

# Indian Child Welfare Act

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

A. "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](#).

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

A. 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 for the Indian child. A tribe or a parent can also petition to transfer jurisdiction of the case to their own tribal court. ICWA sets out federal requirements regarding removal and placement of Indian children in foster or adoptive homes and allows the child's tribe to intervene in the case.

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

A. 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 "**any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe**" (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.

ICWA **does not** apply to divorce proceedings, intra-family disputes, juvenile delinquency proceedings, or cases under tribal court jurisdiction.

## **Q. How do I know if my child is eligible for membership in a tribe?**

A. All tribes have the right to determine who is a member of their tribe, and different tribes have different requirements for eligibility. In order to understand these requirements for the particular tribe in question, contact the child's tribe.

## **Q. What if my child is Indian but is not a member of a federally recognized tribe?**

A. If your child does not meet the definition of "[Indian child](#)" outlined in the act, ICWA would not apply to your child's case. Other federal and state laws, however, may provide other protections, including relative placement provisions and the opportunity to be heard in a case review hearing.

## **Q. Who receives notice?**

A. Notice is to be sent to each of the following:

- Parents
- "Indian Custodian" (defined by ICWA as "Any Native person who has legal custody of the child under tribal law or custom or under state law or to whom temporary physical care, custody, or control has been transferred by the parent")
- The child's tribe (If child is affiliated with, or eligible for, membership in more than one tribe, all tribes should receive notice)
- The BIA (only if identity/location of the tribe and/or parent, or Indian Custodian cannot be determined)

## **Q. How is notice sent?**

A. Notice must be sent by registered mail, return receipt requested. A copy of this notice should be filed in the case file and with the court, along with any returned receipts.

## **Q. When should notice be sent?**

A. No requests for a court proceeding (with the exception of emergency removals) can be made until:

- At least 10 days after receipt of notice by parents or Indian Custodian, or after 30 days if 20 additional days are requested by the parents or Indian Custodian to prepare for the proceedings; or
- At least 10 days after receipt of notice by the tribe, or after 30 days if the tribe requests an additional 20 days to prepare or the proceeding; or
- No fewer than 15 days after receipt of notice by the Bureau of Indian Affairs

**Q. What if the tribe does not respond?**

A. Even if a tribe does not respond to an official notice sent, or if it replies that it does not wish to intervene in the proceeding, continue to send the tribe notices of every proceeding. The tribe can intervene at any point in the proceeding and therefore it has the right to notice of all hearings related to the case.

**Q. What considerations should be made in an ICWA case?**

A. Caseworkers must make several considerations when handling an ICWA case, including:

1. Providing active efforts to the family
2. Identifying a placement that fits under the ICWA preference provisions
3. Notifying the child's tribe and the child's parents of the child custody proceeding
4. Working actively to involve the child's tribe and the child's parents in the proceedings

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

**Q. Who should you contact if you feel that your rights under ICWA are being ignored?**

A. If you feel that ICWA is not being applied correctly in your child's case, you should contact the following people as soon as possible:

- An attorney (Indian law experience preferred)
- Legal services
- The child's tribe

The court may order different services or a different placement if it is determined that ICWA is not being applied correctly.

**Q. What are "active efforts"? What considerations should be made in an ICWA case?**

A. States are required to provide active efforts to families, and the court will be asked to determine whether active efforts have been made. The definition of "active efforts" is left open in the Indian Child Welfare Act to accommodate individual case decisions. However, federal guidelines do exist (Federal Register, Vol. 44, No. 228, Monday, November 26, 1979).

ICWA mandates the state to make active efforts in every ICWA case in two areas:

1. Provide services to the family to prevent removal of an Indian child from his or her parent or Indian custodian
2. Reunify an Indian child with his or her parent or Indian custodian after removal

A cornerstone in the application of active efforts is active and early participation and consultation with the child's tribe in all case planning decisions. Additionally, active efforts is more intensive than "reasonable efforts." For example, reasonable efforts might be only a referral for services, but active efforts would be to arrange for the best-fitting services and help families engage in those services. The federal guidelines referenced above apply whether or not the child's tribe is involved in the custody proceedings.

# Child Protective Services

## **Q. What is child abuse?**

**A.** Child abuse is defined by law as harm or threatened harm to a child's health and welfare through acts or neglect by the child's parent(s), legal guardian or caretaker.

- Physical Abuse: non-accidental physical injury to a child under the age of 18.
- Physical Neglect: failure to provide a child under the age of 18 with basic needs such as food, clothing, shelter, medical care, educational opportunity, protection or supervision.
- Sexual Abuse: sexual exploitation of a child or adolescent for the gratification of the perpetrator or another person.
- Psychological Maltreatment: rejecting, terrorizing, isolating, exploiting, corrupting, and/or denying emotional responsiveness.

## **Q. Who is required to report child abuse?**

**A.** Federal, Tribal and State law requires EVERY PERSON, whether private citizen or professional, with reasonable cause to believe that a child under 18 is being abused or is in danger of being abused, to report the suspicion of abuse.

## **Q. When should someone report child abuse?**

**A.** A report should be made when there is reasonable cause to believe that a child or adolescent has been abused or neglected or is in danger of being abused. A report of suspected abuse is only a request for an investigation. The person making the report does not need to prove the abuse prior to making the report. Investigation and validation of child abuse reports is the responsibility of child protective services. If additional incidents of abuse occur after the initial report has been made, the reporting party should contact child protective services again.

## **Q. How should an abuse report be made?**

**A.** Reports can be made to the local Department of Human Services (DHS) in the county where the child resides or to a statewide hotline number designated for such a purpose. **OKDHS: 800.522.3511 or to MCN CFS: 918.732.7869**

## **Q. What information is needed when reporting abuse?**

**A.** When reporting child abuse, the following information will be requested. Failure to have all the information available should not prevent a person from reporting the abuse. However, certain information is vital to locate the child and provide some indication of what to expect when the child protective services worker investigates. Prior to opening an investigation, pertinent information to provide includes:

- Name of the child and family members
- Approximate age of the child (required) and family members
- Gender of the child and family members
- Family address or directions to the child's home or current location (required)
- Family phone number
- Parents place of employment
- Description of suspected abuse (required)
- Current condition of the child (required)

Those reporting child abuse can remain anonymous.

# Foster Care & Adoptions Certification & Placement

**Q. What are the minimum requirements for certification as a Muscogee (Creek) tribal resource home?**

A. Requirements are as follows:

- Applicant(s) must be at least 21 years of age;
- Applicant(s) must be able to manage personal and household financial needs without relying on foster care reimbursement;
- Applicant(s) must be able to provide appropriate sleeping arrangements, which offers privacy and meet the individual needs of the custody child;
- Applicant(s) must provide verification that the physical and mental health of all members of the household would not hinder the family providing for the individual needs of the custody child;
- Applicant(s) must ensure that any household member 18 years of age or older will submit to a criminal background investigation, including fingerprinting and a child abuse and neglect records systems search;
- Applicant(s) must provide references;
- Applicant(s) must complete a home study and house assessment;
- Applicant(s) must complete resource parent training.

**Q. Do both applicants need to be Indian to be approved as a tribal resource home for the Muscogee (Creek) Nation?**

A. No. At least one prospective resource parent must be a member of a federally recognized tribe of Indians.

**Q. I am unmarried. Will I be eligible for certification as a tribal resource home?**

A. CFSA does not require applicants to be married.

**Q. Will I receive financial assistance when I receive placement?**

A. Resource parents generally receive a stipend within 90 days of placement of a child in the home. The amount of the stipend depends on the age of the child.

**Q. Will I receive financial assistance for day care services?**

A. Child care assistance is generally available to when both resource parents work outside the home or are enrolled in school.