

NOTICE OF INVOLUNTARY CHILD CUSTODY PROCEEDING INVOLVING AN INDIAN CHILD

TO:

Notice To:

- The child's parent(s)
- The child's tribe
- The child's custodian(s)
- Bureau of Indian Affairs

The Indian Child Welfare Act requires that you be notified of the upcoming custody hearing concerning the child named below. Information about the hearing is also contained in this form. Your rights regarding these proceedings are explained in an attachment to this form. Personal information you provide may be used for secondary purposes [Privacy Law, s. 15.04(1)(m), Wisconsin Statutes].

THIS NOTICE CONCERNS:

CHILD INFORMATION

Name (Last, First, Middle)	Birthdate (mm/dd/yyyy)	Birthplace (City, State)
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Name – Tribe or Band or Alaska Native village of which child is reported to be a member or eligible for membership

MOTHER INFORMATION

Name – (Current - Last, First, Middle)	Maiden Name	Birthdate (mm/dd/yyyy)
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Other Names Known By

Tribal Affiliation(s)

Clan

FATHER INFORMATION

Name (Last, First, Middle)	Birthdate (mm/dd/yyyy)
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Other Names Known By

Tribal Affiliation(s)

Clan

Yes No Additional family history information is attached.

THE CHILD NAMED ABOVE IS CURRENTLY IN THE CUSTODY OF THE PARENT OR INDIAN CUSTODIAN.

THIS IS TO ADVISE YOU THAT THE CHILD NAMED ABOVE HAS BEEN TEMPORARILY PLACED IN THE CUSTODY OF THE AGENCY NAMED BELOW.

Name - Agency	Address (Street, City, State, Zip Code)
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HEARING INFORMATION

Date of Hearing (mm/dd/yyyy)	Time of Hearing <input type="checkbox"/> AM <input type="checkbox"/> PM	Type of Hearing
Circuit Court		
Court Address (Street, City, State, Zip Code)		

IF YOU HAVE ANY QUESTIONS REGARDING THIS HEARING OR YOUR RIGHTS, CONTACT:

Name – Caseworker	Telephone Number
Name – Agency	Address (Street, City, State, Zip Code)
SIGNATURE – Caseworker	Date Signed (mm/dd/yyyy)

Note to Sender: It is required that this notice be sent by registered mail with return receipt requested. **The return receipt must be filed with the court.**

NOTIFICATION OF RIGHTS UNDER THE INDIAN CHILD WELFARE ACT

Intervention

The parents, the Indian custodians and the child's tribe have the right to intervene at any point in the proceeding. A parent is any biological parent of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom.

Appointment of Attorney

If the court determines that the parent(s) or Indian custodian(s) is unable to afford an attorney, the court must appoint an attorney to represent each of them.

Transfer of Proceedings

Either of the child's parents, the Indian custodian, or the Indian child's tribe may request the court to transfer the proceedings to the child's tribal court. Unless either parent objects, the tribal court declines to accept transfer, or there is good cause to the contrary, the court shall transfer the proceedings to the tribal court.

Notice

The parent(s), the Indian custodian(s), and the child's tribe shall be notified by registered mail, return receipt requested, of the pending court or administrative proceeding and of the right of intervention. If the identity or the location of the parent or Indian custodian and the tribe cannot be determined, the notice shall be given to the Secretary of the Interior who shall have 15 days after receipt to provide the notice to the parent or Indian custodian and the tribe. No out-of-home care placement or termination of parental rights proceedings shall be held until at least 10 days after the receipt of the notice by the parent or Indian custodian and the tribe or the Secretary. The parent(s), the Indian custodian(s), and the child's tribe have the right, upon request, to have up to 20 additional days to prepare for the hearing.

Examination of Reports or Other Documents

The parent(s), the Indian custodian(s) and the child's tribe have the right to examine all reports and other documents filed with the court that may be used by the court to make decisions.

Remedial Services and Rehabilitation Programs -- Active Efforts

The court must be satisfied that active efforts have been made to provide services designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. However, nothing in the Indian Child Welfare Act prevents the emergency removal of an Indian child who is a resident of or domiciled on a reservation but temporarily located off the reservation from his / her parent or Indian custodian or the emergency placement of such child in out-of-home care or an institution, under state law, in order to prevent imminent physical damage or harm to the child. The state or county agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of the Indian Child Welfare Act, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

Out-of-Home Care Placement Orders – Burden of Proof and Need for Expert Testimony

In order to make an out-of-home care placement, the court must determine by clear and convincing evidence, including testimony of qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Placement of Indian Children in Out-Of-Home Care

The child shall be placed in the least restrictive setting which is most family-like and in which his or her special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. The court shall give preference, in the absence of good cause to the contrary, to a placement with:

1. a member of the Indian child's extended family, as determined by the tribe.
2. a foster home licensed, approved, or specified by the Indian child's tribe.
3. an Indian foster home licensed or approved by an authorized non-Indian licensing authority.
4. an institution for children approved by an Indian tribe or operated by an Indian organization, which has a program suitable to meet the child's needs.

Where appropriate, the child's or parents' preference shall be considered: if a consenting parent desires anonymity, the court or agency shall give weight to such desire in applying the preferences listed above.

Additional Rights in Hearings Related to Termination of Parental Rights and Adoption

Parental Rights Termination Orders – Burden of Proof and Need for Expert Testimony

In order to terminate parental rights, the court must determine by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Voluntary Termination

If any parent or Indian custodian voluntarily consents to an out-of-home care placement or to termination of parental rights, there are special rules on how the court accepts any such consent. Withdrawal of such consent also has special provisions. See the Indian Child Welfare Act at 25 U.S.C. section 1913.

Placement of Indian Children in Adoptive Homes

The court shall give preference, in the absence of good cause to the contrary, to a placement with:

1. a member of the child's extended family.
2. other members of the Indian child's tribe.
3. other Indian families.

Return of Custody

A biological parent or prior Indian custodian may petition for return of custody after a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child. The court shall grant the petition unless there is a showing that the return of custody is not in the best interests of an Indian child.

Whenever an Indian child is removed from an out-of-home care placement for the purpose of further out-of-home care, pre-adoptive or adoptive placement, the placement shall be in accordance with the placement preferences.