

## **FAQ:**

### **General Questions**

#### **What is ICWA, and why was it passed?**

“ICWA” stands for the Indian Child Welfare Act, which is a federal law passed in 1978. ICWA was passed in response to the alarmingly high number of Indian children being removed from their homes by both public and private agencies. The intent of Congress under ICWA was 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 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. Child custody proceedings under ICWA include hearings focused on foster care placement, termination of parental rights, adoption, and placements related to status offenses. Status offenses are actions committed by a child that if committed by an adult would not be deemed a criminal act, such as truancy from school or being incorrigible.

#### **How does ICWA protect American Indian/Alaska Native children and their families?**

When ICWA applies to a child’s case, the child’s tribe and family will have an opportunity to be involved in decisions affecting services and placements for the Indian child. A tribe, parent, or Indian custodian can also petition to transfer jurisdiction of the case to the tribal court of the child’s tribe. ICWA sets out federal requirements regarding removal and placement of Indian children in foster, guardianship, or adoptive homes, and allows the child’s tribe to intervene in the case. Foster placements under ICWA also include residential or group care home placements.

#### **Who is covered by ICWA?**

Indian children involved in state child custody proceedings are covered by ICWA. A person may define his or her identity as Indian, but in order for ICWA to apply, the involved child must be an Indian child as defined by the law.

ICWA defines an “Indian child” as:

- Unmarried,
- Under 18, and
- A tribal member OR eligible for membership and the biological child of a tribal member (25 U.S.C. § 1903).

Under federal law, individual tribes have the right to determine eligibility, membership, or both. However, in order for ICWA to apply, the child must be a member of, or eligible for membership in, a federally recognized tribe.

#### **Are there any proceedings involving the placement of an Indian child where ICWA does NOT apply?**

Yes. ICWA does not apply to custody disputes between parents or family members (such as in divorce proceedings), juvenile delinquency proceedings based on crimes that would be criminal even if the child was an adult (e.g., theft), or to cases under tribal court jurisdiction.

#### **I’m involved in a foster care or adoption proceeding. Does ICWA apply even if the tribe isn’t involved?**

Yes. The state must apply ICWA even if the tribe does not intervene in the case.

## **I'm a Native grandparent and I want custody of my grandchild. Can ICWA help me?**

In cases where ICWA applies, the law provides placement preferences that put family first. It is important to talk with the parents' attorney to make sure they are familiar with these placement preferences and discuss with a judge why you should be considered as a placement resource for your grandchild. Also, a federal law under Title IV-E of the Social Security Act requires that states must consider giving preference to relative placements over non-relatives (42 USC 671(19)) and requires states to provide notice of a relative child being removed from their home to all adult extended family members and notify them of their right to be considered for placement and participate in care of the child (42 USC 671 (29)).

## **How do I change my child custody order?**

The parent must request a change in custody in the court that issued the original child custody court order. Parents may need to contact a private attorney. Child custody is not handled by ICW unless the child is a ward of tribal court.

## **What if my spouse/companion has the kids and I was them?**

Custody disputes must be resolved in a court. The ICW cannot participate in civil or divorce custody disputes or actions.

## **What is voluntarily guardianship?**

Voluntary guardianship occurs when a child is living with someone other than the parents for an extended time. The custodians must have a notarized document and consent from the parents or court order which says whom has guardianship of child. Long term guardianship arrangements should be completed by court order.

## **What considerations should be made in an ICWA case?**

Caseworkers must make several considerations when handling in ICWA case, including:

- Providing active efforts to the family
- Identifying a placement that fits under the ICWA preference provisions
- Notifying the child's tribe and the child's parents in a timely manner of the child custody proceeding
- Working actively to involve the child's tribe, the child's parents, and the child's extended family in the proceeding and other important caseworker decisions

Your caseworker should be able to explain your rights under ICWA and any case actions in a manner that is easy for you to understand.