

Grandfamilies State Law and Policy Resource Center



Key Considerations for Implementing the Notice Requirement of the Fostering Connections to Success and Increasing Adoptions Act

Introduction

This document outlines the components that are required by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act) in order for a state or tribe to comply with the Notification of Relatives Provision (Section 103) of the law. Any text in **bold** is the black letter law of the Social Security Act as amended by the Fostering Connections Act. Any words in bulleted, plain text are recommendations for the state, agency, department or tribe to consider ensuring that children fully benefit from the law. Please note that the Indian Child Welfare Act and Multiethnic Placement Act both also require notice to relatives; however the requirements of the Fostering Connections Act do not replace or modify such provisions. See page 6 of this document for more information on the relationship between the Fostering Connections Act and the Indian Child Welfare Act.

For a 50 state and the District of Columbia compilation of data on current state notice statutes please visit www.grandfamilies.org. For additional information on notice and other kinship requirements of the new law see: New Help for Children Raised by Grandparents and Other Relatives: Questions and Answers about the Fostering Connections to Success and Increasing Adoptions Act, at www.grandfamilies.org

Fostering Connections to Success and Increasing Adoptions Act of 2008 – Notification of Relatives Provision, Section 103

Within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence, that— (A) specifies that the child has been or is being removed from the custody of the parent or parents of the child; (B) explains the options the relative has under Federal, State, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice; (C) describes the requirements under subsection 471(a)(10) of the Social Security Act to become a foster family home and the additional services and supports that are available for children placed in such a home; and (D) if the State has elected the option to make kinship guardianship assistance payments under subsection 471(a)(28) of the Social Security Act, describes how the relative guardian of the child may subsequently enter into an agreement with the State under section 473(d) of the Social Security Act to receive the payments.

Statutory Requirements

(A) The notice requirements provide that:

(1) Within 30 days

- The state or tribe^{*} may also require that efforts to identify, locate and notify be renewed at a later time if appropriate.

(2) after the removal of a child from the custody of the parent or parents of the child,

- The state or tribe should also consider strategies (i.e. Family Group Decision Making and Ethnographic Interviewing techniques) that will enable outreach and engagement of relatives prior to removal, with parental consent.
- Such strategies may include the use of a person with appropriate cultural skills and knowledge or the assistance of a person familiar with the culture of the child (key informant) to ensure that the most effective methods of identifying relatives are used.

(3) the state shall exercise due diligence

- The state or tribe should provide examples of which steps must generally be taken toward identifying relatives and providing this required notice.
- Generally due diligence requires the actions of a “reasonable person”. What is reasonable and appropriate may vary with the circumstances, including the cultural background of the child and family.
- Due diligence may include a combination of good casework skills such as interviews and meetings with household members, children and others who know the child and family, as well as the use of other technological resources and family finding tools.
- The state or tribe should require specific documentation to show that such diligent efforts have been made to ensure compliance.

(4) to identify

- The state or tribe should consider the use of the Federal Parent Locator Service and family conferencing techniques to help identify all relatives. The Fostering Connections to Success and Increasing Adoptions Act allowed the Federal Parent Locator Service to be used for child welfare purposes.
- All parents and children, when appropriate, as well as other collateral resources, such as school personnel, health professionals, child care providers, community service providers, and faith based services or other informal family resources should be interviewed to help with identification of relatives.
- When appropriate, the child welfare agency staff should consult tribal child welfare agency resources to provide culturally appropriate and effective strategies to identify relatives.
- The state or tribe should consider what type of documentation must go into the case file to demonstrate that the state, agency, or department attempted to identify all relatives.

^{*} Where tribes are identified in this document it is assumed that they are operating a Title IV-E program and using IV-E funds for placements, see page 6 of this document for further clarification.

(5) and provide notice

- The state or tribe should define what type of notice should be given. (i.e.: written, oral, express mail, return receipt requested, certified, etc.).
 - Best practice would suggest that the notice be in writing for everyone's benefit -- the agency would have proof that it provided notice and the relatives receiving notice would have a record of the opportunities they have to care for or participate in planning for their relative children.
- The state or tribe should decide and note which state agency or department in the agency is responsible for providing notice.
- The state or tribe should consider what type of documentation must go into the case record to demonstrate that the state, agency, or department attempted notification to the relative. (i.e.: Written memorandum, express mail confirmation, phone records, etc.).
- Notice should also include adequate identifying information about the child, for example family and married name of parents.
- Notice should be written in plain language, easily understood by the general population, available in other languages, and provided with any necessary accommodations for those with visual impairments or in need of an interpreter.
- The court should also inquire about the diligent search and notification of relatives.

(6) to all adult grandparents and other adult relatives of the child

- A decision about which relatives need to be identified and notified should be determined as part of the agency's "due diligence" requirement.
- The state or tribe should consider whether it wants to clarify what relative means.
 - Some states currently list out the relatives to be included, such as all adult siblings, all adult aunts or uncles, all great-grandparents, and all great-aunts and great-uncles.
 - Other states define relative as anyone related by blood, marriage or adoption. Some further limit this by stating that only those related by the 3rd degree qualify for purpose of this requirement.
 - Paternal relatives as well as maternal relatives must be included for notification purposes.
 - There needs to be attention paid to how different cultural groups define relative. Extended family in a tribal setting could include clan members for example, which is not likely to appear in state child welfare laws. Tribal definitions may also differ from tribe to tribe.
 - Another example is to use any adult relative identified by a child as a relative who plays or has played a significant positive role in his or her life.
- In making a decision about how relative will be defined, the state or tribe should be mindful of how relative is defined in different provisions of child welfare law in the state or tribe.

(7) (including any other adult relatives suggested by the parents)

- This is not optional, Federal law requires that they must identify and notify the relatives suggested by the parents (within the bounds of due diligence).
- As with all relatives, whether or not identified by the parent, the state does not have to necessarily place with the relatives identified by the parent, but federal law requires that they must notify them. Federal law requires that states and tribes consider giving preference to placement with a relative however; ultimately, placement decisions are made by the state or tribal child welfare agency.

(8) This notice is subject to exceptions due to family or domestic violence.

- The state or tribe should articulate who will be making these determinations. (i.e.: judge, attorney, the department, caseworker, etc.).
- The state or tribe should determine the criteria and documentation requirements for the family or domestic violence exception for purposes of notice.
- The state or tribe should give consideration to whether relatives should not be notified if the court or state or tribe believes that notice may be dangerous to the family or child;
 - If the court determines that such notification would not be in the best interest of the child due to past or current family or domestic violence; or
 - If notice would put the child or parent at risk of physical, mental, or emotional abuse.
- The state or tribe cannot create “other exceptions” to federal law, including parental objection to notice. The only exception is family or domestic violence.
- States and tribes should review existing state child enforcement program definitions and procedures related to family and domestic violence exceptions, including their override procedure.
- Also see: [New Help for Children Raised by Grandparents and Other Relatives: Questions and Answers about the Fostering Connections to Success and Increasing Adoptions Act](#), for further guidance on this issue.

(B) In the notice given to all relatives, the state or tribe must:

(1) Specify that the child has been or is being removed from the custody of the parent or parents of the child;

- The notice must clearly identify the child or children and family connection.
- The notice should not contain details of the removal, but rather merely state that the child or children have been or are being removed from the custody of the parent(s).

(2) Explain the options the relative has under Federal, State, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;

- The state or tribe, in plain language, should state every different type of placement option available to a relative, including: licensed foster care

placement; the opportunity for guardianship assistance, if available; non licensed kinship care placement; custody; guardianship; and adoption.

- This list should also include information about informal care options for relatives that choose to care for the child outside of the child welfare system.
- The notice should also include next steps if the relative wants to be involved.
- Additionally, the state or tribe should include a statement that there are many different ways to help and support the family in addition to or instead of becoming a placement resource; for example becoming a visitation resource for a child, assisting the parents with transportation, or helping the child to maintain a connection to the child's family and culture.
- Resources available to relative caregivers should be referenced in this notice, including respite care, financial resources for informal caregivers, tribal agencies or programs and Kinship Navigator Programs, if they exist.
- At this time the state or tribe may want to consider explaining to the relative their visitation rights, if any.
- States or tribes must also inform the individual of any options that may be lost by failing to respond to the notice. This may include, for example that child may be adopted by foster parents or others if attempts at reunification with birth parent(s) are not required or are unsuccessful or that the relative's decision not to become a placement resource at the beginning does not preclude consideration of the relative later, but that opportunities later may be more limited.

(3) Describes the requirements under 42 U.S.C. § 671(a)(10) (2006) to become a foster family home.

- The state or tribe should provide the relatives with notice that includes the requirements to become a foster family home in that state or tribe, any information about differences between becoming a licensed or unlicensed foster family home, and any information about waiver processes.
- Please see the 50 state and the District of Columbia compilation of data on licensing waivers for relatives at www.grandfamilies.org

(4) Describes the additional services and supports that are available for children placed in such a home;

- Describe the types of expenses the person may incur if the child is placed in their home and if/when and by which agency the person can be reimbursed for those expenses.
- List all supportive services available to foster parents, including tribal resources.
- Explain the process of notification for and rights associated with future hearings.
- Include services for children with special needs, Medicaid, independent living services, Chafee benefits, tribal programs, etc.
- Describe the extent to which licensing interacts with eligibility for any subsidized guardianship programs that exist.

(5) If the State or Tribe has elected the option to make kinship guardianship assistance payments, describe how the relative guardian of the child may subsequently enter into an agreement with the State under 42 U.S.C. § 673(d) to receive the payments.

- The state or tribe should also describe what would be necessary to receive adoption assistance payments if adoption is an appropriate permanency option.
- It is important to note that some tribes also use what is referred to as a "customary adoption" which is specifically designed to work with extended family members and help protect the Indian child's birth family connections. This customary adoption is eligible for IV-E adoption assistance.
- For a further explanation of kinship guardianship assistance, please see: Sample State Legislation Needed to Implement the Federal Kinship Guardianship Assistance Option under Title IV-E of the Social Security Act and subsidized guardianship information available at www.grandfamilies.org

Notice and the Indian Child Welfare Act

Please note that the Indian Child Welfare Act (ICWA) also contains notice requirements that apply in all state child custody proceedings involving Indian children as defined by ICWA (American Indian and Alaskan Native children). These notice requirements provide for notice to the Indian child's tribe and parents and are not replaced or modified by similar requirements contained in either the Fostering Connections Act or Multiethnic Placement Act. For state agencies and courts involved in child custody proceedings involving Indian children the suggested practice is to follow the ICWA notice requirements **and** any Fostering Connections Act provisions that are not addressed by ICWA. Application of Fostering Connections Act notice provisions for children who are involved in tribal child custody proceedings would be based upon whether the tribe was operating a Title IV-E program and using IV-E funds for placements.

This document was prepared in collaboration with Children's Defense Fund, ChildFocus, CLASP, Children and Family Research Center - School of Social Work at University of Illinois at Urbana-Champaign, Grandfamilies of America, National Conference of State Legislatures, the National Center for State Courts and the National Indian Child Welfare Association.