

Juvenile court—dependency.

When there are concerns about abuse or neglect of children, the court may order that:

- ◆ The parent and the child receive services;
- ◆ The child be removed from the parents' care and live in relative or foster care;
- ◆ Parental rights be terminated; or
- ◆ The child be eligible for tribal customary adoption per the laws, traditions, and customs of the tribe without termination of parental rights.

Juvenile court—delinquency.

If a child breaks the law and is charged, the case may be heard in a delinquency court. (Depending on the child's age, history, and crime, a child may be tried as an adult in criminal court.) ICWA's requirements (other than inquiry) apply only to delinquency proceedings where the child is in foster care, or at risk of entering foster care, *and*:

- ◆ The proceeding arises from acts that would not be criminal if committed by an adult;
- ◆ The court is setting or considering a hearing to terminate parental rights; or
- ◆ The court makes a finding that the foster care placement arises from conditions in the child's home.

The court can order that the child:

- ◆ Live with the parent under court supervision;
- ◆ Be placed on probation and sent to live in a relative's home, a foster home, a group home, or an institution; or
- ◆ Be confined to a youth facility by the California Department of Corrections and Rehabilitation, Division of Juvenile Justice or, if tried and convicted as an adult, a state prison.

FOR MORE INFORMATION

The Tribal/State Programs Unit of the Judicial Council's Center for Families, Children & the Courts provides support to local courts on tribal issues and assists with the development of policies, positions, and programs to ensure the highest quality of justice and service for California's Native American communities. The unit provides educational and technical assistance to those communities in relation to the Indian Child Welfare Act.

Statewide Directory of Services for Native American Families

www.courts.ca.gov/5807.htm

To learn more about the Tribal/State
Programs Unit or for assistance,
call Vida Castaneda
at 415-865-7874

or visit

www.courts.ca.gov/programs-tribal.htm

This unit is supported with funds from the Office on Violence Against Women, U.S. Department of Justice, that are administered through the Governor's Office of Emergency Services, the U.S. Department of Health and Human Services, the Court Improvement Program, and the California Department of Social Services.

Copyright © 2017 Judicial Council of California



Judicial Council of California
Center for Families, Children & the Courts
455 Golden Gate Avenue
San Francisco, California 94102-3688
415-865-4200
www.courts.ca.gov

THE INDIAN CHILD WELFARE ACT FOR KIN CAREGIVERS & FOSTER PARENTS

Important Information for
Kin Caregivers and Foster Parents
Caring for American
Indian/Alaska Native Children
in California

June 2017



JUDICIAL COUNCIL
OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS

What is the Indian Child Welfare Act?

The Indian Child Welfare Act (ICWA) is a federal law created to keep American Indian/Alaska Native (AI/AN) children connected to their cultures and communities. After learning that many AI/AN children were being needlessly removed from their homes by public and private agencies, Congress passed ICWA in 1978 to protect the best interests of Indian children and “to promote the stability and security of Indian tribes and families” (25 U.S.C. § 1902). ICWA sets minimum federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe. California has also passed laws that expand ICWA’s legal scope and requirements.

A child is “ICWA eligible” if he or she is:

- ◆ Under 18 and unmarried; *or*
- ◆ An AB 12 nonminor dependent; *and*
- ◆ A member of a tribe or eligible for membership; *and*
- ◆ A biological child of a member of a federally recognized tribe.

What are the rights of ICWA-eligible children and families?

If ICWA eligible, the child and parents have certain rights, including:

- ◆ Assistance with tribal enrollment for the child;
- ◆ Entitlement to services created for AI/AN families (if available in the family’s area);
- ◆ Placement preferences to keep the child connected to his or her tribal community; and
- ◆ Additional assistance if the tribe intervenes on behalf of the family or child.

If I am not American Indian/Alaska Native, can I still be a foster parent or kin caregiver to an AI/AN child?

Yes, but please note that:

- ◆ ICWA has certain placement preferences that legally must be followed; see www.childsworld.ca.gov/res/pdf/ICWA/ICWAFactSheet.pdf.

- ◆ A tribe may intervene at any point, may provide additional services, and may request a change in placement; see www.courts.ca.gov/documents/licwa-Tribal-Participation-factsheet.pdf.
- ◆ Each tribe is different.
- ◆ Federally recognized tribes are independent, sovereign nations.
- ◆ The unique historical trauma of Native Americans is not widely understood by non-Native people. To learn more about tribal history and California’s tribal communities, visit www.courts.ca.gov/3066.htm.

How can a foster parent or kin caregiver work with an ICWA family?

- Let the social worker, probation officer, or the court know if:
 - ◆ The child or a family member says he or she has Native American ancestry. Use this handout as a guide: www.courts.ca.gov/documents/ICWA-Familyfillable_tree.pdf.
 - ◆ You are an “Indian custodian,” that is, an Indian person caring for an Indian child. ICWA gives the Indian custodian the same rights as a parent.
- Include culturally appropriate services in the child’s ICWA case plan. To find services in your area, view the statewide directory at www.courts.ca.gov/5807.htm.
- Connect the child to his or her tribal community through tribal events, classes, participation in ceremonies, and local inter-tribal events at tribal agencies or centers.
- Respect tribal representatives as you would any other government official.
- Learn more at www.courts.ca.gov/8075.htm#tab15022.

Will the child’s tribe know the child’s family is involved with the legal system?

Yes. If there is reason for a state or federal court to know that a family is American Indian/Alaska Native, then the tribe, parent, guardian, Indian custodian, and the Bureau of Indian Affairs must be notified by the

- ◆ Social worker in a dependency case;
- ◆ Probation officer in a delinquency case;
- ◆ Parent in a family court case; or
- ◆ Court clerk in a probate guardianship case.

What if the family doesn’t want the tribe to know about their court case?

The tribe has the right to intervene in an ICWA case whether the family agrees or not. The parents cannot waive the rights of the tribe.

What tribal resources are available?

Resources for AI/AN families in California that may not require membership in a federally recognized tribe may include:

- ◆ Health centers
- ◆ Substance abuse programs
- ◆ Title VII education programs
- ◆ Foster family agencies
- ◆ College recruiting programs
- ◆ Tribal TANF (Temporary Assistance for Needy Families) services

ICWA: The four types of court cases

Family court.

ICWA applies if custody or care of an Indian child may be given to someone other than the child’s parents or if parental rights are terminated.

Probate court.

ICWA applies to probate guardianship cases involving Indian children.