

CHAPTER 338

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 25-1204

BY REPRESENTATIVE(S) Duran and Joseph, Bacon, Bird, Boesenecker, Brown, Camacho, Espenoza, Garcia, Gilchrist, Hamrick, Jackson, Lieder, Lindsay, Lindstedt, Lukens, Mabrey, Martinez, McCormick, Phillips, Ricks, Rutinel, Rydin, Sirota, Stewart K., Story, Titone, Valdez, Velasco, Willford, Woodrow, McCluskie, Clifford, English, Froelich; also SENATOR(S) Danielson, Amabile, Bridges, Carson, Cutter, Daugherty, Exum, Frizell, Gonzales J., Jodeh, Kipp, Lundeen, Marchman, Michaelson Jenet, Mullica, Roberts, Simpson, Snyder, Sullivan, Wallace, Weissman, Winter F., Coleman.

AN ACT

CONCERNING THE CODIFICATION OF THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978" AS THE "COLORADO INDIAN CHILD WELFARE ACT".

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

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

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

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

~~(A) The court shall ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is to be made at the commencement of the proceeding, and all responses must be on the record. The court shall instruct the participants to inform the court if any participant subsequently receives information that provides reason to know the child is an Indian child.~~

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

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

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

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

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

~~(D) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska native village;~~

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

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

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

~~(c) The petitioning or filing party shall disclose in the complaint, petition, or other commencing pleading filed with the court that the child who is the subject of the proceeding is an Indian child and the identity of the Indian child's tribe or what efforts the petitioning or filing party has made in determining whether the child is an Indian child. If the child who is the subject of the proceeding is determined to be an Indian child, the petitioning or filing party shall further identify what reasonable efforts have been made to send notice to the persons identified in subsection (1)(b) of this section. The postal receipts indicating that notice was properly sent by the petitioning or filing party to the parent or Indian custodian of the Indian child and to the Indian child's tribe must be attached to the complaint, petition, or other commencing pleading filed with the court; except that, if notification has not been perfected at the time the initial complaint, petition, or other commencing pleading is filed with the court or if the postal receipts have not been received back from the post office, the petitioning or filing party shall file the postal receipts with the court. Any responses sent by the tribal agents to the petitioning or filing party, the county department of human or social services, or the court must be distributed to the parties and deposited with the court.~~

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

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

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

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

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

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

ARTICLE 1.2
Colorado Indian Child Welfare Act

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

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

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

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

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

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

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

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

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

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

OPPORTUNITY TO TRANSFER THE CASE TO A TRIBAL COURT OR OTHERWISE PARTICIPATE IN THE STATE COURT PROCEEDING.

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

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

(k) COLORADO IS COMMITTED TO THE CONSISTENT APPLICATION OF AND COMPLIANCE WITH THE FEDERAL ICWA THROUGHOUT THE STATE TO ENSURE THAT PROPER NOTICE IS PROVIDED AND PROCEDURES ARE FOLLOWED AS SPECIFIED BY ICWA WHEN STATE COURT ACTIONS INVOLVE INDIAN CHILDREN; AND

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

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

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

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

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

(b) THE STATE OF COLORADO RECOGNIZES ALL FEDERALLY RECOGNIZED INDIAN TRIBES AS HAVING THE INHERENT AUTHORITY TO DETERMINE THEIR OWN JURISDICTION FOR ANY AND ALL INDIAN CHILD CUSTODY OR CHILD PLACEMENT

PROCEEDINGS, REGARDLESS OF WHETHER THE TRIBE'S MEMBERS ARE ON OR OFF THE RESERVATION AND REGARDLESS OF THE PROCEDURAL POSTURE OF THE PROCEEDING;

(c) THE STATE OF COLORADO HAS LONG RECOGNIZED THE IMPORTANCE OF INDIAN CHILDREN TO THEIR TRIBES, NOT ONLY AS MEMBERS OF TRIBAL FAMILIES AND COMMUNITIES BUT ALSO AS THE TRIBE'S GREATEST RESOURCE AS FUTURE MEMBERS AND LEADERS OF THE TRIBE. THE VITALITY OF INDIAN CHILDREN IN COLORADO IS ESSENTIAL TO THE HEALTH AND WELFARE OF BOTH THE STATE AND TRIBES, AND IS ESSENTIAL TO THE FUTURE WELFARE AND CONTINUED EXISTENCE OF THE TRIBES.

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

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

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

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

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

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

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

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

(III) PRE-ADOPTIVE PLACEMENT, INCLUDING 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;

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

(V) A PARENTAGE DETERMINATION; AND

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

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

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

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

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

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

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

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

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

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

(I) THE INDIAN CHILD'S PARENTS OR, IF THE INDIAN CHILD'S PARENTS DO NOT

HAVE THE SAME DOMICILE, THE INDIAN CHILD'S PARENT WHO HAS PHYSICAL CUSTODY OF THE INDIAN CHILD;

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

(III) THE INDIAN CHILD'S GUARDIAN.

(6) "DUE DILIGENCE" MEANS THE EARNEST ENDEAVOR OF THE COURT AND THE PETITIONING OR FILING PARTY TO INVESTIGATE THE BASIS FOR A PARTY'S OR OTHER INDIVIDUAL'S ASSERTION THAT A CHILD MAY BE AN INDIAN CHILD, AS DESCRIBED IN SECTION 19-1.2-107.

(7) "EMERGENCY PROCEEDING" MEANS ANY COURT ACTION THAT INVOLVES THE EMERGENCY REMOVAL OR EMERGENCY PLACEMENT OF AN INDIAN CHILD, INCLUDING REMOVAL PURSUANT TO SECTION 19-1.2-110, 19-1.2-123, 19-3-405, 14-10-129(4), OR 15-14-204 (5) WITH OR WITHOUT A PROTECTIVE CUSTODY ORDER, OR A TEMPORARY SHELTER CARE PROCEEDING PURSUANT TO SECTION 19-3-401 OR 19-3-403.

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

(b) IF THE MEANING OF "EXTENDED FAMILY MEMBER" CANNOT BE DETERMINED PURSUANT TO SUBSECTION (8)(a) OF THIS SECTION, "EXTENDED FAMILY MEMBER" MEANS AN INDIVIDUAL WHO HAS ATTAINED EIGHTEEN YEARS OF AGE AND WHO IS THE INDIAN CHILD'S GRANDPARENT, AUNT, UNCLE, BROTHER, SISTER, BROTHER-IN-LAW, SISTER-IN-LAW, NIECE, NEPHEW, FIRST OR SECOND COUSIN, GODPARENT, STEPPARENT, OR STEPGRANDPARENT, OR AS DETERMINED BY THE INDIAN CHILD'S TRIBE MEMBER. EVEN FOLLOWING TERMINATION OF A MARRIAGE, A GODPARENT, STEPPARENT, OR STEPGRANDPARENT IS CONSIDERED AN "EXTENDED FAMILY MEMBER".

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

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

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

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

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

(12) "INDIAN CUSTODIAN" MEANS AN INDIAN, OTHER THAN THE INDIAN CHILD'S PARENT, WHO HAS BEEN GRANTED LEGAL CUSTODY OR GUARDIANSHIP OF THE INDIAN CHILD PURSUANT TO TRIBAL LAW, TRIBAL CUSTOM, OR STATE LAW, OR TO

WHOM TEMPORARY PHYSICAL CARE, CUSTODY, AND CONTROL HAS BEEN TRANSFERRED BY THE INDIAN CHILD'S PARENT OUTSIDE THE INVOLVEMENT OF A CHILD WELFARE OR CHILD PLACEMENT AGENCY.

(13) "INDIAN ORGANIZATION" MEANS A GROUP, ASSOCIATION, PARTNERSHIP, CORPORATION, OR OTHER LEGAL ENTITY OWNED OR CONTROLLED BY INDIANS OR WITH A MAJORITY OF INDIAN MEMBERS.

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

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

(16) "PARENT" MEANS:

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

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

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

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

(18) "REASON TO KNOW" MEANS THAT A COURT OR A PETITIONING OR FILING PARTY HAS REASON TO KNOW THAT A CHILD IS AN INDIAN CHILD, AS DESCRIBED IN SECTION 19-1.2-107.

(19) "RESERVATION" MEANS:

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

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

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

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

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

19-1.2-104. Applicability - incorporation of federal law. (1) UNLESS EXPLICITLY STATED OTHERWISE IN THIS ARTICLE 1.2, ALL PROVISIONS OF THIS ARTICLE 1.2 APPLY TO ALL CHILD CUSTODY PROCEEDINGS; ANY MATTER BROUGHT PURSUANT TO THE "UNIFORM DISSOLUTION OF MARRIAGE ACT", ARTICLE 10 OF TITLE 14; THE "COLORADO PROBATE CODE", ARTICLES 10 TO 17 OF TITLE 15; ALL OTHER PRIVATE MATTERS THAT MEET THE DEFINITION OF A CHILD CUSTODY PROCEEDING; AND THE "COLORADO CHILDREN'S CODE", THIS TITLE 19.

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

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

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

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

(2) (a) FOR PURPOSES OF DETERMINING THE BIOLOGICAL PARENT OF AN INDIAN

CHILD, A COURT MAY ORDER GENETIC TESTS PURSUANT TO SECTION 19-4-112 OR 13-25-126.

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

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

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

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

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

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

(c) THE PRIORITIZATION OF PLACEMENT OF THE INDIAN CHILD IN ACCORDANCE WITH THE PLACEMENT PREFERENCES SET FORTH IN SECTION 19-1.2-120;

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

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

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

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

(b) THE POSTAL RECEIPTS OR COPIES OF POSTAL RECEIPTS FROM THE NOTICE SENT PURSUANT TO SUBSECTION (3)(d) OF THIS SECTION INDICATING THAT THE NOTICE WAS PROPERLY SENT BY THE PETITIONING OR FILING PARTY TO THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN AND TO THE INDIAN CHILD'S TRIBE OR TRIBES. THE POSTAL RECEIPTS MUST BE ATTACHED TO THE COMPLAINT, PETITION, OR OTHER COMMENCING PLEADING FILED WITH THE COURT; EXCEPT THAT, IF NOTIFICATION HAS NOT BEEN PERFECTED AT THE TIME THE INITIAL COMPLAINT, PETITION, OR OTHER COMMENCING PLEADING IS FILED WITH THE COURT, OR IF THE POSTAL RECEIPTS HAVE NOT BEEN RECEIVED BACK FROM THE POST OFFICE, THE PETITIONING OR FILING PARTY SHALL FILE THE POSTAL RECEIPTS WITH THE COURT UPON RECEIPT OF THE POSTAL RECEIPTS.

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

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

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

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

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

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

(II) THE CHILD'S PARENT OR PARENTS;

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

(IV) THE CHILD'S EXTENDED FAMILY MEMBERS;

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

(VI) AN INDIAN TRIBE WHEN INFORMATION FROM INQUIRIES MADE PURSUANT TO SUBSECTIONS (3)(a)(I) TO (3)(a)(V) OF THIS SECTION INDICATE THAT THERE IS A REASONABLE LIKELIHOOD THAT THE INDIAN TRIBE MAY PROVIDE ADDITIONAL INFORMATION REGARDING WHETHER THE CHILD IS A MEMBER OF THAT TRIBE OR WHETHER THE CHILD MAY BE ELIGIBLE FOR MEMBERSHIP IN THAT TRIBE.

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

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

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

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

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

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

(VI) THE COURT IS INFORMED THAT THE CHILD OR THE CHILD'S PARENT POSSESSES AN IDENTIFICATION CARD OR OTHER SUFFICIENT DOCUMENTATION INDICATING MEMBERSHIP IN AN INDIAN TRIBE;

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

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

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

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

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

(d) IF THE COURT KNOWS, OR HAS REASON TO KNOW AS DESCRIBED IN SUBSECTION (3)(b) OF THIS SECTION, THAT THE CHILD WHO IS THE SUBJECT OF THE CHILD CUSTODY PROCEEDING IS AN INDIAN CHILD, THE PETITIONING OR FILING PARTY SHALL SEND NOTICE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE PARENT OF THE CHILD, THE CHILD'S INDIAN CUSTODIAN, AND THE TRIBAL AGENT OF THE INDIAN CHILD'S TRIBE OR TRIBES, OR, IF THERE IS NOT A DESIGNATED TRIBAL AGENT, THE PETITIONING OR FILING PARTY SHALL CONTACT THE INDIAN TRIBE FOR DIRECTION TO THE APPROPRIATE OFFICE OR INDIVIDUAL. IN PROVIDING THE NOTICE, THE COURT AND EACH PARTY SHALL COMPLY WITH THE FEDERAL ICWA AND THIS ARTICLE 1.2.

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

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

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

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

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

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

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

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

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

(c) IN PERFORMING DUE DILIGENCE, THE PETITIONING OR FILING PARTY MAY, IF A KNOWN CONNECTION HAS NOT BEEN IDENTIFIED PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION BUT THE COURT OR PETITIONING OR FILING PARTY RECEIVES A REASONABLY CREDIBLE ASSERTION OF THE CHILD'S INDIAN HERITAGE WITHOUT IDENTIFICATION OF A SPECIFIC TRIBE OR TRIBES BUT NARROWED TO A REGION OF THE UNITED STATES, ASK EITHER RELEVANT TRIBES IN THAT IDENTIFIED REGION OR THE RELEVANT BUREAU OF INDIAN AFFAIRS OFFICE IF THE RELEVANT TRIBES OR BUREAU HAVE INFORMATION RELEVANT TO THE DETERMINATION THAT THE CHILD IS AN INDIAN CHILD.

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

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

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

(II) THE TRIBE OF WHICH THE INDIAN CHILD IS A MEMBER IF THE INDIAN CHILD IS

A MEMBER OF ONE TRIBE BUT IS ELIGIBLE FOR MEMBERSHIP IN ONE OR MORE OTHER TRIBES; OR

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

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

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

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

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

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

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

(IV) THE INTERESTS ASSERTED BY EACH TRIBE;

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

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

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

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

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

(c) DOCUMENTED ALL CONTACT WITH:

(I) THE RESPECTIVE TRIBE OR TRIBES. THIS CONTACT MUST INCLUDE AT LEAST TWO CONTACTS OR GOOD FAITH ATTEMPTS TO CONTACT THE TRIBE OR TRIBES WITHIN

SEVENTY DAYS AFTER THE FINDING, UNLESS THE TRIBE OR TRIBES PROVIDED WRITTEN DOCUMENTATION INDICATING MEMBERSHIP, ELIGIBILITY, OR INELIGIBILITY OF THE CHILD.

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

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

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

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

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

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

(d) THE NAME OF EACH INDIAN TRIBE OF WHICH THE INDIAN CHILD IS A MEMBER OR IN WHICH THE INDIAN CHILD MAY BE ELIGIBLE FOR MEMBERSHIP;

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

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

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

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

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

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

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

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

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

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

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

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

(3)(a) A HEARING THAT REQUIRES NOTICE PURSUANT TO THIS SECTION MUST NOT BE HELD UNTIL AT LEAST TEN DAYS AFTER THE LATEST RECEIPT OF THE NOTICE BY THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, TRIBE, OR, IF APPLICABLE, THE FEDERAL BUREAU OF INDIAN AFFAIRS. UPON REQUEST, THE COURT SHALL GRANT THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE UP TO TWENTY-ONE ADDITIONAL DAYS AFTER THE DATE UPON WHICH NOTICE WAS RECEIVED BY THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE TO PREPARE FOR PARTICIPATION IN THE HEARING.

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

19-1.2-109. Enrollment of an Indian child with a tribe. (1) UNLESS AN INDIAN CHILD'S PARENT OBJECTS, THE PETITIONING OR FILING PARTY OR THE INDIAN TRIBE SHALL ASSIST IN ENROLLING AN INDIAN CHILD WHO IS IN THE COURT'S JURISDICTION IN A TRIBE WITH WHICH THE CHILD IS ELIGIBLE FOR ENROLLMENT. IF THE INDIAN

CHILD IS ELIGIBLE TO BE ENROLLED IN MORE THAN ONE TRIBE, THE COURT SHALL DETERMINE MEMBERSHIP PURSUANT TO SECTION 19-1.2-107.

(2) IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION, WHEN THE PETITIONING OR FILING PARTY, INCLUDING A COUNTY DEPARTMENT OR A CHILD PLACEMENT AGENCY, HAS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD, THE PETITIONING OR FILING PARTY SHALL, AT A MINIMUM, STATE IN WRITING OR ORALLY ON THE RECORD THE RELEVANT TRIBE OR TRIBES WITH WHICH THE CHILD MAY BE ELIGIBLE FOR ENROLLMENT TO DETERMINE IF THE CHILD IS IN FACT ELIGIBLE FOR ENROLLMENT. THE NOTIFICATION TO THE RELEVANT TRIBE OR TRIBES MAY BE DONE IN CONJUNCTION WITH THE NOTICE REQUIREMENTS SET FORTH IN SECTION 19-1.2-108 (1).

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

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

(a) DETERMINE WHETHER THE INDIVIDUAL OR AGENCY HAS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD PURSUANT TO SECTION 19-1.2-107 (3)(b); AND

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

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

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

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

(c) AT ANY COURT HEARING DURING THE EMERGENCY PROCEEDING, DETERMINE

WHETHER THE EMERGENCY REMOVAL OR PLACEMENT IS NO LONGER NECESSARY TO PREVENT IMMINENT PHYSICAL HARM OR DANGER TO THE INDIAN CHILD; AND

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

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

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

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

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

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

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

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

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

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

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

(j) A STATEMENT OF THE EFFORTS THAT HAVE BEEN TAKEN TO ASSIST THE INDIAN

CHILD'S PARENTS OR INDIAN CUSTODIAN SO THAT THE INDIAN CHILD MAY BE SAFELY RETURNED TO THE CUSTODY OF THE PARENTS OR INDIAN CUSTODIAN.

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

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

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

19-1.2-111. Active efforts - when required - characteristics. (1) IF THERE IS REASON TO KNOW THAT A CHILD WHO IS THE SUBJECT OF A CHILD CUSTODY PROCEEDING IS AN INDIAN CHILD, ACTIVE EFFORTS ARE REQUIRED AND THE COURT SHALL MAKE AN INITIAL DETERMINATION WHETHER ACTIVE EFFORTS HAVE BEEN MADE TO PREVENT REMOVAL OF THE INDIAN CHILD FROM THE FAMILY. IF THE INDIAN CHILD HAS BEEN REMOVED FROM THE FAMILY, THE COURT SHALL DETERMINE WHETHER ACTIVE EFFORTS HAVE BEEN MADE TO REUNITE THE FAMILY.

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

(3) ACTIVE EFFORTS MUST:

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

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

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

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

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

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

(a) CONDUCTING A COMPREHENSIVE ASSESSMENT OF THE CIRCUMSTANCES OF THE

INDIAN CHILD'S FAMILY, WITH A FOCUS ON REUNIFICATION AS THE PRIMARY AND MOST DESIRABLE GOAL;

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

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

(d) CONDUCTING OR CAUSING TO BE CONDUCTED A DILIGENT SEARCH FOR THE INDIAN CHILD'S EXTENDED FAMILY MEMBERS AND CONTACTING AND CONSULTING WITH THE INDIAN CHILD'S EXTENDED FAMILY MEMBERS AND ADULT RELATIVES TO PROVIDE FAMILY STRUCTURE AND SUPPORT FOR THE INDIAN CHILD AND THE INDIAN CHILD'S PARENTS;

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

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

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

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

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

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

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

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

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

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

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

19-1.2-112. Right to counsel - appointment of counsel - access to records.

(1) IF THERE IS REASON TO KNOW THAT A CHILD WHO IS THE SUBJECT OF A CHILD CUSTODY PROCEEDING IS AN INDIAN CHILD:

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

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

19-1.2-113. Right to intervene and appear. (1) NOTWITHSTANDING THIS ARTICLE 1.2 TO THE CONTRARY, A TRIBE, OR INDIAN CUSTODIAN WHO IS NOT OTHERWISE A PARTY TO A CHILD CUSTODY PROCEEDING BROUGHT PURSUANT TO THIS ARTICLE 1.2, HAS THE RIGHT TO INTERVENE AT ANY POINT IN A CHILD CUSTODY PROCEEDING AND A TRIBE MAY BE REPRESENTED BY AN INDIVIDUAL AUTHORIZED BY THE TRIBE TO ACT ON ITS BEHALF, REGARDLESS OF WHETHER THE INDIVIDUAL IS LICENSED TO PRACTICE LAW.

(2) IN ACCORDANCE WITH THE COLORADO RULES OF CIVIL PROCEDURE, AN ATTORNEY WHO IS NOT BARRED FROM PRACTICING LAW IN COLORADO MAY APPEAR ON BEHALF OF A TRIBE IN ANY CHILD CUSTODY PROCEEDING INVOLVING AN INDIAN

CHILD WITHOUT ASSOCIATING WITH LOCAL COUNSEL OR WITHOUT PAYING A FEE TO APPEAR PRO HAC VICE.

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

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

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

19-1.2-115. Qualified expert witnesses. (1) IN A CHILD CUSTODY PROCEEDING THAT REQUIRES THE TESTIMONY OF A QUALIFIED EXPERT WITNESS, THE PETITIONING OR FILING PARTY SHALL SEEK A QUALIFIED EXPERT WITNESS FROM THE INDIAN CHILD'S TRIBE AND MAY, WHEN APPROPRIATE, CONTACT THE FEDERAL BUREAU OF INDIAN AFFAIRS AND REQUEST THAT THE TRIBE OR BUREAU IDENTIFY ONE OR MORE INDIVIDUALS WHO MEET THE CRITERIA DESCRIBED IN SUBSECTION (3) OR (4) OF THIS SECTION AND MAKE A RECORD OF THAT CONTACT EITHER IN WRITING OR ORALLY ON THE RECORD.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OR ELIGIBLE FOR MEMBERSHIP TO ASSIST THE COURT IN MAKING THE DETERMINATION.

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

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

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

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

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

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

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

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

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

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

(V) THE SOCIOECONOMIC CONDITIONS OF THE INDIAN CHILD'S TRIBE OR ANY NEGATIVE PERCEPTION OF THE TRIBE'S OR THE FEDERAL BUREAU OF INDIAN AFFAIRS'S SOCIAL SERVICES OR JUDICIAL SYSTEMS; OR

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

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

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

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

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

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

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

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

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

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

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

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

19-1.2-119. Requirements if transfer to tribal court granted. (1) UPON GRANTING A MOTION TO TRANSFER PURSUANT TO SECTION 19-1.2-118, THE COURT SHALL EXPEDITIOUSLY:

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

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

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

(I) COORDINATE WITH THE TRIBAL COURT AND THE INDIAN CHILD'S TRIBE TO ENSURE THAT THE TRANSFER OF THE PROCEEDING AND THE TRANSFER OF CUSTODY

OF THE INDIAN CHILD IS ACCOMPLISHED WITH MINIMAL DISRUPTION OF SERVICES TO THE INDIAN CHILD AND THE INDIAN CHILD'S FAMILY; AND

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

(A) ALL RECORDS AND ORIGINAL DOCUMENTS IN THE PETITIONING OR FILING PARTY'S POSSESSION THAT ARE RELATED TO THE INDIAN CHILD, INCLUDING A BIRTH CERTIFICATE, SOCIAL SECURITY CARD, CERTIFICATE OF INDIAN BIRTH, AND OTHER SIMILAR DOCUMENTS;

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

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

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

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

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

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

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

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

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

(A) THE CHILD'S NONCUSTODIAL PARENT;

(B) A MEMBER OF THE INDIAN CHILD'S EXTENDED FAMILY;

(C) A FOSTER HOME LICENSED, APPROVED, OR SPECIFIED BY THE INDIAN CHILD'S TRIBE;

(D) ANOTHER MEMBER OF THE INDIAN CHILD'S TRIBE;

(E) ANOTHER INDIAN FAMILY WITH WHOM THE INDIAN CHILD HAS A RELATIONSHIP;

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

(G) A FOSTER HOME LICENSED OR APPROVED BY A LICENSING AUTHORITY IN THIS STATE AND IN WHICH ONE OR MORE OF THE LICENSED OR APPROVED FOSTER PARENTS IS AN INDIAN; OR

(H) AN INSTITUTION FOR CHILDREN THAT HAS A PROGRAM SUITABLE TO MEET THE INDIAN CHILD'S NEEDS AND IS APPROVED BY AN INDIAN TRIBE OR OPERATED BY AN INDIAN ORGANIZATION.

(2) IF THE PARENTAL RIGHTS OF THE INDIAN CHILD'S PARENTS HAVE BEEN TERMINATED OR IF AN INDIAN CHILD IS IN NEED OF GUARDIANSHIP PURSUANT TO PART 2 OF ARTICLE 14 OF TITLE 15 OR ADOPTIVE PLACEMENT, EXCEPT AS PROVIDED FOR IN SUBSECTION (3) OF THIS SECTION, THE INDIAN CHILD MUST BE PLACED:

(a) IN ACCORDANCE WITH THE ORDER OF PREFERENCE ESTABLISHED BY THE INDIAN CHILD'S TRIBE; OR

(b) IF THE INDIAN CHILD'S TRIBE HAS NOT ESTABLISHED PLACEMENT PREFERENCES, ACCORDING TO THE FOLLOWING ORDER OF PREFERENCE:

(I) WITH A MEMBER OF THE INDIAN CHILD'S EXTENDED FAMILY;

(II) WITH OTHER MEMBERS OF THE INDIAN CHILD'S TRIBE;

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

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

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

(VI) WITH ANOTHER INDIAN FAMILY.

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

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

(c) IF THE COURT DETERMINES THAT THE MOVING PARTY HAS ESTABLISHED ITS BURDEN BY CLEAR AND CONVINCING EVIDENCE THAT THERE IS GOOD CAUSE TO

DEPART FROM THE PLACEMENT PREFERENCES SET FORTH IN SUBSECTION (1) OR (2) OF THIS SECTION, THE COURT MAY AUTHORIZE AN ALTERNATIVE PLACEMENT.

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

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

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

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

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

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

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

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

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

(IV) MAY NOT BE BASED:

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

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

(C) ON THE DISTANCE BETWEEN A PLACEMENT THAT MEETS THE PLACEMENT

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

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

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

(5) TO ENSURE THAT THIS ARTICLE 1.2 IS FULLY IMPLEMENTED AND THAT ALL INDIAN CHILDREN HAVE THE OPPORTUNITY TO MAINTAIN STRONG CONNECTIONS TO THEIR CULTURE, IF THE HOUSEHOLD INTO WHICH AN INDIAN CHILD IS PLACED FOR ADOPTION OR GUARDIANSHIP DOES NOT INCLUDE A PARENT WHO IS A MEMBER OF THE INDIAN CHILD'S TRIBE, THE COURT SHALL REQUIRE THE PARTIES TO THE ADOPTION TO ENTER A CULTURAL COMPACT AT THE DISCRETION OF THE INDIAN CHILD'S TRIBE, OR OTHERWISE DEVELOP A PLAN THAT DOCUMENTS THE PARTIES' AGREEMENT REGARDING HOW THE INDIAN CHILD WILL CONTINUE TO ACTIVELY PARTICIPATE IN THE INDIAN CHILD'S CULTURAL LEARNING AND ACTIVITIES, AND ENGAGEMENT WITH FAMILY MEMBERS. EACH CULTURAL COMPACT OR PLAN MUST BE SPECIFIC TO THE INDIAN CHILD; MUST CONSIDER THE INDIAN CHILD'S MENTAL, PHYSICAL, AND EMOTIONAL NEEDS, INCLUDING THE INDIAN CHILD'S PREFERENCES; AND MUST TAKE INTO ACCOUNT THE INDIAN CHILD'S UNDERSTANDING AS THE INDIAN CHILD GROWS AND MATURES. THE CULTURAL COMPACT OR PLAN IS CONSIDERED A POST-ADOPTION CONTACT AGREEMENT IN ACCORDANCE WITH SECTION 19-5-208 (4.5) AND ENFORCEABLE IN ACCORDANCE WITH SECTION 19-5-217.

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

(7) A CONFIDENTIALITY REQUIREMENT, IF ANY, DOES NOT PREVENT AN ADULT ADOPTEE, ADULT DESCENDANT OF AN ADOPTEE, OR ANOTHER ELIGIBLE PARTY FROM OBTAINING UNREDACTED COPIES OF ADOPTION RECORDS PURSUANT TO SECTION 19-5-305.

19-1.2-121. Order to vacate judgment. (1) A PETITION TO VACATE AN ORDER OR A JUDGMENT INVOLVING AN INDIAN CHILD REGARDING JURISDICTION IN ACCORDANCE WITH SECTIONS 19-1.2-116 AND 19-1.2-118, PLACEMENT, GUARDIANSHIP, OR THE TERMINATION OF PARENTAL RIGHTS MAY BE FILED IN A PENDING CHILD CUSTODY PROCEEDING INVOLVING THE INDIAN CHILD OR, IF A CHILD CUSTODY PROCEEDING IS NOT PENDING, IN ANY STATE OR LOCAL COURT OF COMPETENT JURISDICTION BY:

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

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

(c) THE INDIAN CHILD'S TRIBE.

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

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

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

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

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

(2) IF THE COURT FINDS THAT THE INDIAN CHILD HAS BEEN IMPROPERLY REMOVED OR IMPROPERLY RETAINED, THE COURT SHALL ORDER THE PETITIONING OR FILING PARTY TO IMMEDIATELY RETURN THE INDIAN CHILD TO THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN AND DISMISS THE PROCEEDING, UNLESS THE COURT DETERMINES THAT DOING SO WOULD SUBJECT THE INDIAN CHILD TO SUBSTANTIAL AND IMMEDIATE DANGER OR A THREAT OF SUBSTANTIAL AND IMMEDIATE DANGER. IN SUCH A CASE, THE COURT SHALL HOLD A HEARING WITHIN TWENTY-EGHT DAYS

IN ACCORDANCE WITH 25 U.S.C. SEC. 1912 (e) AND SECTION 19-1.2-123 TO DETERMINE IF THE RETURN OF THE INDIAN CHILD IS APPROPRIATE.

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

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

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

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

19-1.2-124. Tribal customary adoption. (1) IF THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE PROVIDES NOTICE TO THE COURT AND THE PARTIES IN WRITING OR ORALLY ON THE RECORD THAT THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE IS PURSUING A TRIBAL CUSTOMARY ADOPTION AS A RESOLUTION TO THE CHILD CUSTODY PROCEEDING, THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE MUST SECURE A MOTION TO TRANSFER THE CASE TO TRIBAL COURT PURSUANT TO SECTION 19-1.2-118 WITHIN SIXTY-THREE DAYS AFTER RECEIVING THE NOTICE. IF THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE DOES NOT SECURE A MOTION TO TRANSFER THE CASE WITHIN SIXTY-THREE DAYS, THE COURT MAY CONSIDER OTHER PERMANENCY OR PLACEMENT OPTIONS PURSUANT TO THIS ARTICLE 1.2 AS A RESOLUTION TO THE CHILD CUSTODY PROCEEDING. FAILURE TO SECURE THE MOTION TO TRANSFER THE CASE WITHIN SIXTY-THREE DAYS DOES NOT PREVENT THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE FROM FILING A MOTION TO TRANSFER THE CASE TO A TRIBAL COURT AT A LATER DATE.

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

19-1.2-125. Termination of parental rights - tribal customary adoption exemption. (1) UPON THE FILING OF A MOTION TO TERMINATE THE PARENT-CHILD

LEGAL RELATIONSHIP, THE COURT SHALL MAKE A FINDING, SUBJECT TO THE PROCEDURES DESCRIBED IN SECTION 19-1.2-107 (2) AND (3), REGARDING WHETHER THERE IS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD.

(2) (a) If there is a finding that there is reason to know that the child is an Indian child, in addition to the statutory criteria outlined in section 19-3-604 and part 1 of article 5 of this title 19, the court shall make findings, supported by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that the parents' continued custody of the Indian child is likely to result in serious emotional or physical damage to the child.

(b) The court may not enter an order terminating parental rights of an Indian child unless:

(I) The court has offered the parties the opportunity to participate in mediation;

(II) Active efforts to reunite the Indian family did not eliminate the necessity for termination based on serious emotional or physical damage to the Indian child; and

(III) The court has considered and eliminated any less drastic alternatives to termination, including, but not limited to, allocation of parental responsibilities, guardianship, and tribal customary adoption.

(3) The evidence required pursuant to this section must show a causal relationship between the particular conditions in the Indian child's home and the likelihood that continued custody of the Indian child by the Indian child's parent or parents will result in serious emotional or physical damage to the particular Indian child who is the subject of the child custody proceeding. Evidence that shows the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not, by itself, establish a causal relationship as required by this section.

(4) A petitioning or filing party filing a motion to terminate parental rights of an Indian child shall document in the motion what efforts have been made to explore tribal customary adoption pursuant to section 19-1.2-124.

(5) If requested by the tribe, the termination order must include a provision that the petitioning or filing party maintain connections between the Indian child and the Indian child's tribe.

(6) The rights of one parent may be terminated without affecting the rights of the other parent.

19-1.2-126. Voluntary consent - foster care placement, relinquishment of parental rights, or adoption - requirements - when not valid. (1) When a

PARENT OR INDIAN CUSTODIAN VOLUNTARILY CONSENTS TO A FOSTER CARE, PRE-ADOPTIVE OR ADOPTIVE PLACEMENT, OR TO TERMINATE PARENTAL RIGHTS, THE CONSENT IS NOT VALID UNLESS EXECUTED IN WRITING AND RECORDED BEFORE A JUDGE OF A COURT OF COMPETENT JURISDICTION AND ACCOMPANIED BY THE JUDGE'S CERTIFICATE THAT THE TERMS AND CONSEQUENCES OF THE CONSENT WERE FULLY EXPLAINED IN DETAIL AND 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 IS NOT VALID.

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

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

19-1.2-127. Tribal-state agreements - purpose - requirements. (1) (a) THE STATE DEPARTMENT SHALL CONTINUE TO MAKE GOOD FAITH EFFORTS TO FOLLOW AND REVISE TRIBAL-STATE CHILD WELFARE AGREEMENTS WITH THE SOUTHERN UTE INDIAN TRIBE AND THE UTE MOUNTAIN UTE INDIAN TRIBE. THE STATE DEPARTMENT SHALL REVISE A TRIBAL-STATE CHILD WELFARE AGREEMENT UPON THE REQUEST OF, AND IN CONJUNCTION WITH, THE REQUESTING INDIAN TRIBE.

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

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

(3) A TRIBAL-STATE CHILD WELFARE AGREEMENT MAY INCLUDE AGREEMENTS REGARDING DEFAULT JURISDICTION OVER CASES IN WHICH THE STATE COURTS AND TRIBAL COURTS HAVE CONCURRENT JURISDICTION; THE TRANSFER OF CASES BETWEEN STATE COURTS AND TRIBAL COURTS; THE ASSESSMENT, REMOVAL, PLACEMENT, CUSTODY, AND ADOPTION OF INDIAN CHILDREN; AND ANY OTHER CHILD WELFARE SERVICES PROVIDED TO INDIAN CHILDREN.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(II) THE NUMBER OF INDIAN CHILDREN IN FOSTER CARE;

(III) THE NUMBER OF INDIAN CHILDREN PLACED IN ADOPTIVE HOMES FROM THE CHILD WELFARE SYSTEM; AND

(IV) THE NUMBER OF AVAILABLE PLACEMENTS AND COMMON BARRIERS TO RECRUITMENT AND RETENTION OF APPROPRIATE PLACEMENTS.

(c) NO LATER THAN DECEMBER 1, 2027, AND EVERY EVEN-NUMBERED YEAR THEREAFTER, THE STATE DEPARTMENT SHALL REPORT THE FINDINGS OF THE INFORMATION COMPILED PURSUANT TO SUBSECTIONS (2)(a) AND (2)(b) OF THIS SECTION TO THE HOUSE OF REPRESENTATIVES HEALTH AND HUMAN SERVICES COMMITTEE, THE HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE, THE SENATE HEALTH AND HUMAN SERVICES COMMITTEE, AND THE SENATE JUDICIARY COMMITTEE, OR THEIR SUCCESSOR COMMITTEES.

(2) NOTWITHSTANDING THE REQUIREMENT IN SECTION 24-1-136 (11)(a)(I), THE REPORT REQUIRED PURSUANT TO THIS SECTION CONTINUES INDEFINITELY.

19-1.2-130. Conflict of laws. (1) EXCEPT AS PROVIDED IN SECTION 19-5-305, IF ANY PROVISION OF THIS ARTICLE 1.2 IS FOUND TO PROVIDE A LOWER STANDARD OF PROTECTION TO THE RIGHTS OF AN INDIAN CHILD OR THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE THAN THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978":

(a) THE HIGHER STANDARD OF PROTECTION IN THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978" CONTROLS; AND

(b) THE CONFLICTING PROVISION DOES NOT RENDER ANY REMAINING PROVISIONS OF THIS ARTICLE 1.2 INOPERATIVE THAT PROVIDE A HIGHER STANDARD OF PROTECTION THAN THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978".

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

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

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

19-3-702. Permanency hearing. (4) (e) If the court finds that there is not a

substantial probability that the child or youth will be returned to a parent or legal guardian within six months and the child or youth appears to be adoptable and meets the criteria for adoption in section 19-5-203, the court may order ~~the~~ a county department of human or social services to show cause why it should not file a motion to terminate the parent-child legal relationship pursuant to part 6 of this article 3. Cause may include, but is not limited to, any of the following conditions:

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

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

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

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

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

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

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

~~(a) 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 most significant contacts.~~

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

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

19-2.5-502. Petition initiation - petition form and content. (5) (a) Pursuant to ~~section 19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19, in ~~those~~ delinquency proceedings to which the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., ~~as amended,~~ applies, including, but not limited to, status offenses such as the illegal possession or consumption of ethyl alcohol or marijuana by an underage ~~person~~ INDIVIDUAL or illegal possession of marijuana paraphernalia by an underage

person, as described in section 18-13-122, and possession of handguns by juveniles, as described in section 18-12-108.5, the petition must:

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

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

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

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

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

19-3-602. Motion for termination - separate hearing - right to counsel - no jury trial. (1.5) (a) Pursuant to ~~the provisions of section 19-1-126~~ SECTION 19-1.2-125, the motion for termination must:

(b) If notices were sent to the INDIAN CHILD's parent or Indian custodian ~~of the child~~ and to the Indian child's tribe, pursuant to ~~section 19-1-126~~ SECTION 19-1.2-108, the postal receipts, or copies thereof, ~~shall~~ MUST be attached to the motion for termination and filed with the court or filed within ~~ten~~ FOURTEEN days after the filing of the motion for termination, as specified in ~~section 19-1-126 (1)(c)~~ SECTION 19-1.2-107 (1)(b).

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

19-5-103. Relinquishment procedure - petition - hearings. (1.5) (a) Pursuant to ~~the provisions of section 19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19, the petition for relinquishment ~~shall~~ MUST:

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

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

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

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

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

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

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

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

SECTION 12. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 31, 2025