive standards to be followed in State-administered proceedings concerning possible removal of an Indian child from her family. See, e.g., 25 U.S.C. 1912(d) (requiring provision of “active efforts” to prevent the breakup of an Indian family); id. 1912(e)(f) (requiring specified burdens of proof and expert testimony regarding potential danger to child resulting from continued custody by parent, before foster-care placement or termination of parental rights may be ordered).

The “most important substantive requirement imposed on state courts” by ICWA is the placement preference for any adoptive placement of an Indian child. Holyfield, 490 U.S. at 36–37. In any adoptive placement of an Indian child under State law, ICWA requires that a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child’s extended family (regardless of whether they are Tribal citizens); (2) other members of the Indian child’s Tribe; or (3) other Indian families. 25 U.S.C. 1915(a). ICWA requires similar placement preferences for pre-adoptive placement and foster-care placement. 25 U.S.C. 1915(a)-(b). These preferences reflect the Federal policy that, where possible, an Indian child should remain in the Indian community.” Holyfield, 490 U.S. at 36–37 (internal citations omitted).

C. Need for These Regulations

Although the Department initially hoped that binding regulations would not be “necessary to carry out the Act,” see 44 FR 67,584 (Nov. 23, 1979), a third of a century of experience has confirmed the need for more uniformity in the implementation and application of this important Federal law.

Need for Uniform Federal Standard.

For decades, various State courts and agencies have interpreted the Act in different, and sometimes conflicting, ways. This has resulted in different standards being applied to ICWA adjudications across the United States, contrary to Congress’s intent. See Holyfield, 490 U.S. at 43–46; see also 25 U.S.C. 1902; H.R. Rep. No. 95–1386, at 19; see generally Casey Family Programs, Indian Child Welfare Act: Measuring Compliance (2015), www.casey.org/media/measuring-compliance-icwa.pdf. Perhaps the most noted example is the “existing Indian family,” or EIF, exception, under which some State courts first determine the “Indian-ness” of the child and family before applying the Act. As a result, children who meet the statutory definition of “Indian child” and their parents are denied the protections that Congress established by Federal law. This exception to the application of ICWA was created by some State courts, and has no basis in ICWA’s text or purpose. Currently, the Department has identified State-court cases applying this exception in a few states while other State courts have rejected the exception. See, e.g., Thompson v. Fairfax Cty. Dep’t of Family Servs., 747 SE.2d 838, 847–48 [Va. Ct. App. 2013] (collecting cases); In re Alexandra P., 176 Cal. Rptr. 3d 468, 484–85 [Cal. Ct. App. 2014] (noting split across California jurisdictions). The question whether an Indian child, her parents, and her Tribe will receive the Federal protections to which they are entitled must be uniform across the Nation, as Congress mandated.

This type of conflicting State-level statutory interpretation can lead to arbitrary outcomes, and can threaten the rights that the statute was intended to protect. For example, in Holyfield, the Court concluded that the term “domicile” in ICWA must have a uniform Federal meaning, because otherwise parties or agencies could avoid ICWA’s application “merely by transporting [the child] across state lines.” 490 U.S. at 46. State courts also differ as to what constitutes “good cause” for departing from ICWA’s child placement preferences, weighing a variety of different factors when making the determination. See, e.g., In re A.J.S., 204 P.3d 543, 551 [Kan. 2009]; In re Adoption of P.H., 851 P.2d 1361, 1363–64 [Alaska 1993]; In re Adoption of M., 832 P.2d 518, 522 [Wash. 1992]. States are also required by law to demonstrate sufficient “active efforts” to keep a family intact. See State ex rel. C.D. v. State, 200 P.3d 194, 205 [Utah Ct. App. 2008] (noting State-by-State disagreement over what qualifies as “active efforts”). In other instances, State courts have simply ignored ICWA requirements outright. Ogala Sioux Tribe & Rosebud Sioux Tribe v. Van Hunnik, 100 F. Supp. 3d 749, 754 (D.S.D. 2015) (finding that the State had “developed and implemented policies and procedures for the removal of Indian children from their parents’ custody in violation of the mandates of the Indian Child Welfare Act”). The result of these inconsistencies is that many of the problems Congress intended to address by enacting ICWA persist today.

The Department’s current nonbinding guidelines are insufficient to fully implement Congress’s goal of nationwide protections for Indian children, parents, and Tribes. See 44 FR at 67,584–95. While State courts will sometimes defer to the guidelines in ICWA cases (see In re Jack C., 122 Cal. Rptr. 3d 6, 13–14 [Cal. Ct. App. 2011]; In the Interest of Tavian B., 874 N.W.2d 456, 460 [Neb. 2016]), State courts frequently characterize the guidelines as lacking the force of law and conclude that they may depart from the guidelines as they see fit. See, e.g., Gila River Indian Cnty. v. Dep’t of Child Safety, 363 P.3d 148, 153 [Ariz. Ct. App. 2015].

These State-specific determinations about the meaning of key terms in the Federal law will continue absent a legislative rule, with potentially devastating consequences for the children, families, and Tribes that ICWA was designed to protect. Consider a child who is a Tribal citizen and who lives with his mother, who is also a Tribal citizen. The mother and child live far from their Tribe’s reservation because of her work, and they are not able to regularly participate in their Tribe’s social, cultural, or political events. If the State social-services agency seeks to remove the child from the mother and initiates a child-custody proceeding, the application of ICWA to that proceeding—which clearly involves an “Indian child”—will depend on whether that State court has accepted the existing Indian family exception. Likewise, even if the court agrees that ICWA applies, the actions taken to provide remedial and rehabilitative programs to the family will be uncertain because there is no uniform interpretation of what constitutes “active efforts” under ICWA. This type of variation was not intended by Congress and actively undermines the purposes of the Act.

Need for Protections for Tribal Citizens Living Outside Indian Country.

The need for more uniform application of ICWA in State courts is reinforced by the fact that approximately 78% of Native Americans live outside of Indian country. 2 where judges may be less familiar with ICWA requirements generally, or where a Tribe may be less
likely to find out about custody adjudications involving their citizens. Some commenters have pointed to the large number of Tribal citizens living off-reservation as proof that off-reservation Indians have made a conscious choice to distance themselves from their Tribe and its culture, and that ICWA’s protections are unnecessary. They have accordingly questioned the need for a legislative rule, based on the assumption that off-reservation Indians do not want the Federal protections that accompany their status as Indians.

These comments misapprehend the reasons for high off-reservation Indian populations and the nature of Tribal citizenship generally, and do not diminish the need for the final rule. First, the fact that many Indians live off-reservation is, in part, a result of past, now-repudiated Federal policies encouraging Indian assimilation with non-Indians and, in some cases, terminating Tribes outright. For example, Congress passed the Indian General Allotment Act, 24 Stat. 388, codified at 25 U.S.C. 331 (1887) (repealed), which authorized the United States to allot and sell Tribal lands to non-Indians and take them out of trust status. The purpose of the Act was to “encourage individual land ownership and, hopefully, eventual assimilation into the larger society,” Bugenig v. Hoopa Valley Tribe, 266 F.3d 1201, 1205 (9th Cir. 2001), and to “promote[c] interaction between the races and . . . encourage[e] Indians to adopt white ways,” Mattz v. Arnett, 412 U.S. 481, 496 (1973). Indian lands subsequently passed out of Tribal control, which often led to Tribal citizens dispersing from their reservations.

Likewise, during the so-called “termination era” of the 1950s, Congress passed a series of acts severing its trust relationship with more than 100 Tribes. Terminated Tribes lost not only their land base but also myriad Federal services previously arising from the trust relationship, including education, health care, housing, and emergency welfare. See Sioux Tribe of Indians v. United States, 7 Cl. Ct. 468, 476 n.8 (Cl. Ct. 1985) (describing the termination policy). Lacking these basic services, which often did not otherwise exist in rural Tribal communities, many Indians were forced to move to urban areas. And in 1956, the Relocation Act was passed with funds to support the voluntary relocation of any young adult Indian willing to move from on or near a reservation to a selected urban center. Act of Aug. 3, 1956, Public Law 84–459, 70 Stat. 986. Thus, today’s off-reservation population is not a new phenomenon; ICWA itself was enacted with Congress’s awareness that many Indians live off-reservation. See 1978 House Hearings at 103; H.R. Rep. No. 95–1386, at 15. The fact that an Indian does not live on a reservation is not evidence of disassociation with his or her Tribe. In fact, citizens of many Tribes do not have the option to live on reservation land, as over 40 percent of Tribes have no reservation land.

Second, the comments ignore the fact that, regardless of geographic location of a Tribal citizen, Tribal citizenship (aka Tribal membership) is voluntary and typically requires an affirmative act by the enrollee or her parent. Tribal laws generally include provisions requiring the parent or legal guardian of a minor to apply for Tribal citizenship on behalf of the child. See, e.g., Jamestown S’Klallam Tribe Tribal Code § 4.02.04(A)—Applications for Enrollment. Tribes also often require an affirmative act by the individual seeking to become a Tribal citizen, such as the filing of an application. See, e.g., White Mountain Apache Enrollment Code, Sec. 1–401—Application Form: Filing. As ICWA is limited to children who are either enrolled in a Tribe or are eligible for enrollment and have a parent who is an enrolled member, that status inherently demonstrates an ongoing Tribal affiliation even among off-reservation Indians.

Rather than simply moving off-reservation, those enrolled Tribal citizens who do want to renounce their affiliation with a Tribe may voluntarily relinquish their citizenship. Tribal governing documents often include provisions allowing adult citizens to relinquish Tribal citizenship, sometimes also requiring a notarized or witnessed written statement. See, e.g., Jamestown S’Klallam Tribe Tribal Code § 4.04.01(C)—Loss of Tribal Citizenship; White Mountain Apache Enrollment Code Sec. 1–702—Relinquishment. These procedures, and not an individual’s geographic location, are the proper determinant of whether an individual retains an ongoing political affiliation with a Tribe (both generally and for the purposes of the ICWA placement preferences).

Commenters who raised this point also argued that a legislative rule would continue to apply Tribal placement preferences to individuals who have low Indian blood quantum. Several noted that the Indian child in Adoptive Couple v. Baby Girl, 133 S. Ct. 2552 (2013), purportedly was 3/256 Cherokee by blood, and questioned why ICWA should apply to such individuals, particularly when they live off-reservation. This argument mistakes and over-simplifies the nature of Indian status. Tribes have a wide variety of citizenship-eligibility requirements. For example, the Jamestown S’Klallam Tribe requires the applicant to produce “documentary evidence such as a notarized paternity affidavit showing the name of a parent through whom eligibility for citizenship is claimed.” Jamestown S’Klallam Tribe Tribal Code § 4.02.04(C)—Applications for Enrollment. Other Tribes include blood-quantum requirements. For example, the White Mountain Apache Tribe requires the applicant to be at least one fourth (1/4) degree White Mountain Apache blood. See White Mountain Apache Constitution, Article II, sec. 1—Membership. Federal courts have repeatedly recognized that determining citizenship (membership) requirements is a sovereign Tribal function. See, e.g., Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 n.32 (1978) (“A tribe’s right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community.”); Montgomery v. Flandreau Santee Sioux Tribe, 905 F. Supp. 740, 746 (D.S.D. 1995) (“Giving deference to the Tribe’s right as a sovereign to determine its own membership, the Court holds that it lacks subject matter jurisdiction to determine whether any plaintiffs were wrongfully denied enrollment in the Tribe.”); In re Adoption of C.D.K., 629 F. Supp. 2d 1258, 1262 (D. Utah 2009) (holding that “the Indian tribes’ ‘inherent power to determine tribal membership’ entitles determinations of membership by Indian tribes to great deference”). The act of fulfilling Tribal citizenship requirements is all that is necessary to demonstrate Tribal affiliation, and thus qualify as an “Indian” or “Indian child” under ICWA.

These types of objections, which are based on fundamental misunderstandings of Indian law, history, and social and cultural life, actually demonstrate the need for a legislative rule. Too often, State courts are swayed by these types of arguments and use the law to affirm the lack of regulations to craft ad hoc “exceptions” to ICWA. A legislative rule is necessary to support ICWA’s underlying purpose and to address those areas where a lack of binding guidance has resulted in inconsistent implementation and noncompliance with the statute. Continued Need for ICWA Protections. ICWA’s requirements remain vitally important today. Although ICWA has helped to prevent the wholesale separation of Tribal
children from their families in many regions of the United States, Indian families continue to be broken up by the removal of their children by non-Tribal public and private agencies. Nationwide, based on 2013 data, Native American children are represented in State foster care at a rate 2.5 times their presence in the general population. See National Council of Juvenile and Family Court Judges, Disproportionality Rates for Children of Color in Foster Care tbl. 1 (June 2015). This disparity has increased since 2000. Id. (showing disproportionality rate of 1.5 in 2000). In some States, including numerous States with significant Indian populations, Native American children are represented in State foster-care systems at rates as high as 14.8 times their presence in the general population of that State. Id. While this disproportionate overrepresentation of Native American children in the foster-care system likely has multiple causes, it nonetheless supports the need for this rule.

Through numerous statutory provisions, ICWA helps ensure that State courts incorporate Indian social and cultural standards into decision-making that affects Indian children. For example, section 1915 requires foster-care and adoptive placement preference be given to members of the child’s extended family. This requirement comports with findings that Tribal citizens tend to value extended family more than the Euro-American model, often having several generations of family members participating in primary child-rearing activities. See, e.g., John G. Red Horse, Family Preservation: Concepts in American Indian Communities (Casey Family Programs and National Indian Child Welfare Assoc. Dec. 2000). Likewise, from the adoptee’s perspective, extended-family-member involvement and strong connection to Tribe shape reunification. Ashley L. Landers et al., Finding Their Way Home: The Reunification of First Nations Adoptees, 10 First Peoples Child & Family Review no. 2 (2015).

D. The Department’s Implementation of ICWA

As required by ICWA, the Department issued regulations in 1979 to establish procedures through which a Tribe may reassert jurisdiction over Indian child-custody proceedings. 44 FR 45096 (Jul. 24, 1979) (codified at 25 CFR part 23). In January 1994, the Department revised its ICWA regulations to convert the competitive-grant process for Tribes to a noncompetitive funding mechanism, while continuing the competitive award system for Indian organizations. See 59 FR 2248 (Jan. 13, 1994).

In 1979, the Department published recommended guidelines for Indian child-custody proceedings in State courts. 44 FR 24000 (Apr. 23, 1979) (proposed guidelines); 44 FR 32,294 (Jun. 5, 1979) (seeking public comment); 44 FR 67584 (final guidelines). Several commenters remarked then that the Department had the authority to issue regulations and should do so. The Department declined to issue regulations and instead revised its recommended guidelines and published them in final form in November 1979. 44 FR 67584.

More recently, the Department determined that it may be appropriate and necessary to promulgate additional and updated rules interpreting ICWA and providing uniform standards for State courts to follow in applying the Federal law. In 2014, the Department invited public comments to determine whether to update its guidelines to address inconsistencies in State-level ICWA implementation that had arisen since 1979 and, if so, what changes should be made. The Department held several listening sessions, including sessions with representatives of federally recognized Indian Tribes, State-court representatives (e.g., the National Council of Juvenile and Family Court Judges (NCJFCJ) and the National Center for State Courts’ Conference of Chief Justices Tribal Relations Committee), the National Indian Child Welfare Association, and the National Congress of American Indians. The Department received comments from those at the listening sessions and also received written comments, including comments from individuals and additional organizations. The Department considered these comments and subsequently published updated Guidelines (2015 Guidelines) in February 2015. See 80 FR 10146 (Feb. 25, 2015).

Many commenters on the 2015 Guidelines requested not only that the Department update its ICWA guidelines but that the Department also issue binding regulations addressing the requirements and standards that ICWA provides for State-court child-custody proceedings. Commenters noted the role that regulations could provide in promoting uniform application of ICWA across the country, along with many of the other reasons discussed above why ICWA regulations are needed. Recognizing that need, the Department began a notice-and-comment process to promulgate formal ICWA regulations. The Department issued a proposed rule on March 20, 2015 that would “incorporate many of the changes made to the recently revised guidelines into regulations, establishing the Department’s interpretation of ICWA as a binding interpretation to ensure consistency in implementation of ICWA across all States.” 80 FR 14480, 14481 (Mar. 20, 2015).

As part of its process collecting input on the proposed regulations, Interior held five public hearings and five Tribal-consultation sessions across the country, as well as one public hearing and one Tribal consultation by teleconference. Public hearings and Tribal consultations were held on April 22, 2015, in Portland Oregon; April 23, 2015, in Rapid City, South Dakota; May 5, 2015, in Albuquerque, New Mexico; May 7, 2015, in Prior Lake, Minnesota; May 11 and 12, 2015, by teleconference; and May 14, 2015, in Tulsa, Oklahoma. All sessions were transcribed. In addition to oral comments, the Department received over 2,100 written comments.

After the public-comment period closed on May 19, 2015, the Department reviewed comments received and, where appropriate, made changes to the proposed rule in response. This final rule reflects the input of all comments received during the public-comment period and Tribal consultation. The comments on the proposed rule and the contents of the final rule are discussed in detail below in Section IV.

In crafting this final rule, the Department is drawing from its expertise in Indian affairs generally, and from its extensive experience in administering Indian child-welfare programs specifically. BIA’s Office of Indian Services, through its Division of Human Services, collects information from Tribes on their ICWA activities for the Indian Child Welfare Quarterly and Annual Report, ensures that ICWA processes and resources are in place to facilitate implementation of ICWA, administers the notice process under section 1912 of the Act, publishes a nationwide contact list of Tribally designated ICWA agents for service of notice, administers ICWA grants, and maintains a central file of adoption records under ICWA. In addition, BIA provides technical assistance to State social workers and courts on ICWA and Indian child welfare in general.
The full Federal Regulations regarding 25 CFR Part 23, Indian Child Welfare Act Proceedings; Final Rule can be found online:

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 566

Introduced by Coash, 27; Crawford, 45; Davis, 43; Lindstrom, 18; Scheer, 19.

Read first time January 21, 2015

Committee: Judiciary

A BILL FOR AN ACT relating to Indian child welfare; to amend sections 43-512.04, 43-1406, 43-1501, 43-1502, 43-1504, 43-1505, 43-1506, 43-1507, 43-1508, 43-1509, and 43-1514, Reissue Revised Statutes of Nebraska, and sections 43-279.01 and 43-1503, Revised Statutes Cumulative Supplement, 2014; to require inquiry by juvenile courts regarding Indian children; to provide for recognition of tribal law in paternity determinations; to change provisions of the Nebraska Indian Child Welfare Act; to provide requirements for voluntary and involuntary proceedings under the act; to define and redefine terms; to provide powers and duties for the Department of Health and Human Services; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 43-279.01, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-279.01 (1) When the petition alleges the juvenile to be within the provisions of subdivision (3)(a) of section 43-247 or when termination of parental rights is sought pursuant to subdivision (6) of section 43-247 and the parent, custodian, or guardian appears with or without counsel, the court shall inform the parties of the:

(a) Nature of the proceedings and the possible consequences or dispositions pursuant to sections 43-284, 43-285, and 43-288 to 43-295;

(b) Right of the parent to engage counsel of his or her choice at his or her own expense or to have counsel appointed if the parent is unable to afford to hire a lawyer;

(c) Right of a stepparent, custodian, or guardian to engage counsel of his or her choice and, if there are allegations against the stepparent, custodian, or guardian or when the petition is amended to include such allegations, to have counsel appointed if the stepparent, custodian, or guardian is unable to afford to hire a lawyer;

(d) Right to remain silent as to any matter of inquiry if the testimony sought to be elicited might tend to prove the party guilty of any crime;

(e) Right to confront and cross-examine witnesses;

(f) Right to testify and to compel other witnesses to attend and testify;

(g) Right to a speedy adjudication hearing; and

(h) Right to appeal and have a transcript or record of the proceedings for such purpose.

(2) The court shall have the discretion as to whether or not to appoint counsel for a person who is not a party to the proceeding. If counsel is appointed, failure of the party to maintain contact with his or her court-appointed counsel or to keep such counsel advised of the party’s current address may result in the counsel being discharged by the
court.

(3) After giving the parties the information prescribed in subsection (1) of this section, the court may accept an in-court admission, an answer of no contest, or a denial from any parent, custodian, or guardian as to all or any part of the allegations in the petition. The court shall ascertain a factual basis for an admission or an answer of no contest.

(4) In the case of a denial, the court shall allow a reasonable time for preparation if needed and then proceed to determine the question of whether the juvenile falls under the provisions of section 43-247 as alleged. After hearing the evidence, the court shall make a finding and adjudication to be entered on the records of the court as to whether the allegations in the petition have been proven by a preponderance of the evidence in cases under subdivision (3)(a) of section 43-247 or by clear and convincing evidence in proceedings to terminate parental rights. The court shall inquire as to whether any party believes an Indian child is involved in the proceedings prior to the advisement of rights pursuant to subsection (1) of this section. If an Indian child is involved, the standard of proof shall be in compliance with the Nebraska Indian Child Welfare Act, if applicable.

(5) If the court shall find that the allegations of the petition or motion have not been proven by the requisite standard of proof, it shall dismiss the case or motion. If the court sustains the petition or motion, it shall allow a reasonable time for preparation if needed and then proceed to inquire into the matter of the proper disposition to be made of the juvenile.

Sec. 2. Section 43-512.04, Reissue Revised Statutes of Nebraska, is amended to read:

43-512.04 (1) An action for child support or medical support may be brought separate and apart from any action for dissolution of marriage. The complaint initiating the action shall be filed with the clerk of the
district court and may be heard by the county court or the district court
as provided in section 25-2740. Such action for support may be filed on
behalf of a child:

   (a) Whose paternity has been established (i) by prior judicial order
in this state, (ii) by a prior determination of paternity made by any
other state or by an Indian tribe as described in subsection (1) of
section 43-1406, or (iii) by the marriage of his or her parents as
described in section 42-377 or subsection (2) of section 43-1406; or

   (b) Whose paternity is presumed as described in section 43-1409 or
subsection (2) of section 43-1415.

   (2) The father, not having entered into a judicially approved
settlement or being in default in the performance of the same, may be
made a respondent in such action. The mother of the child may also be
made a respondent in such an action. Such action shall be commenced by a
complaint of the mother of the child, the father of the child whose
paternity has been established, the guardian or next friend of the child,
the county attorney, or an authorized attorney.

   (3) The complaint shall set forth the basis on which paternity was
previously established or presumed, if the respondent is the father, and
the fact of nonsupport and shall ask that the father, the mother, or both
parents be ordered to provide for the support of the child. Summons shall
issue against the father, the mother, or both parents and be served as in
other civil proceedings, except that such summons may be directed to the
sheriff of any county in the state and may be served in any county. The
method of trial shall be the same as in actions formerly cognizable in
equity, and jurisdiction to hear and determine such actions for support
is hereby vested in the district court of the district or the county
court of the county where the child is domiciled or found or, for cases
under the Uniform Interstate Family Support Act if the child is not
domiciled or found in Nebraska, where the parent of the child is
domiciled.
(4) In such proceeding, if the defendant is the presumed father as described in subdivision (1)(b) of this section, the court shall make a finding whether or not the presumption of paternity has been rebutted. The presumption of paternity created by acknowledgment as described in section 43-1409 may be rebutted as part of an equitable proceeding to establish support by genetic testing results which exclude the alleged father as being the biological father of the child. A court in such a proceeding may order genetic testing as provided in sections 43-1414 to 43-1418.

(5) If the court finds that the father, the mother, or both parents have failed adequately to support the child, the court shall issue a decree directing him, her, or them to do so, specifying the amount of such support, the manner in which it shall be furnished, and the amount, if any, of any court costs and attorney's fees to be paid by the father, the mother, or both parents. Income withholding shall be ordered pursuant to the Income Withholding for Child Support Act. The court may require the furnishing of bond to insure the performance of the decree in the same manner as is provided for in section 42-358.05 or 43-1405. Failure on the part of the defendant to perform the terms of such decree shall constitute contempt of court and may be dealt with in the same manner as other contempts. The court may also order medical support and the payment of expenses as described in section 43-1407.

Sec. 3. Section 43-1406, Reissue Revised Statutes of Nebraska, is amended to read:

43-1406 (1) A determination of paternity made by any other state or by an Indian tribe as defined in section 43-1503, whether established through voluntary acknowledgment, genetic testing, tribal law, or administrative or judicial processes, shall be given full faith and credit by this state.

(2) A child whose parents marry is legitimate.

Sec. 4. Section 43-1501, Reissue Revised Statutes of Nebraska, is
amended to read:

43-1501 Sections 43-1501 to 43-1516 and sections 8, 9, and 14 of this act shall be known and may be cited as the Nebraska Indian Child Welfare Act.

Sec. 5. Section 43-1502, Reissue Revised Statutes of Nebraska, is amended to read:

43-1502 The purpose of the Nebraska Indian Child Welfare Act is to clarify state policies and procedures regarding the implementation by the State of Nebraska of the federal Indian Child Welfare Act, 25 U.S.C. 1901 et seq. It shall be the policy of the state to cooperate fully with Indian tribes in Nebraska in order to ensure that the intent and provisions of the federal Indian Child Welfare Act are enforced. This cooperation includes recognition by the state that Indian tribes have a continuing and compelling governmental interest in an Indian child whether or not the Indian child is in the physical or legal custody of a parent, an Indian custodian, or an Indian extended family member at the commencement of an Indian child custody proceeding or the Indian child has resided or is domiciled on an Indian reservation. The state is committed to protecting the essential tribal relations and best interests of an Indian child by promoting practices consistent with the federal Indian Child Welfare Act and other applicable law designed to prevent the Indian child's voluntary or involuntary out-of-home placement.

Sec. 6. Section 43-1503, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-1503 For purposes of the Nebraska Indian Child Welfare Act, except as may be specifically provided otherwise, the term:

(1) Active efforts shall mean and include, but not be limited to:

(a) A concerted level of casework, both prior to and after the removal of an Indian child, exceeding the level that is required under reasonable efforts to preserve and reunify the family described in section 43-283.01 in a manner consistent with the prevailing social and
cultural conditions and way of life of the Indian child's tribe or tribes

to the extent possible under the circumstances;

(b) A request to the Indian child's tribe or tribes and extended
family known to the department or the state to convene traditional and
customary support and services;

(c) Actively engaging, assisting, and monitoring the family's access
to and progress in culturally appropriate and available resources of the
Indian child's extended family members, tribal service area, Indian tribe
or tribes, and individual Indian caregivers;

(d) Identification of and provision of information to the Indian
child's extended family members known to the department or the state
concerning appropriate community, state, and federal resources that may
be able to offer housing, financial, and transportation assistance and
actively assisting the family in accessing such community, state, and
federal resources;

(e) Identification of and attempts to engage tribally designated
Nebraska Indian Child Welfare Act representatives;

(f) Consultation with extended family members known to the
department or the state, or a tribally designated Nebraska Indian Child
Welfare Act representative if an extended family member cannot be
located, to identify family or tribal support services that could be
provided by extended family members or other tribal members if extended
family members cannot be located;

(g) Frequent family time in the Indian child's home and the homes of
the Indian child's extended family members known to the department or the
state when appropriate and to the extent possible under the
circumstances;

(h) Exhaustion of all available tribally appropriate family
preservation alternatives; and

(i) When the department or the state is involved in a proceeding
under this act, the department or the state shall provide a written
report of their attempts to provide active efforts to the court at every
hearing involving an Indian child. This report shall be sent to the
Indian child's tribe or tribes within three days after being filed with
the court and shall be deemed to be admissible evidence of active efforts
in proceedings conducted under this act;

(2) Best interests of the Indian child shall include:

(a) The Indian child's best interests are served by the use of
practices in compliance with the federal Indian Child Welfare Act, the
Nebraska Indian Child Welfare Act, and other applicable laws that are
designed to prevent the Indian child's voluntary or involuntary out-of-
home placement; and

(b) Whenever an out-of-home placement is necessary, placing the
child, to the greatest extent possible, in a foster home, adoptive
placement, or other type of custodial placement that reflects the unique
values of the Indian child's tribal culture and is best able to assist
the child in establishing, developing, and maintaining a political,
cultural, and social relationship with the Indian child's tribe or tribes
and tribal community;

(3) Child custody proceeding shall mean and include:

(a) Foster care placement which shall mean any action removing an
Indian child from his or her parent or Indian custodian for temporary or
emergency placement in a foster home or institution or the home of a
guardian or conservator where the parent or Indian custodian cannot have
the child returned upon demand, but where parental rights have not been
terminated;

(b) Termination of parental rights which shall mean any action
resulting in the termination of the parent-child relationship;

(c) Preadoptive placement which shall mean the temporary placement
of an Indian child in a foster home or institution after the termination
of parental rights, but prior to or in lieu of adoptive placement; and

(d) Adoptive placement which shall mean the permanent placement of
an Indian child for adoption, including any action resulting in a final
decree of adoption; and —

(e) Voluntary foster care placement which shall mean a non-court
involved proceeding in which the department or the state is facilitating
a voluntary foster care placement or in-home services to families at risk
of entering the foster care system. An Indian child, parent, or tribe
involved in a voluntary foster care placement shall only be provided
protections as provided in sections 43-1505(4), 43-1506, and 43-1508.
Such term or terms shall not include a placement based upon an act
which, if committed by an adult, would be deemed a crime or upon an
award, in a divorce proceeding, of custody to one of the parents;

(4) The department or the state shall mean the applicable state
social services entity that is involved with the provision of services to
Indian children, specifically the Nebraska Department of Health and Human
Services and the Nebraska Office of Probation Administration in certain
cases.

(5 2) Extended family member shall be as defined by the law or
custom of the Indian child's primary tribe or, in the absence of such
laws or customs of the primary tribe, the law or custom of the Indian
child's other tribes or, in the absence of such law or custom tribe or,
in the absence of such law or custom, shall mean be a person who has
reached the age of eighteen and who is the Indian child's parent,
grandparent, aunt or uncle, clan member, band member, sibling, brother-
in-law or sister-in-law, niece or nephew, cousin, or stepparent;

(6) Federal Indian Child Welfare Act shall mean the federal Indian

(7 3) Indian shall mean means any person who is a member of an
Indian tribe, or who is an Alaska Native and a member of a regional
corporation defined in section 7 of the Alaska Native Claims Settlement
Act, 43 U.S.C. 1606;

(8 4) Indian child shall mean means any unmarried person who is
under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(9) Indian child's tribe or tribes shall mean (a) the Indian tribe or tribes in which an Indian child is a member or eligible for membership or (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(10) Indian child's primary tribe shall mean, in the case of an Indian child that is a member or eligible for membership in multiple tribes, the tribe determined by the procedure enumerated in subsection (4) of section 43-1504;

(11) Indian custodian shall mean any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(12) Indian organization shall mean any group, association, partnership, limited liability company, corporation, or other legal entity owned or controlled by Indians or a majority of whose members are Indians;

(13) Indian tribe shall mean any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. 1602(c);

(14) Parent means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father when paternity has not been acknowledged or established;

(15) Qualified expert witness shall mean one of the following
persons, in descending priority order although a court may assess the 
credibility of individual witnesses:

(a) A member of the Indian child's tribe or tribes who is recognized 
by the tribal community as knowledgeable in tribal customs as they 
pertain to family and childrearing practices;

(b) A lay expert witness that possesses substantial experience in 
the delivery of child and family services to Indians and extensive 
knowledge of prevailing social and cultural standards and childrearing 
practices within the Indian child's tribe or tribes; or

(c) A professional person having substantial education in the area 
of his or her specialty;

(16 10) Reservation shall mean means Indian country as defined in 18 
U.S.C. 1151 and any lands, not covered under such section, title to which 
is either held by the United States in trust for the benefit of any 
Indian tribe or individual or held by any Indian tribe or individual 
subject to a restriction by the United States against alienation or 
federally designated or established service area which means a geographic 
area designated by the United States where federal services and benefits 
furnished to Indians and Indian tribes are provided or which is otherwise 
designated to constitute an area on or near a reservation;

(17 11) Secretary shall mean means the Secretary of the United 
States Department of the Interior;

(18 12) Tribal court shall mean means a court with jurisdiction over 
child custody proceedings and which is either a Court of Indian Offenses, 
a court established and operated under the code or custom of an Indian 
tribe, or any other administrative body of a tribe which is vested with 
authority over child custody proceedings; and

(19 13) Tribal service area shall mean means a geographic area, as 
defined by the applicable Indian tribe or tribes, in which tribal 
services and programs are provided to Indians Native American people.

Sec. 7. Section 43-1504, Reissue Revised Statutes of Nebraska, is
amended to read:

43-1504 (1) An Indian tribe shall have jurisdiction exclusive as to this state over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except when such jurisdiction is otherwise vested in the state by existing federal law. When an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(2) In any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the primary tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe, except that such transfer shall be subject to declination by the tribal court of such tribe.

(3) In any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe or tribes shall have a right to intervene at any point in the proceeding regardless of whether the intervening party is represented by legal counsel. The Indian child's tribe or tribes and their counsel are not required to associate with local counsel or pay a fee to appear pro hac vice in a child custody proceeding under the Nebraska Indian Child Welfare Act. Representatives from the Indian child's tribe or tribes have the right to fully participate in every court proceeding held under the act.

(4) If the Indian child is eligible for membership or enrolled in multiple Indian tribes, and more than one Indian tribe intervenes in a state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian child's primary tribe shall be determined in the following manner:
(a) A unanimous agreement between the applicable Indian tribes designating which Indian tribe shall be the Indian child's primary tribe in the underlying state court proceeding, within thirty days of intervention by an additional tribe or tribes.

(b) The Indian tribes should seek to consult the parents of the Indian child and an Indian child over the age of twelve, when practicable, prior to entering into such an agreement.

(c) If a unanimous agreement cannot be reached by the Indian tribes within thirty days, the Indian child's primary tribe shall be determined by the state court based upon which Indian tribe with which the Indian child has more significant contacts.

(§ 4) The State of Nebraska shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other entity.

Sec. 8. Section 43-1505, Reissue Revised Statutes of Nebraska, is amended to read:

43-1505 (1) In any involuntary proceeding in a state court, when the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall send a notice conforming to the requirements of 25 C.F.R. 23.11 to notify the parents, the parent or Indian custodian, and the Indian child's tribe or tribes, by certified or registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe or tribes cannot be determined, such notice shall be given to the secretary in like manner, who may provide the requisite notice to the parent or Indian custodian and the tribe or tribes. No foster care placement or termination of parental rights proceedings shall be held until at least ten days after receipt of
notice by the parent or Indian custodian and the tribe or tribes or the
secretary. The parent or Indian custodian or the tribe or tribes shall,
upon request, be granted up to twenty additional days to prepare for such
proceeding.

(2) In any case in which the court determines indigency, the parent
or Indian custodian shall have the right to court-appointed counsel in
any removal, placement, or termination proceeding. The court may, in its
discretion, appoint counsel for the child upon a finding that such
appointment is in the best interests of the Indian child. When
state law makes no provision for appointment of counsel in such
proceedings, the court shall promptly notify the secretary upon
appointment of counsel and request from the secretary, upon certification
of the presiding judge, payment of reasonable attorney's fees and
expenses out of funds which may be appropriated.

(3) Each party to a foster care placement or termination of parental
rights proceeding under state law involving an Indian child shall have
the right to examine all reports or other documents filed with the court
upon which any decision with respect to such action may be based.

(4) Any party seeking to effect a foster care placement of, or
termination of parental rights to, an Indian child under state law shall
satisfy the court that active efforts have been made to provide remedial
services and rehabilitative programs designed to prevent the breakup of
the Indian family or unite the parent or Indian custodian with the Indian
child and that these efforts have proved unsuccessful. Any written
evidence showing that active efforts have been made shall be admissible
in a proceeding under the Nebraska Indian Child Welfare Act. Prior to the
court ordering placement of the child in foster care or the termination
of parental rights, the court shall make a determination that active
efforts have been provided or that the party seeking placement or
termination has demonstrated that attempts were made to provide active
efforts to the extent possible under the circumstances.
The court shall not order foster care placement under this section in the absence of a determination by the court, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

The court shall not order termination of parental rights under this section in the absence of a determination by the court, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Sec. 9. Notice of an involuntary proceeding involving an Indian child shall conform with the requirements of 25 C.F.R. 23.11, and shall contain the following additional information, to the extent it is known, and if this additional information is unknown, a statement indicating what attempts have been made to locate the information:

(a) The name and last-known address of the Indian child;
(b) The name and address of the Indian child's parents, paternal and maternal grandparents, and Indian custodians, if any;
(c) The tribal affiliation of the parents of the Indian child or, if applicable, the Indian custodians;
(d) A statement as to whether the Indian child's residence or domicile is on the tribe's reservation;
(e) An identification of any tribal court order affecting the custody of the Indian child to which a state court may be required to accord full faith and credit; and
(f) A copy of the motion for foster care placement of the Indian child, and any accompanying affidavits in support thereof, if such documents exist.
(2) A copy of the notice of an involuntary proceeding in state court involving an Indian child, as described in subsection (1) of this section, shall be filed with the court within three days issuance.

Sec. 10. Section 43-1506, Reissue Revised Statutes of Nebraska, is amended to read:

43-1506 (1) When any parent or Indian custodian voluntarily consents (a) to a foster care placement, relinquishment, or termination, including services offered by the Department of Health and Human Services or the state or its designee, or (b) to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(2) When the Department of Health and Human Services or the state offers the parent, Indian child, or Indian custodian services through a voluntary foster care placement or in-home services and the department or the state knows or has reason to know that an Indian child is involved, the department or the state shall notify the parent or Indian custodian and the Indian child's tribe or tribes, by telephone call, fax, email, or registered mail with return receipt requested, of the provision of services and any pending child custody proceeding. If the identity or location of the parent or Indian custodian and the tribe or tribes cannot be determined, such notice shall be given to the secretary and the appropriate area director listed in 25 C.F.R. 23.11 in like manner who may provide the requisite notice to the parent or Indian custodian and the tribe or tribes. Notice shall be provided within five days after the
initiation of voluntary services.

(3) When the Department of Health and Human Services or the state offers the parent or Indian custodian services through a voluntary foster care placement or in-home services, the Indian custodian of the child and the Indian child's tribe or tribes have a right to participate in, provide, or consult with the department or the state regarding the provision of voluntary services.

(4) When the department or the state offers the parent or Indian custodian services through a voluntary foster care placement or in-home services, the department or the state shall provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family or unite the parent or Indian custodian with the Indian child until these efforts have proved unsuccessful.

(5) Prior to any voluntary relinquishment or termination of parental rights proceeding in which the Department of Health and Human Services or the state is a party or was providing assistance to a parent or Indian custodian, the department or the state or its designee shall submit the following information, in writing, to the court if it has not previously been provided:

(a) The jurisdictional authority of the court in the proceeding;

(b) The date of the Indian child's birth and the date of any voluntary consent to relinquishment or termination;

(c) The age of the Indian child at the time voluntary consent was given;

(d) The date the parent appeared in court and was informed by the judge of the terms and consequences of any voluntary consent to relinquishment or termination;

(e) The parent fully understood the explanation of such terms and consequences in English or, when necessary, the explanation was interpreted into a language that the parent understood and the parent fully understood the explanation of such terms and consequences in the
language into which such terms and consequences were translated;

(f) The name and address of any prospective adoptive parent whose
identity is known to the consenting parent;

(g) The promises, if any, made to the parent, as a condition of the
parent's consent, including promises regarding the tribal affiliation or
health, ethnic, religious, economic, or other personal characteristics of
any adoptive family with which the child would be placed; and

(h) The details, if any, of an enforceable communication or contact
agreement authorized by section 43-162.

(6) 2 Any parent or Indian custodian may withdraw consent to a
foster care or voluntary foster care placement under state law at any
time and, upon such withdrawal, the child shall be returned to the parent
or Indian custodian.

(7) 3 In any voluntary proceedings for termination of parental
rights to, or adoptive placement of, an Indian child, the consent of the
parent may be withdrawn for any reason at any time prior to the entry of
a final decree of termination or adoption, as the case may be, and the
child shall be returned to the parent.

(8) 4 After the entry of a final decree of adoption of an Indian
child in any state court, the parent may withdraw consent thereto upon
the grounds that consent was obtained through fraud or duress and may
petition the court to vacate such decree. Upon a finding that such
consent was obtained through fraud or duress, the court shall vacate such
decree and return the child to the parent. No adoption which has been
effective for at least two years may be invalidated under the provisions
of this subsection unless otherwise permitted under state law.

Sec. 11. Section 43-1507, Reissue Revised Statutes of Nebraska, is
amended to read:

43-1507 Any Indian child who is the subject of any action for foster
care placement or termination of parental rights under state law, any
parent or Indian custodian from whose custody such child was removed, and
the Indian child's primary tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 43-1504 to 43-1506 and sections 8 and 9 of this act.

Sec. 12. Section 43-1508, Reissue Revised Statutes of Nebraska, is amended to read:

43-1508 (1) In any adoptive placement of an Indian child under state law, a preference shall be given, in the absence of good cause to the contrary, to a placement with the following in descending priority order:

(a) A member of the Indian child's extended family;
(b) Other members of the Indian child's tribe or tribes; or
(c) Other Indian families; or
(d) A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child's tribe or tribes;

(2) Any child accepted for foster care, preadoptive placement, or a voluntary foster care placement shall be placed in the least restrictive setting which most approximates a family and in which his or her special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with one of the following in descending priority order:

(a) A member of the Indian child's extended family;
(b) Other members of the Indian child's tribe or tribes;
(c) A foster home licensed, approved, or specified by the Indian child's tribe or tribes;
(d) An Indian foster home licensed or approved by an authorized non-Indian licensing authority;
(e) A non-Indian family committed to enabling the child to have
extended family time and participation in the cultural and ceremonial
events of the Indian child's tribe or tribes;

(f) An Indian facility or program for children approved by an Indian
tribe or operated by an Indian organization which has a program suitable
to meet the Indian child's needs; or

(g) A non-Indian facility or program for children approved by an
Indian tribe.

(b) A foster home licensed, approved, or specified by the Indian
child's tribe;

(c) An Indian foster home licensed or approved by an authorized non-
Indian licensing authority; or

(d) An institution for children approved by an Indian tribe or
operated by an Indian organization which has a program suitable to meet
the Indian child's needs.

(3) In the case of a placement under subsection (1) or (2) of this
section, if the Indian child's primary tribe shall establish a different
order of preference by resolution or in the absence thereof the order
established by resolution of the Indian child's other tribes, the agency
or court effecting the placement shall follow such order so long as the
placement is the least restrictive setting appropriate to the particular
needs of the child, as provided in subsection (2) of this section. When
appropriate, the preference of the Indian child or parent shall be
considered, except that, when a consenting parent evidences a desire for
anonymity, the court or agency shall give weight to such desire in
applying the preferences.

(4) The standards to be applied in meeting the preference
requirements of this section shall be the prevailing social and cultural
standards of the Indian community in which the parent or extended family
resides or with which the parent or extended family members maintain
social and cultural ties. Good cause to deviate from the placement
preferences in subsections (1) through (3) of this section includes: (a)
The request of the biological parents or the Indian child when the Indian child is at least twelve years of age; (b) the extraordinary physical or emotional needs of the Indian child as established by testimony of a qualified expert witness; or (c) the unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria. The burden of establishing the existence of good cause to deviate from the placement preferences and order shall be by clear and convincing reference on the party urging that the preferences not be followed.

(5) A record of each such placement, under state law, of an Indian child shall be maintained by the state, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the secretary or the Indian child's tribe or tribes.

Sec. 13. Section 43-1509, Reissue Revised Statutes of Nebraska, is amended to read:

43-1509 (1) Notwithstanding any other state law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 43-1505, that such return of custody is not in the best interests of the Indian child.

(2) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the Nebraska Indian Child Welfare Act, except in the case in which an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

Sec. 14. Section 43-1514, Reissue Revised Statutes of Nebraska, is
amended to read:

43-1514  (1) Nothing in the Nebraska Indian Child Welfare Act shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his or her parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable state law, in order to prevent imminent physical damage or harm to the child. The state authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of the Nebraska Indian Child Welfare Act, transfer the child to the jurisdiction of the appropriate Indian tribe or tribes, or restore the child to the parent or Indian custodian, as may be appropriate.

(2) During the course of each intake received by the statewide child abuse and neglect hotline provided by the Department of Health and Human Services, the hotline representative shall inquire as to whether the person calling the hotline believes one of the parties involved may be an Indian child or Indian person. If the hotline representative has any reason to believe that an Indian child or Indian person is involved in the intake, the representative shall immediately document the information and inform his or her supervisor.

Sec. 15. The Department of Health and Human Services or the state, in consultation with Indian tribes, shall adopt and promulgate rules and regulations to establish standards and procedures for the department's or the state's review of cases subject to the Nebraska Indian Child Welfare Act and methods for monitoring the department's or the state's compliance with the federal Indian Child Welfare Act and the Nebraska Indian Child Welfare Act. The standards and procedures and the monitoring methods shall be integrated into the department's or the state's structure and
plan for the federal government's child and family service review process and any program improvement plan resulting from that process.

Sec. 16. Original sections 43-512.04, 43-1406, 43-1501, 43-1502, 43-1504, 43-1505, 43-1506, 43-1507, 43-1508, 43-1509, and 43-1514, Reissue Revised Statutes of Nebraska, and sections 43-279.01 and 43-1503, Revised Statutes Cumulative Supplement, 2014, are repealed.