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## Indian Child Welfare Act

### What is the Indian Child Welfare Act?

For many years, state welfare agencies and private adoption agencies removed large numbers of native children from their homes to place them in non-native families away from their cultures. This federal law (ICWA) aims to prevent the removal of Indian children from their tribe and their culture by state courts and agencies unless no placement within a native family is possible. The law also recognizes the authority tribes and tribal courts have over their members.

### Which children does the law protect?

ICWA applies to children who are members of federally recognized tribes and children who are eligible for tribal membership and have at least one natural parent who is a tribal member.

### Who decides if a child is a tribal member or eligible for tribal membership?

The tribe makes that decision based on its own laws and customs. A state court cannot decide whether a child is or is not a tribal member.

### When does the law protect them?

ICWA applies to foster care, guardianship, child abuse and neglect, and parental rights termination cases. It does not apply to custody disputes between divorcing parents or to juvenile delinquency proceedings.

### How does ICWA work?

Only the tribe has the authority to make a decision about a tribal member who is living on the reservation. It also has sole authority over children whose tribal member custodial parent was living on the reservation immediately before the case (for foster care, guardianship, etc.) started. In a case in which a tribe has no tribal court, the state court may become involved. For other Indian children, the state court usually has jurisdiction. But the person who starts the

case (usually called the petitioner) must give formal notice to the tribe and to the U.S. Department of the Interior before filing a case in state court. The tribe has the right to enter into the case to make sure that the child's rights and the rights of the tribe over its people are respected.

Anyone who wants to take away the rights of a tribal member parent or custodian must be able to prove that the child will be harmed if not removed from the home. The tribe has the right to find other relatives to care for the child, or other tribal members, to make sure that the child is not removed from the child's unique cultural heritage.

A state court must allow the tribe to present an expert witness in the case, someone who can explain the culture of the tribe and what kind of environment the child needs in order to retain that culture.

In a case in which a tribal member parent voluntarily gives up a child, the rules are less strict.

Indian Child Welfare Act (ICWA) Website

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