



Indian Child Welfare Act

Rights guaranteed to Parents and Indian Custodians under the Indian Child Welfare Act (ICWA)

- 1 Parents and Indian Custodians are entitled to Notice in any involuntary proceeding - registered mail, return receipt requested;
- 2 Indigent Parents and Indian Custodians are entitled to the appointment of counsel in these cases;
- 3 Parents and Indian Custodians have the right to request transfer to tribal court at any stage of the ICWA proceedings;
- 4 Parents and Indian Custodians have the right to legally challenge certain violations of ICWA;
- 5 Parents and Indian Custodians have the right to have their child, who has been removed in an emergency proceeding, be returned once the threat of imminent physical or emotional harm has subsided;
- 6 Parents and Indian Custodians have the right to heightened evidentiary standards at the adjudication, disposition, and termination of parental rights phases of a case;
- 7 Parents and Indian Custodians have the right to receive active efforts to preserve their family before a child is removed and active efforts to reunify their family after a child is removed; and
- 8 Parents cannot consent to the adoption of their child less than 10 days after the birth of the child and have the right to do so in front of a judge in a language they understand.

Please note: This is neither a comprehensive list nor a benchmark.

National Organizations that Provide ICWA Information and Resources:

National Council of Juvenile and Family Court Judges
www.ncjfcj.org

National Indian Child Welfare Association
www.nicwa.org

Tribal Law and Policy Institute
www.tribal-institute.org

National Congress of American Indians
www.ncai.org

National American Indian Court Judges Association
www.naicja.org

Native American Rights Fund
www.narf.org

Casey Family Programs
www.casey.org

National Center for State Courts
www.ncsc.org

National CASA
www.casaforchildren.org

**The Children's Bureau:
An Office of the Administration
for Children and Families**
www.acf.gov/programs/cb

**ABA Center on Children
and the Law**
www.americanbar.org/child



Indian Child Welfare Act

Rights guaranteed to Federally Recognized Indian Tribes Under the Indian Child Welfare Act (ICWA)

- 1 Tribes have exclusive jurisdiction over Indian children domiciled on the reservation and Indian children who are wards of the tribal court, regardless of domicile;
- 2 Tribes have concurrent jurisdiction over Indian children in state court proceedings and have the right to intervene at any stage of the ICWA proceedings as well as the right to request transfer;
- 3 Tribes are entitled to Notice in any involuntary proceeding - registered mail, return receipt requested;
- 4 Tribes have the right to legally challenge certain violations of ICWA;
- 5 Tribes have the right to alter ICWA placement preferences through tribal law or resolution;
- 6 Voluntary adoptions are included under ICWA, and tribal interests are on par with parental interests;
- 7 Tribes have the right to have their laws and court orders given full faith and credit;
- 8 Tribes have the right to request information from the state about the placement of any member child; and
- 9 Tribes have the right to petition for the resumption of jurisdiction where it has otherwise been taken.

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Indian Child Welfare Act

Key Responsibilities of State Court Judges under the Indian Child Welfare Act (ICWA)

- 1** In order to determine the proper application of ICWA and jurisdiction, the Judge must ask if a child is or might be a member of a federally recognized tribe or eligible for membership, if the child was in the custody of an Indian custodian prior to the hearing, and if the child resides or is domiciled on a reservation or is the ward of a tribal court;
- 2** The Judge must ensure proper notice and inquiry is mailed to all tribes in which the child might be eligible for enrollment, registered mail, return receipt requested, and must include information on the hearing and a copy of the petition;
- 3** The heart of an ICWA case in state court is the active efforts made to prevent the breakup of the Indian family, which includes whether efforts have been made to identify extended family, tribal members, or other Indian families for placement;
- 4** The Judge must advise indigent parents and Indian custodians they have a right to a court-appointed attorney;
- 5** The Judge must ensure the agency mails notice of scheduled hearings and a copy of the petition to a child's parent if he/she is not at the hearing. Notice must be sent registered mail, return receipt requested;
- 6** Determination that continued custody of child by the parent or Indian Custodian is likely to result in serious emotional or physical damage to the child requires clear and convincing evidence and must include the testimony of a qualified expert witness;
- 7** The Judge must adhere to the priority placement preferences as mandated by the statute, and if the child's placement does not adhere to these preferences must specify why. If no good cause exists, the Judge must order the agency to move the child to a home that complies with placement preferences;
- 8** The Judge must allow the child's tribe and Indian custodian to intervene at any point in the proceedings;
- 9** The Judge must ensure the agency relies upon the social and cultural standards of the Indian community in which the parent or extended family is connected when determining appropriate placements and culturally relevant services;
- 10** Before terminating parental rights, the Judge must find beyond a reasonable doubt, including the testimony of a qualified expert witness, that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child; and
- 11** The Judge must certify that consent to termination of parental rights or adoption was not given prior to or within 10 days after the birth of the child.

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NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES
WWW.NCJFCJ.ORG