

Office of Child Welfare Programs

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Topic: Agency-wide Policy

Clarification of protective active plans for Indian children and active vs.

Subject: reasonable efforts

Applies to (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> All DHS employees | <input type="checkbox"/> County Mental Health Directors |
| <input type="checkbox"/> Area Agencies on Aging | <input type="checkbox"/> Health Services |
| <input type="checkbox"/> Aging and People with Disabilities | <input type="checkbox"/> Office of Developmental Disabilities Services(ODDS) |
| <input type="checkbox"/> Self Sufficiency Programs | <input type="checkbox"/> ODDS Children's Intensive In Home Services |
| <input type="checkbox"/> County DD Program Managers | <input type="checkbox"/> Stabilization and Crisis Unit (SACU) |
| <input type="checkbox"/> ODDS Children's Residential Services | <input type="checkbox"/> Other (<i>please specify</i>): |
| <input checked="" type="checkbox"/> Child Welfare Programs | |

Message:

This memo is to clarify protective action plans involving Indian children, reasonable vs. active efforts and the definition of imminent physical damage or harm under the Indian Child Welfare Act and related Oregon Administrative Rules.

IMMINENT PHYSICAL DAMAGE OR HARM & PRESENT DANGER STANDARDS

DEFINED IN CASES INVOLVING INDIAN CHILDREN:

“Imminent physical damage or harm” means impending and certain physical harm will occur to the Indian child unless a *protective action plan* can be put in place or an *emergency removal* is initiated.

This type of danger is limited to *physical* damage or harm.

"Present danger safety threat" means an immediate, significant, and clearly *observable* family behavior, condition, or circumstance occurring in the present tense, already endangering or threatening to endanger a *child*. The family behavior, condition, or circumstance is happening now and it is currently in the process of actively placing a *child* in peril.

This type of danger includes other dangers in addition to physical harm.

WHEN THE LEVEL OF DANGER MEETS EITHER OF THESE STANDARDS IN A CASE INVOLVING AN INDIAN CHILD, A PROTECTIVE ACTION PLAN MUST BE USED.

TYPES OF PROTECTIVE ACTION PLANS THAT MAY BE USED FOR INDIAN FAMILIES

The Department must use protective actions that allow for the least amount of disruption to the family while still ensuring a child's safety.

In-home protective action plans:

- In-home protective action plans are allowed **if the child can safely remain with a parent or Indian custodian.**
- In-home protective action plans may also result in the Department asking for temporary custody of an Indian child, this is called a "Child Custody Proceeding."
- The Department must provide notice to proceed with a Child Custody Proceeding to the parent(s)/custodian/Tribe(s) within 24 hours of initiating any in-home protective action plan.

Out-of-home protective action plans:

- Out-of-home protective action plans are allowed if the Department determines an in-home protective action will not manage safety. An out-of-home protective action plan occurs when an Indian child is removed from both of the parents, or both of the parents have been removed from the child.
- In order to use an out-of-home protective action, the Department must be able to show

that the standard of “**Imminent physical damage or harm**” has been reached.

- An out-of-home protective action plan is the same as an emergency removal and requires an “Emergency Proceeding.” The Department must consult with the tribe and notify the DHS Tribal Affairs Unit as soon as possible when an emergency removal has occurred.
- An emergency proceeding requires a court hearing that must occur no more than 24 hours after the emergency removal.

A protective action plan may not be extended. When the 10 days expires the protective action must be dismissed, or if there is an impending danger safety threat, the Department must immediately initiate an initial safety plan.

When the department determines the standard of imminent physical damage or harm no longer exists, the Indian child must be returned to the parent with an appropriate in-home safety plan, if one is still required to manage safety.

REASONABLE EFFORTS VS. ACTIVE EFFORTS

Active efforts are more intensive in nature than reasonable efforts. They are culturally appropriate, and engage the tribe. Active efforts can look different for each tribe. Each worker must reach out to the child’s tribe for the guidance on what active efforts includes for that tribe. Please also refer to the BIA guidelines and rules for what constitutes active efforts. ([See attachments.](#))

There is no DHS-approved active-efforts checklist, as the efforts must be tailored to the tribe, family and situation. Completing a checklist does not mean that active efforts have been provided.

Remember to work with child’s tribe at each stage of the case.

Note: Central office is currently revising the rules and updating the ICWA procedure manual for the field.

For additional guidance, please see the attached materials:

- The ICWA (25 USC 21)
- BIA regulations (25 CFR 23)
- BIA 2016 guidelines

If you have any questions about this information, contact:

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[BIA ICWA Guidelines 2016](#)

[25 USC 21](#)

[Federal Register 25 CFR Part 23](#)