

APPENDIX 6

FLOW CHARTS

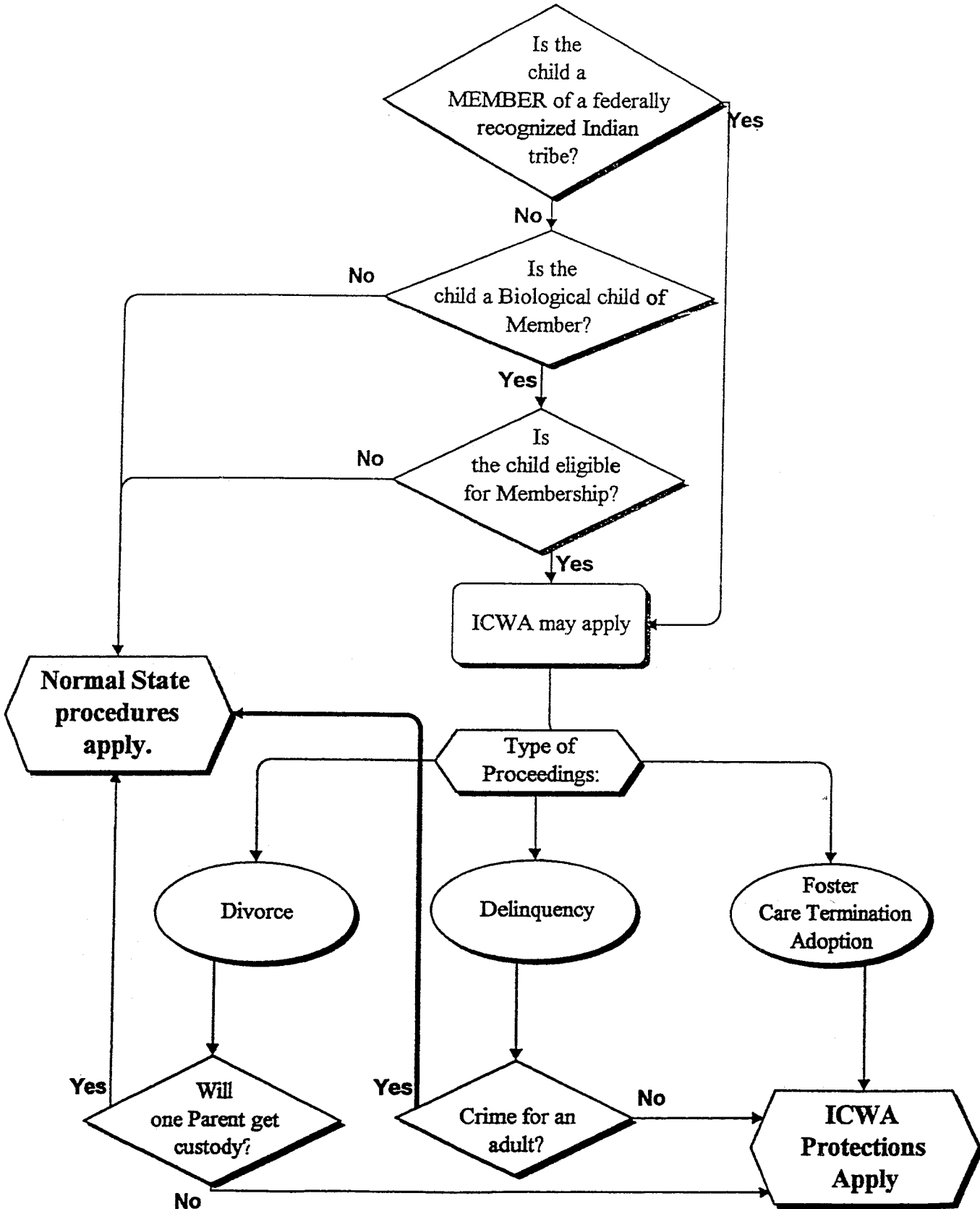
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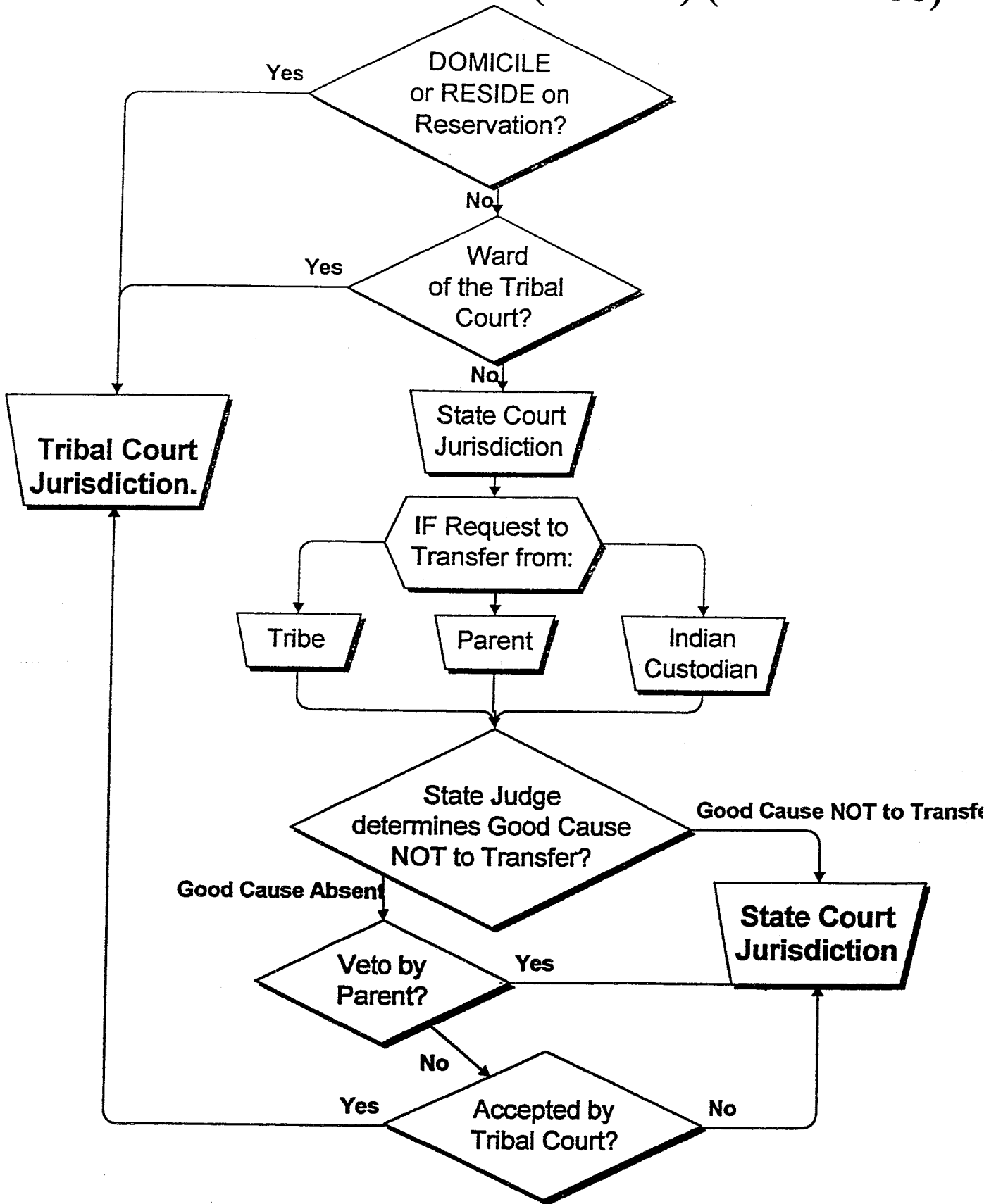
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- Will the ICWA apply to this case?
- Jurisdiction and the ICWA (sec 101) (non-P.L. 280)
- Notice requirements of ICWA (sec 102)
- Checklist for removal or termination (sec 102)
- Placement preferences (sec 105)
- Voluntary Consent to TPR
- Withdrawal of consent (sec 103)
- Emergency removal (sec 112)

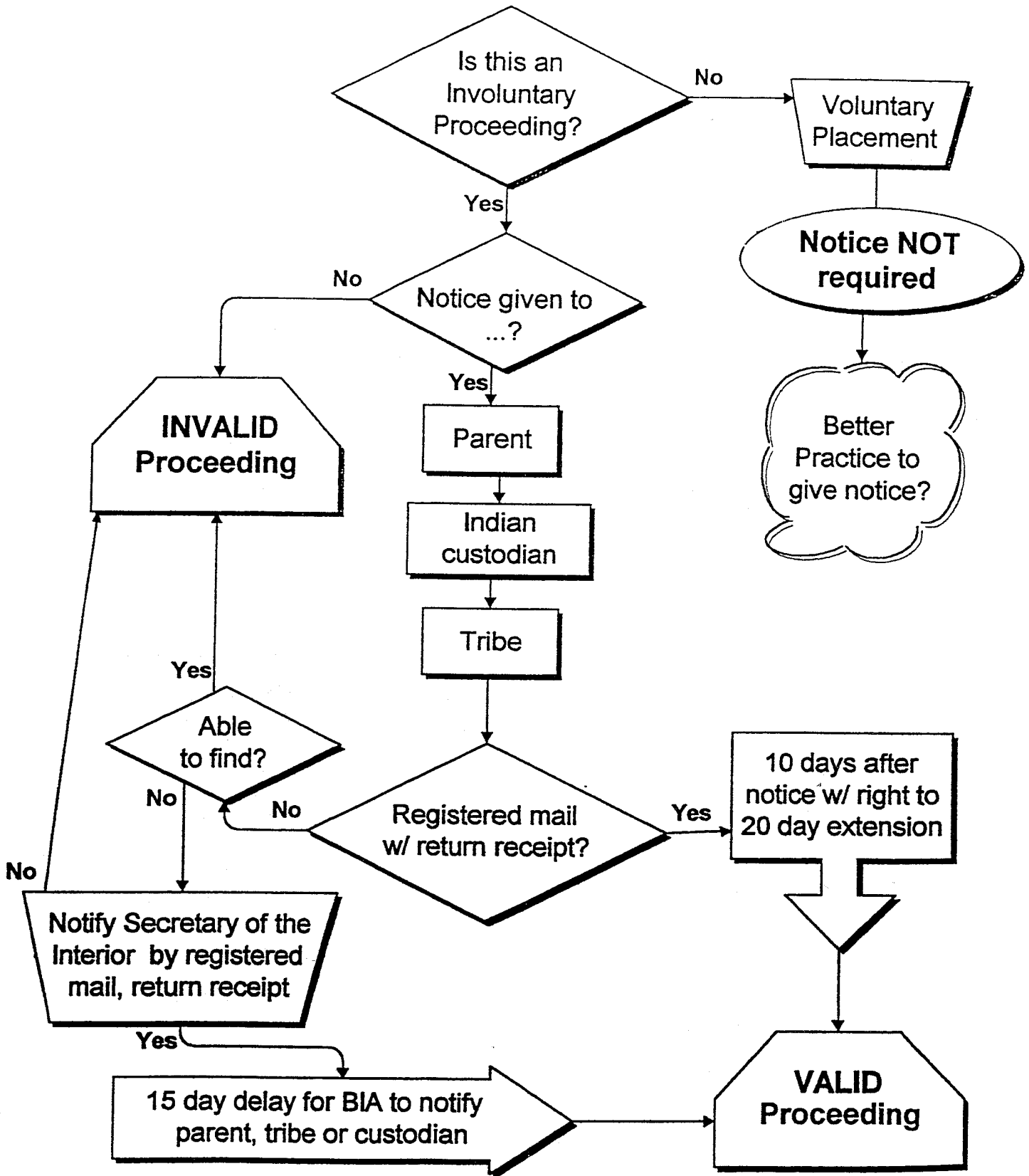
Will the ICWA apply to this case?



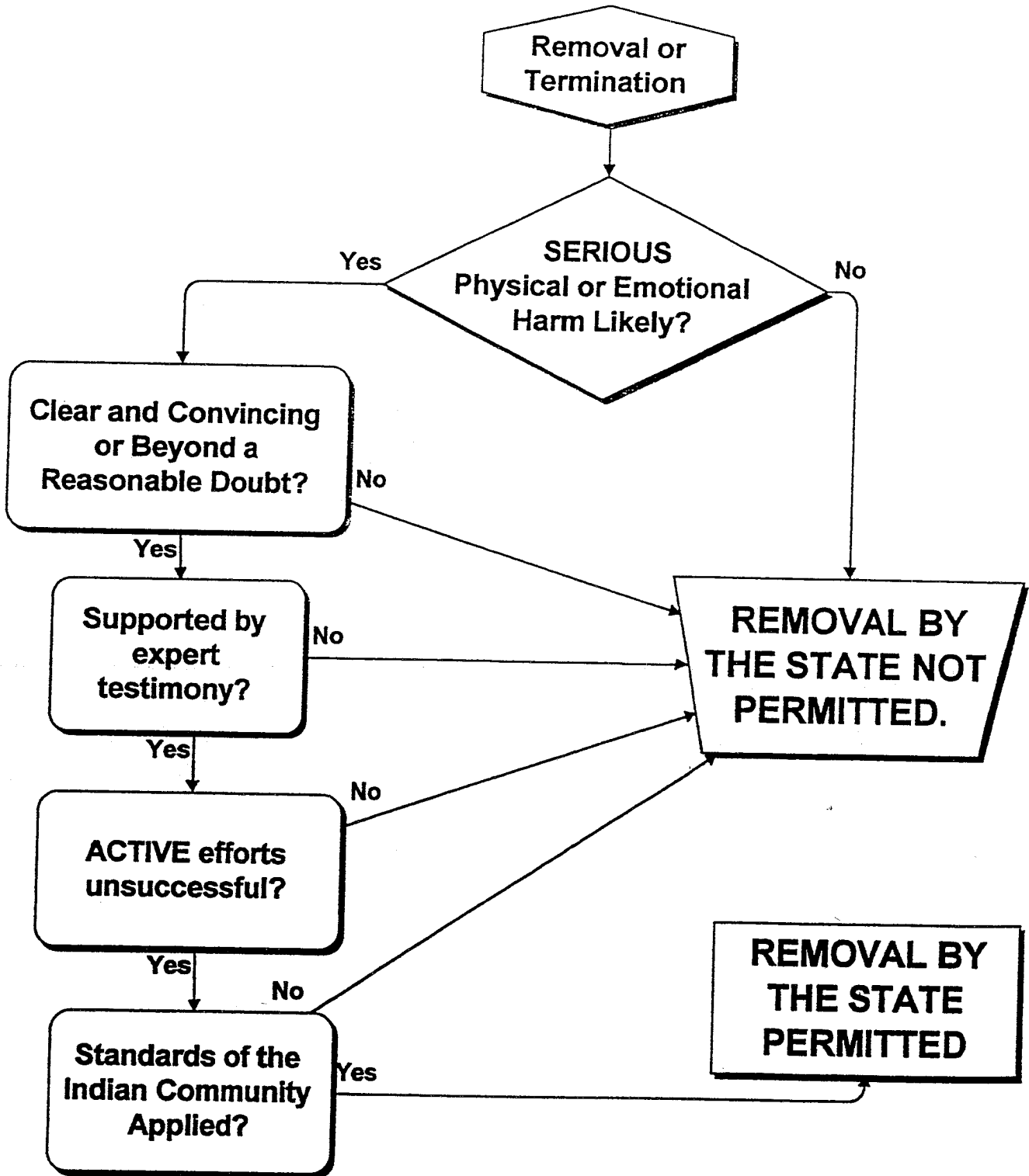
Jurisdiction & the ICWA (Sec 101) (non PL 280)



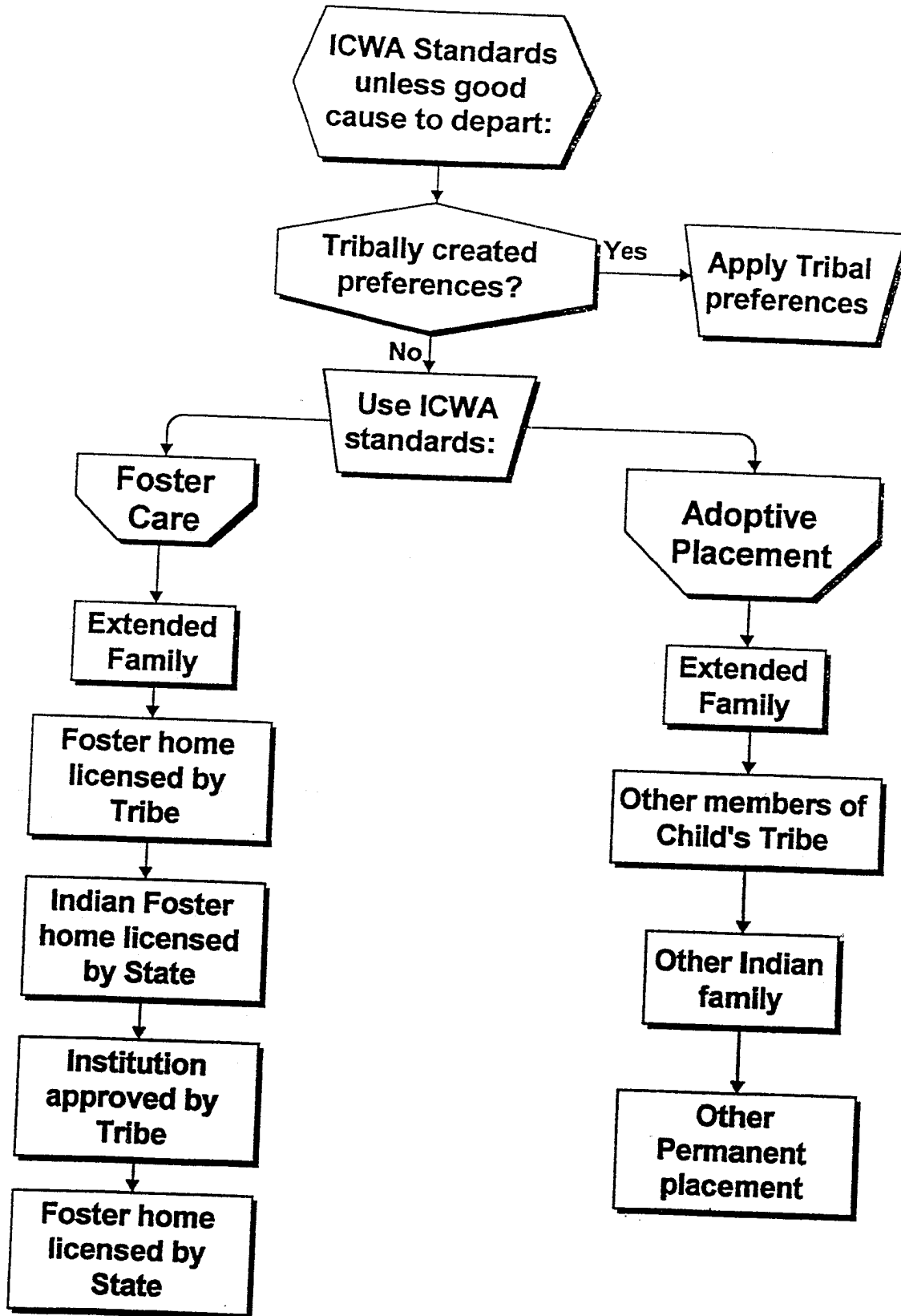
Notice Requirements of ICWA (Sec 102)



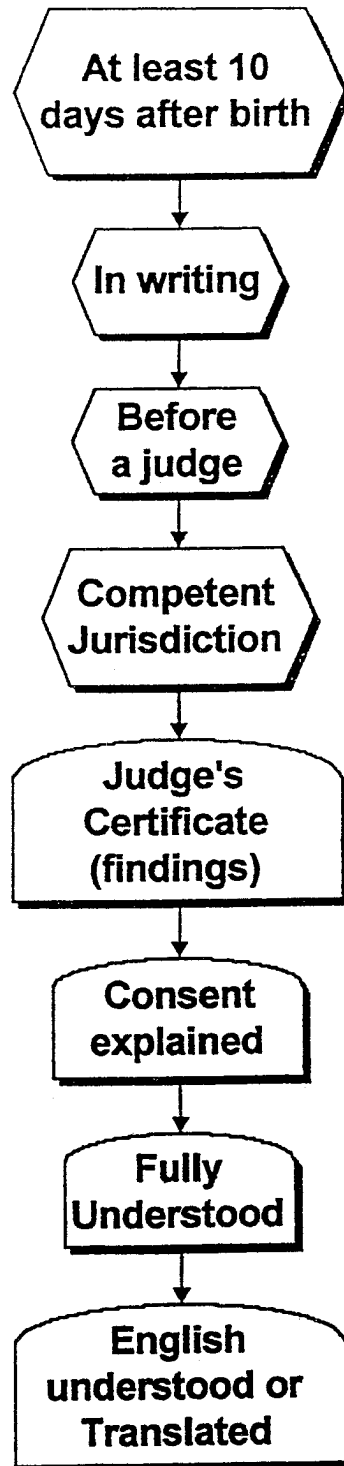
Checklist for Removal or Termination (Sec 102)



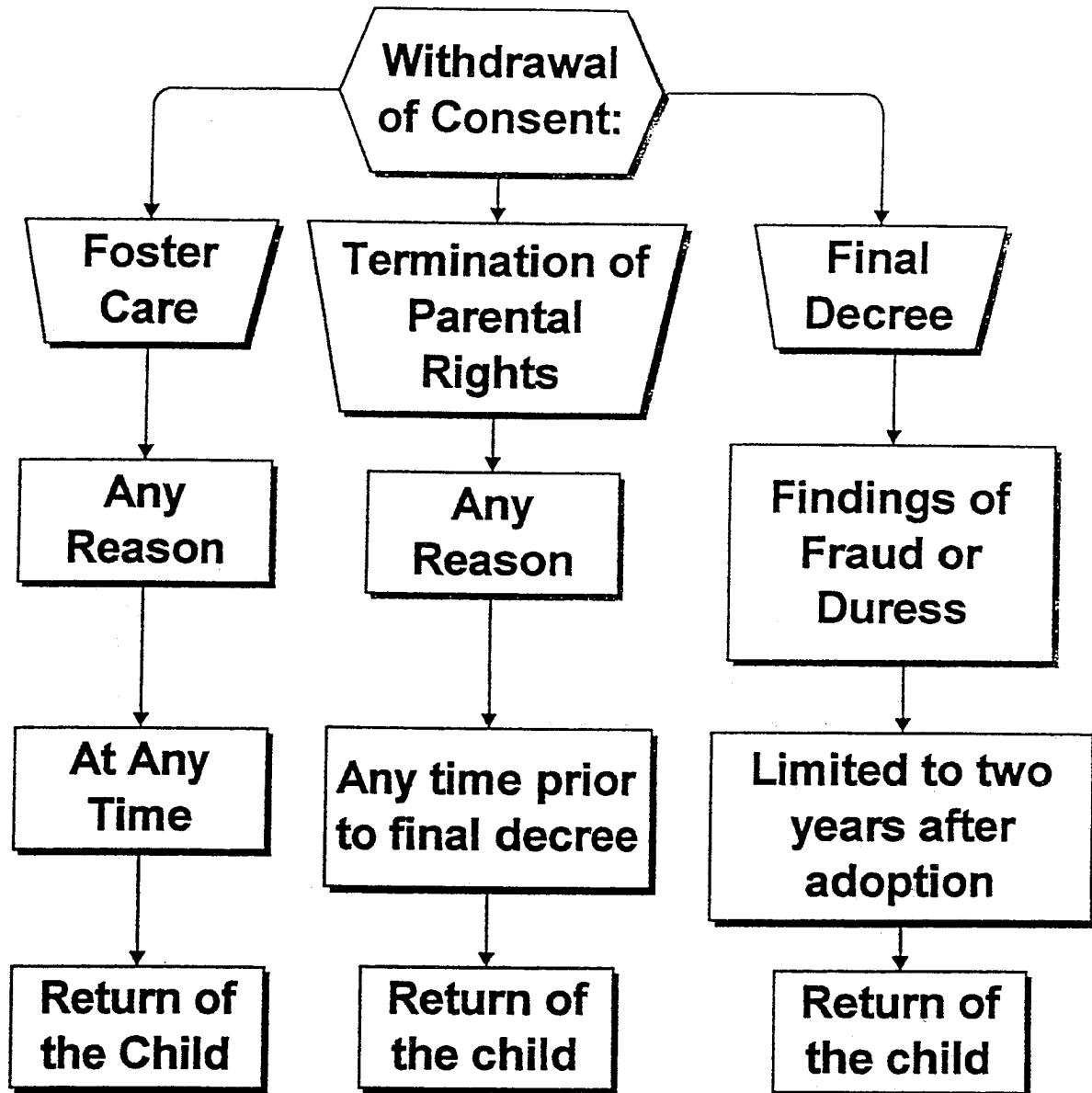
Placement Preferences (Sec 105)



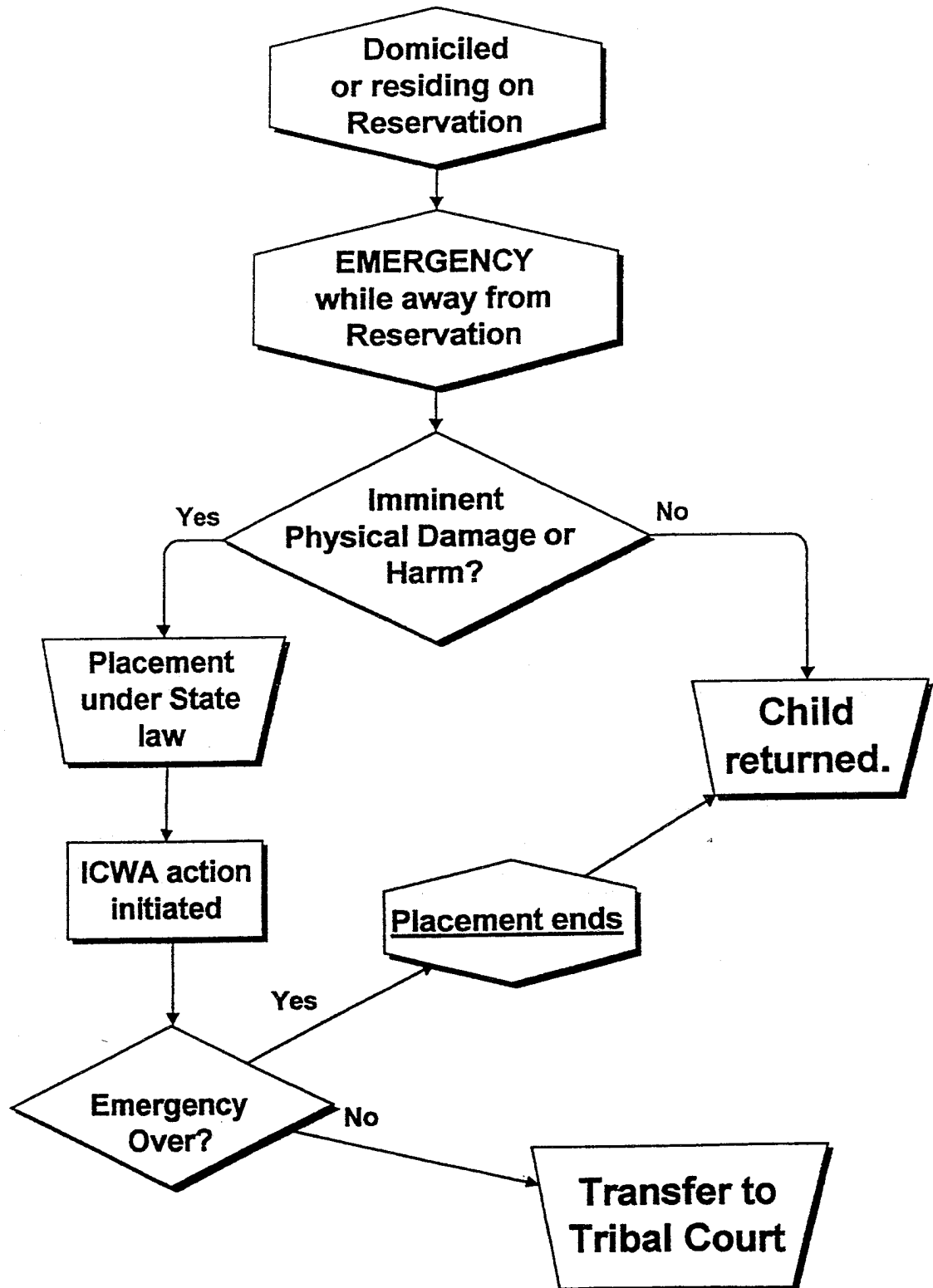
Voluntary consent to TPR



Withdrawal of Consent (sec 103)



Emergency Removal (Sec 112)



DISCLAIMER

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Related resources for families are located at NICWA's web site (www.nicwa.org).



Indian Child Welfare Glossary and Flowchart



NICWA

National Indian Child Welfare Association

Protecting our children • Preserving our culture

The Indian Child Welfare glossary is compiled to accompany the ICWA/Child Protective Services (CPS) Flow Chart. The glossary represents words that are commonly used in Indian child welfare and in situations where the Indian Child Welfare Act is applied.

This material was developed by the National Indian Child Welfare Association.

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Acknowledgements

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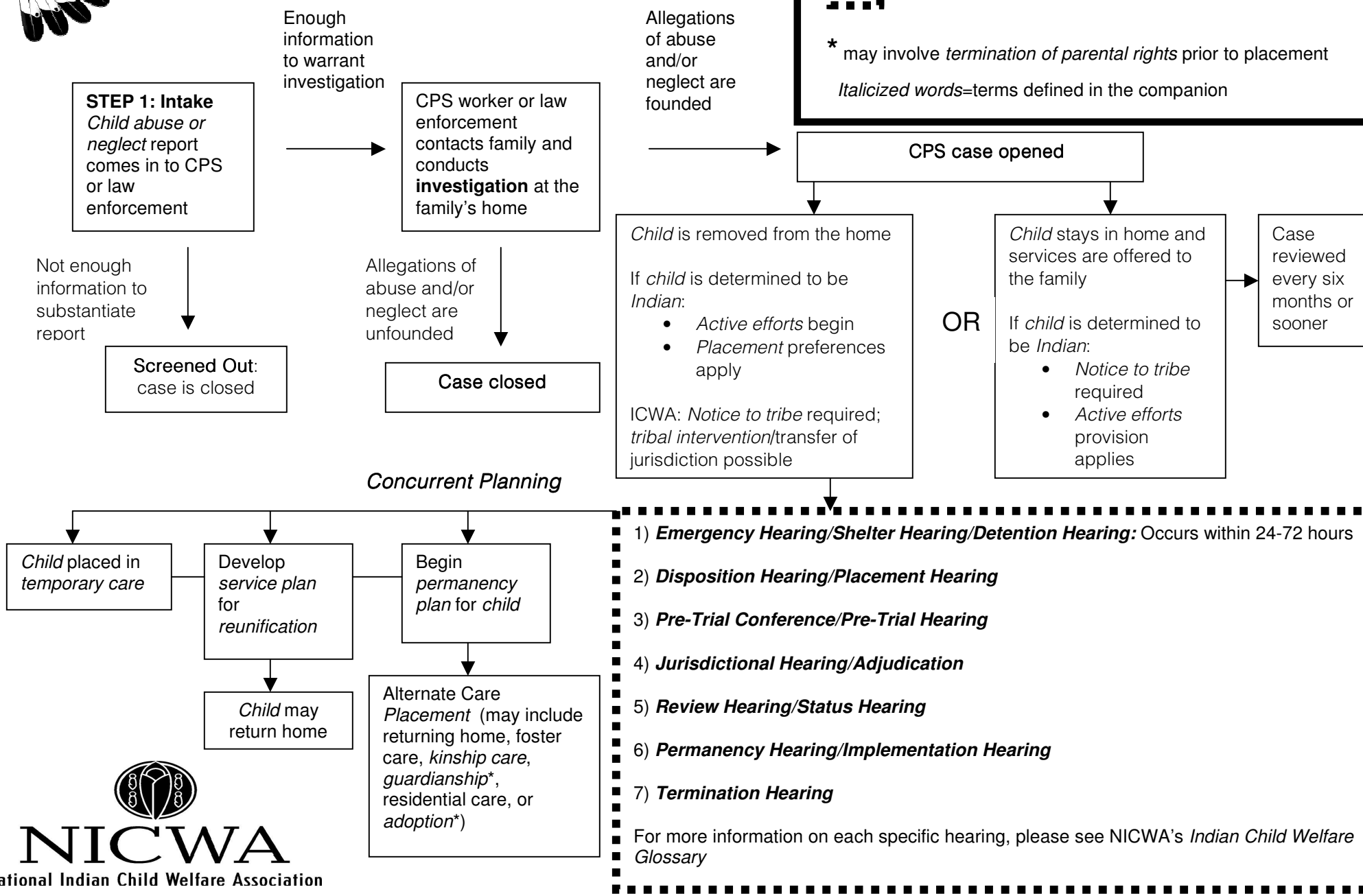
ICWA/Child Protective Services (CPS) Flow Chart

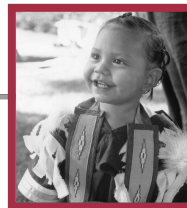
Flow Chart Key

■ ■ ■ ■ ■ Hearings

* may involve *termination of parental rights* prior to placement

Italicized words=terms defined in the companion





A

- **Active efforts:** “Active efforts” is an action that is required of the state in caring for an *Indian child*, mandated under the *Indian Child Welfare Act (ICWA)*. While active efforts is undefined in ICWA, it refers to an effort more intense than the legal term “reasonable efforts.” Active efforts applies to providing *remedial and rehabilitative services* to the family prior to the removal of an Indian child from his or her parent or *Indian custodian*, and/or an intensive effort to reunify an Indian child with his or her parent or *Indian custodian*.
- **Adoption:** Adoption is the legal transfer of parental *custody* for a *child* to adoptive parent(s). There are different forms of adoption, and it does not always include *termination of parental rights*. The new kinship network that is formed upon adoption may include birth parents and relatives, past foster families, and other persons significant to the child.
- **Adoption & Safe Families Act (ASFA):** The Adoption & Safe Families Act (ASFA) is a federal law enacted in 1997 that sets timelines and requirements for finding a permanent home for a *child* in temporary *custody*. It is important to note, however, that ASFA does not supercede the *Indian Child Welfare Act (ICWA)* and that ICWA requirements must still be met.
- **ASFA:** Please see “Adoption & Safe Families Act.”

C

- **CASA:** Please see “Court Appointed Special Advocate.”
- **Case plan:** Please see “service plan.”
- **Child:** A child is any person under 18 years of age or any person under 21 years of age who is under state *custody* in the child welfare system. Please see also “Indian child.”
- **Child abuse and neglect:** Child abuse and neglect is defined differently by individual tribes and states. However, the U.S. federal government provides a foundation definition under the federal Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C.A. §5106g), as amended by the Keeping Children and Families Safe Act of 2003: child abuse and neglect is “at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm.” Types of child abuse can include physical abuse, sexual abuse and exploitation, and emotional abuse or maltreatment. Types of child neglect can include physical, medical, educational, emotional, and moral neglect.
- **Child Protective Services (CPS) / Protective Services:** Child protective services (CPS) are services that the state provides to look after the safety of children. They are often associated with the involuntary removal of a *child* from an unsafe home; however, CPS also provides services to strengthen and support families.

Words that are *italicized* in a definition are defined in a separate entry in this glossary.

- **Concurrent planning:** Concurrent planning is a practice technique used by social workers that takes place when the worker and the family simultaneously plan for *reunification* and an alternate permanent *placement* if reunification is not possible.
- **Court Appointed Special Advocate / CASA:** A CASA volunteer is a trained community volunteer appointed by a judge to speak for the best interests of an abused and neglected child.
- **CPS:** Please see “Child protective services.”
- **Custodian:** A custodian is a person who has legal *custody* of a *child* under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such *child*. See also the definition of “Indian custodian.”
- **Custody:** There are 2 kinds of custody: legal and physical.
 1. **Legal custody:** Legal custody gives a parent the authority to make the decisions about the children’s health, education and welfare. Joint legal custody allows both parents equal responsibility for such decisions in the children’s lives.
 2. **Physical custody:** Physical custody refers to the time the *child* spends with each parent on a regular basis. Joint physical custody can occur when parents can agree on a plan on their own or with a mediator’s help.

Sometimes, a judge gives both parents joint legal custody, but not joint physical custody. This means both parents have equal responsibility for important decisions in the children’s lives, but, the *child* lives with one parent most of the time and usually has scheduled time with the other parent.

- **Customary adoption:** A customary adoption is a practice, ceremony, or process conducted in a manner that is long-established, continued, reasonable, and certain; considered by the people of a tribe to be binding or found by the tribal court to be authentic, which gives a child a legally recognized permanent parent-child relationship with a person other than the child’s biological parent without a requirement for termination of parental rights (TPR).

D

- **Deposition:** A deposition is a *proceeding* that typically occurs outside of the courtroom. It is a collection of statements of parties involved, and these statements are given under oath. A court reporter may use audio or video-recording equipment to collect the information. The deposition is a way for the opposing attorney to learn about the facts and opinions before a *trial* begins, and it may be used at the time of trial.

E

- **Enrollment in a tribe:** Enrollment in a tribe is registration with a tribe that verifies membership with that tribe. See also “member of a tribe.”
- **Expert witness:** Under *ICWA*, an “expert witness” is someone who can



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provide the court with knowledge of the social and cultural aspects of Indian life to diminish the risk of any cultural bias. The testimony of a qualified expert witness is required in the case of an *Indian child* in order to make a *foster care placement* or *termination of parental rights*. A qualified expert witness can be identified with help from the tribe of the *child*, the BIA, or *Indian* organizations and is meant to be a person with more knowledge than the average social worker or anthropologist.

F

- **Family Group Conferencing:** Family group conferencing is a family-centered, strengths-based, and culturally relevant technique used by social workers to gather a family and other significant people for the purpose of establishing a care plan for a *child*. The meeting is often structured into three phases: information sharing, family alone time, and presentation of the plan. Follow-up conferences may occur if needed.
- **Family preservation:** “Family preservation” often refers to a program that provides services specifically identified for families in crisis whose children are at risk of out-of-home placement. Family preservation actively seeks to obtain or directly provide the critical services needed to enable the family to remain together in a safe and stable environment.
- **Foster care:** Foster care is the provision of temporary parental care and supervision to a *child* typically not related through legal or blood ties. For more information on foster care placements, see also “placement.”

G

- **Guardian ad litem:** A guardian ad litem is an advocate for a child whose welfare is a matter of concern for the court. In legal terms, it means “guardian for the lawsuit.”
- **Guardianship:** Guardianship is an out-of-home *placement* designated by a court between a *child* and caretaker which, in most cases, is intended to be permanent. (The child is no longer a ward of the court.)

H

- **Hearing:** A hearing is a *proceeding* to review procedural issues or other matters before a magistrate, such as a judge, without a jury. While some hearings may follow the same process of a *trial*, other hearings may not have as much formal testimony as a trial and may be more brief. There are seven (7) types of hearings that are often associated with child welfare cases. It is important for parent(s)/*custodian*(s) to be present at each of these hearings, as absence could be taken as a lack of interest in the *child*.
 1. **Emergency hearing / Shelter hearing / Detention hearing:** An emergency hearing occurs within 24-72 hours that the state has taken emergency physical *custody* of a *child* suspected to be a victim of abuse or neglect. The purpose of this hearing is for the court to give official *notice* to the parents about what is happening and to determine what steps the state will follow next with regard to the custody of the child: return to parent(s) or live somewhere else for now. If the court decides the child needs to live



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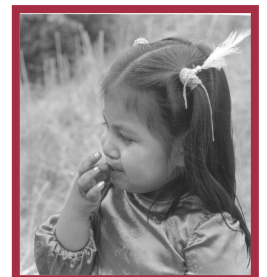
somewhere else, it can make visitation orders so the parent can see the child. The court will also tell the parents where they can get help so the child can come back to them. The court also decides if the state's social services made an "*active effort*" or "*reasonable effort*" to keep the child with the parents.

2. Disposition hearing / Placement hearing: In a disposition hearing the court names the specific place where the *child* will go. This hearing can sometimes be combined with another hearing, to confirm *placement* with a specific family or agency. The initial disposition hearing typically occurs within 14 days after removal of the child.
3. Pre-trial conference / Pre-trial hearing: At the pretrial conference, the court may consider efforts to locate and serve all parties, try to simplify the issues, resolve legal questions, resolve questions about and mark evidence, discuss settlement and mediation, decide whether the *child* will testify at adjudication and under what conditions, establish a reasonable time limit for presenting evidence, consider any other matters that may help resolve the case, and have the parties submit list of witnesses.
4. Jurisdictional hearing / Adjudication: A jurisdictional hearing is one in which the state or the tribe has to



establish sufficient grounds under state or tribal law for the state or tribe to take legal *custody* of the *child*. There are a 3 grounds under which the state can take custody of the child: dependency, neglect, abuse (sexual or physical), and hearings that are on the grounds of dependency are often called "dependency hearings."

- a. Dependency hearing: In a dependency hearing, the state is required to establish that the *child* is dependent instead of abused or neglected. Every state has its own grounds for establishing dependency, however the general meaning of dependency is that through no fault of the parents, the parents are unable to take care of the child, and the child is on his/her own and needs assistance.
5. Review hearing / Status hearing: In a review hearing the state reviews its need to continue jurisdiction over the *child*. It also allows the court to decide whether to continue with family *reunification* services, order additional services, set a date for a permanency hearing, and/or dismiss the case.
6. Permanency hearing / Implementation hearing: A permanency hearing is required under the *Adoption & Safe Families Act of 1997 (ASFA)* and decides a permanent *placement* for the *child* and the future direction of the case. At this hearing, the court makes a permanent plan for the child. The plans can be to place the child with a relative, foster parent, or in a group home; name a legal guardian for the child; or *termination of parental rights* so the child can be adopted. *Reunification* with the original caretakers is not an option by the time this hearing occurs.
7. Termination hearing: In a termination hearing the state court proceeds with the *termination of parental rights (TPR)*. This is like a regular *trial* and may sometimes occur before a jurisdictional hearing or any full-blown trial to develop procedural matters.



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I

- **ICWA:** Please see “Indian Child Welfare Act.”
- **Indian:** “Indian” is a term used in U.S. federal language, including the *Indian Child Welfare Act (ICWA)*, to refer to any person who is a member of a federally recognized American Indian tribe or Alaska Native village, or who is an Alaska Native and a member of a Regional Corporation. See <http://www.indians.org/> for a list of federally recognized tribes.
- **Indian child:** As defined in the *Indian Child Welfare Act (ICWA)*, an Indian child is “any unmarried person who is under age 18 and is either (a) a member of an *Indian* tribe or (b) is eligible for membership in an Indian tribe and is the biological *child* of a member of an Indian tribe” (U.S.C. Title 25).
- **Indian Child Welfare Act / ICWA:** The Indian Child Welfare Act (*ICWA*) is a federal law passed in 1978 that guides states in their process for *placement* of an *Indian child* that is in their *custody*. This act was passed in response to the alarmingly high rate of Indian children being removed from their homes unnecessarily. It requires that states seek placement for the *child* with that child’s family, tribe, and other American *Indian* homes before looking elsewhere. It generally does not apply to divorce *proceedings*, intrafamily disputes, *juvenile delinquency* cases, or cases under tribal court jurisdiction.
- **Indian custodian:** As defined in the *Indian Child Welfare Act (ICWA)*, an Indian custodian is “any *Indian* person who has legal *custody* of an *Indian child* under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such *child* [italics added]” (U.S.C. Title 25).
- **Involuntary:** In Indian child welfare, this refers to the process by which a parent loses *custody* of a *child* to a state agency and the child is placed in foster care due to *child abuse and/or neglect*. In order to regain custody, the parent and social worker together develop a *service plan* outlining *remedial or rehabilitative services* for *reunification* with the child.

J

- **Juvenile delinquency:** Juvenile delinquency occurs when a person under the age of 18 years commits a violation of the federal or state laws which would have been a crime if committed by an adult; or when noncriminal acts are committed by a juvenile for which supervision or treatment by juvenile authorities is authorized. There are narrow exceptions where the *Indian Child Welfare Act (ICWA)* may apply in juvenile delinquency cases.

K

- **Kinship care:** Kinship care is when a non-parent relative provides parental care and supervision to a *child*.

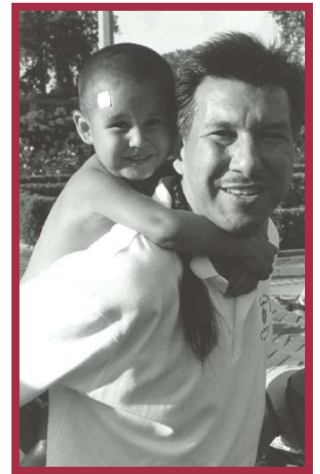
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M

- **Member of a tribe:** The definition of what constitutes membership in a tribe varies from tribe to tribe, and final determination of membership lies with the tribe. Membership can be more inclusive than *enrollment in a tribe*.

N

- **Notice to parent/custodian:** Under the *Indian Child Welfare Act (ICWA)*, states are required to ensure that a parent/*custodian* is notified when their *Indian child* is involved in any involuntary *proceeding* that could lead to a *foster care placement* or *termination of parental rights (TPR)*. The party seeking the foster care placement or TPR is required to notify the parent/*custodian* and the Indian child's tribe by registered mail with return receipt requested of the pending proceedings and of their right to intervene. Additionally, "if the identity or location of the parent or *Indian custodian* and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe [italics added]" (U.S.C. Title 25).
- **Notice to tribe:** Under the *Indian Child Welfare Act (ICWA)*, once the state receives *custody* of an *Indian child*, it is required to notify that *child's* tribe(s) by registered mail with return receipt requested that the child is in their custody so that the tribe may decide if it wishes to intervene. Please see also "tribal intervention."



O

- **Out-of-home Placement:** Please see "placement."

P

- **Permanency planning:** In Indian child welfare practice, permanency planning is planning for maintenance of an *Indian child's* sense of belonging to their extended family, their tribe, and their caretakers in a permanent and stable home. This planning includes carrying out a set of goal-directed activities designed to help the *child* live in such a home, offering the child the opportunity to establish life-long relationships with the placement family, extended family, and their tribe. Examples of permanent *placements* include *kinship care*, *guardianship*, *adoption*, *reunification*, conventional or *customary adoption*, and long-term *foster care*.
- **Permanent placement:** Please see "placement."
- **Placement:** A placement occurs when a *child* is brought to live in a home other than his or her original home. The placement of the child may be temporary or long-term in out-of-home care or *foster care*, or it may be permanent. Under the *Indian Child Welfare Act*, placement preferences exist for an *Indian child*. They are in order of preference as follows:
 1. A member of the Indian child's extended family (*Indian* or non-*Indian*);
 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; or
 4. An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

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Out-of-home/ Foster Care Placements: Placement preferences apply to both voluntary and involuntary *foster care* placements. See definitions for *involuntary* and *voluntary*.

Permanent placement: In Indian child welfare practice, a permanent placement is a permanent and stable home that maintains an *Indian child's* sense of belonging to their extended family, their tribe, and their caretakers.

- **Proceeding:** A proceeding is a process by which legal judgments are administered. Types of proceedings include a *deposition*, a *hearing*, and a *trial*. Child protection proceedings usually take place in a hearing.
- **Protective services:** Please see “child protective services (CPS).”

R

- **Relinquishment of child custody:** Please see “termination of parental rights.”
- **Remedial and rehabilitative services:** Remedial and rehabilitative services are services provided by the state to give support to families to help them become safe *placements* for a *child*. These services are required in the *Indian Child Welfare Act (ICWA)*. The intention of these services is to provide supports to a family to prevent the removal of a child by “rehabilitating” or strengthening the family in their parenting and other related skills, and/or to provide support that assists in “remediating” or correcting the situation in a home that led to the removal of a *child*. These services can include *family group conferencing*, parent counseling, substance abuse counseling, job-skill training, and many other types of services.
- **Residential care:** Residential care is the provision of parental care and supervision to a *child* by a public or private agency in a facility where the *child* lives.
- **Reunification:** Reunification is the *active efforts* of state services to help bring the *child* and family back together after a child has been removed from a home.

S

- **Service plan:** A service plan is an arrangement of services identified by a social worker and family to meet the needs of the *child* and/or parents. Services for the child can include counseling, cultural practices for healing, medical treatment, protective day care, and out-of-home *placement*. Services for both the parents and the child can include *concurrent planning*, *family group conferencing*, counseling, cultural practices for healing, and other *rehabilitative and remedial services*. The service plan may include informal sources of support, like extended family, church, and the tribe. Social workers will have a certain number of face-to-face contacts and home visits with the family, but the level of service varies by family needs, the proximity of services, and the services provided by other agencies. The service plan is time-limited, meaning that goals and objectives must be met within a limited time or the social worker will look at other permanent *placements*.



T

- **Temporary care:** Temporary care is a temporary, safe place that a *child* may be staying at while a permanent *placement* is being sought after. This can include *kinship care*, relative placement, *foster care*, and placement in a care facility.
- **Termination of parental rights (TPR):** Termination of parental rights is a decision by which a parent loses all rights to their *child*. There are two ways a parent's rights to a child may be terminated:
 - **Voluntary TPR:** In a voluntary TPR, the decision to end parental rights is agreed upon by both parents. A child is removed, placed in alternative care, and can be returned upon the parents' request.
 - **Involuntary TPR:** In an involuntary TPR, the decision to end parental rights is made by a court of law and may occur without either parent's consent. A petition must first be filed in a court before it can be ordered. A child is removed, placed in alternative care, and cannot be returned upon the parents' request. Under a *customary adoption*, a modification of parental rights may occur instead of TPR.
- **TPR:** Please see "Termination of parental rights."
- **Transfer of jurisdiction:** Please see "tribal intervention."
- **Trial:** A trial is a *proceeding* to examine disputed questions about facts and law that is presided over by a magistrate, such as a judge, with or without a jury. A trial is usually more formal than a *hearing*. Formal procedures in a trial include opening statements limited to a specific outline, presentation of evidence in a certain order, final arguments, and a final verdict or judgment that usually concludes the trial. A trial can be open to the public. There are several types of trials but they can generally be grouped as "civil trials" or "criminal trials":
 1. **Civil trials:** In civil trials addressing child *custody cases*, allegations of *child abuse and neglect* are not as severe as they are in a criminal trial. The majority of court processes in child abuse and neglect cases are handled in civil trials or hearings. There can be multiple parties in the case.
 2. **Criminal trials:** In criminal trials addressing child *custody cases*, allegations of *child abuse and neglect* are more serious than in civil trials. The seriousness of allegations determines if the state will file it as a criminal case, and the state must be able to prove such allegations. Civil child abuse and neglect cases may proceed simultaneously with a criminal case. Criminal trials have only two parties: the state and the defendant, though there will be similar players as in a civil trial. In most criminal cases the exact punishment will be determined by the judge at a hearing held after the trial.
- **Tribal intervention:** Tribal intervention in a child *custody case* occurs when a tribe acts on its right to participate in a child custody *proceeding*. The *Indian Child Welfare Act (ICWA)* states that "in any State court proceeding for the *foster care placement* of, or *termination of parental rights* to, an *Indian child*, the *Indian custodian* of the *child* and the *Indian child's* tribe shall have a right to intervene at any point in the proceeding [italics added]" (USC Title 25, 1911.C.). This intervention can be wide in its interpretation: the tribe may request to transfer the case to tribal court (a "transfer of jurisdiction") or the tribe may choose to only monitor the case through court records. Transfer of jurisdiction can be requested by either the parent or the tribe. A tribe may intervene at any point in an Indian child custody proceeding.

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V

- **Voluntary**: In Indian child welfare, this term refers to the process by which a parent consents to *relinquish custody* of a *child* over to a state or private agency. A child may be returned to the parent at her/his request, as long as there is no risk of imminent harm or danger presented. Valid consent of a voluntary placement must be given in writing, recorded before a judge, and executed after the child is ten days old.



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