

Frequently Asked Questions

A publication of the National Indian Child Welfare Association

NICWA receives over 1,000 inquiries annually from individuals, case workers, and others seeking information. Here are some of the most frequently asked questions. Our answers should not be considered a substitute for legal advice.

Who is covered by the Indian Child Welfare Act of 1978 (ICWA)?

ICWA covers any child who is either a member of a federally recognized tribe/Alaska Native village or is eligible for membership in a federally recognized tribe/Alaska Native village and is the biological child of a member of a federally recognized tribe/Alaska Native village.

I'm going through a divorce or separation and my partner wants custody of our Native child. Does ICWA apply to my case?

No. ICWA only applies in child welfare proceedings and adoption proceedings.

I need an attorney for my custody case, but I don't think I can afford one. Where can I find an attorney?

If ICWA applies to your case, ICWA guarantees an attorney to all parents regardless of whether or not they can pay. It's important to ask the judge in court for representation. If you are going through a divorce proceeding or custody dispute, unless domestic violence is involved, you will likely have to pay for your own attorney. If there has been domestic violence, contact legal aid services. Please see NICWA's fact sheet *How to Find Free & Low-Cost Legal Assistance*, and visit www.lawhelp.org, for additional information on retaining a free or low-cost attorney.

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

Yes.

Is the state required to contact my tribe when they remove my child?

Yes. ICWA requires that the tribe **must** be notified and has the right to participate in court proceedings. ICWA is less clear regarding private adoptions. Best practice dictates tribes be contacted, and some states mandate this.

Can I or my tribe ask to have the state court proceedings transferred to my tribe's court?

Yes. Both parents and the tribe have the right to request a transfer.

I need to work with my tribal child welfare department regarding the placement of my child, but I find the process intimidating. How can I build a positive relationship with them?

It is good that you are working to develop this relationship. Your tribe will need your help identifying an appropriate placement for your child with a relative or other Indian family. They can also support you as you work on a case plan. Clarifying that you need help understanding the child welfare process and expectations is a good place to start. Realize that most tribes are very understaffed and may not be able to respond as quickly as you would like, so be patient. Also, be honest with them regarding your concerns and the issues that led to you and your child becoming involved in the child welfare system. Communicate that you want a positive relationship where you and the tribe can work together for the benefit of your child.

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My child has been placed in another home where I believe he is being abused. What can I do?

If you believe your child is being abused, it is imperative that you report your suspicions to the tribal or state authorities that handle child protective services. It is also important that you honestly believe there is abuse before doing so. False allegations are harmful to everyone involved and hurt *your* credibility in court.



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 are discussing with the judge why you should be considered as a placement resource for your grandchild. Also, a federal regulation called Title IV-E guarantees all extended family receive notice and be considered for placement.

What did the U.S. Supreme Court decide exactly in the Baby Veronica case (*Adoptive Couple v. Baby Girl*)?

This decision did not overturn ICWA. ICWA still remains law and still applies to private adoptions and child welfare cases nationwide. However, the decision limited ICWA's protections for *unwed fathers without custody* when their children are *voluntarily placed for adoption*. It also changed how ICWA's placement preferences are applied in *voluntary* adoptions.

Is it okay to transport Indian children across state lines for purposes of adoption?

Yes, like all children, Indian children can be adopted in a different state than where they were born or live. It is important, however, that ICWA, the Interstate Compact on the Placement of Children, and other applicable laws designed to prevent the kidnapping of children and promote safe adoptive homes are followed.

I dispute the recommendations of the state child welfare department. What recourse do I have?

First, have a conversation with your case manager about your concerns. If that does not address your concerns, contact the supervisor. There should be processes in place that you can follow, including a grievance process, contacting an ICWA state manager, and contacting an ombudsman to express your concerns. It varies from state to state, so please research your state's department of child services website.

I am a Native adult adoptee who wants to re-establish my connection with my tribe. How can I do that?

First Nations Repatriation Institute (www.wearecominghome.com) is a national non-profit organization that offers advocacy and support to Native adoptees, fostered individuals, and their families. They are a wonderful resource.

What laws exist to protect the rights of First Nations families in the United States? In Canada?

A few states have laws that help provide protections similar to ICWA to First Nations children residing in the United States. In Canada, visiting First Nations Child & Family Caring Society of Canada's website (www.fncaringsociety.com) is a good place to get information, and includes links to provincial or territorial contacts to help with individual cases.

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I am interested in becoming a foster or foster-adoptive parent. Where do I start?

There are a number of resources you may contact. Contact your state department of health and human services or your tribe's Indian child welfare department. Many urban Indian community organizations have a foster care recruitment program as well.

I've heard I have Native American ancestry. How do I trace my Indian lineage?

Please see NICWA's website (www.nicwa.org) for tips on how to get started on this research.

I am a non-Native foster or adoptive parent with an Indian child placed in my home. What should I know about ICWA, the cross-cultural needs of my child, and establishing a relationship with my child's tribe?

ICWA requires states place Indian children in foster care first with their extended family. If this is not possible, placement should be with another family of the same tribe. If neither of these options is available, then placement should be with a tribally approved or licensed foster home. For adoptions, the placement preferences are: extended family, a family of the same tribe, or another Indian family.

If your home is not in line with these placement preferences, it is important to ask your child welfare worker if "diligent efforts" were made to place the child according to these preferences, or if "good cause" to deviate from the placement preferences was shown. If this did not occur, the state has violated federal law and the child may be in an unstable placement.

If the child has been placed legally, it is important to help the child understand his or her tribal identity. Studies show that children who grow up disconnected from their Indian heritage have higher rates of mental health and identity disorders and that children who remain connected with their communities and culture are more resilient or "bounce back" better from the trauma (such as abuse or neglect) they have faced.

A good relationship with the child's tribe is important to your child's development. You should contact the tribe's Indian child welfare department and see how they can assist you in making meaningful connections. You can also connect to your local urban Indian community center to help the child engage with the local Indian community.



What are "active efforts" and how are those different than "reasonable efforts"?

ICWA requires that active efforts are provided to help prevent removal of Native children and strengthen the family so the child can return home. **Active efforts require a higher level of services and more vigorous effort on the part of the state than reasonable efforts.** This means that the state must work closely with the family to ensure they receive any services necessary before a child is removed to prevent removal from the home, or—if removal was necessary—they receive services and support so that the child can be safely returned.

Are there other federal child welfare laws outside of ICWA that can help protect Native children and families?

Yes. The Social Security Act provides a number of requirements for state child welfare agencies and courts that can help support ICWA implementation and the ability of Native children and families to stay connected with their tribes and extended family. Please see our website for specific examples.

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What does NICWA do exactly?

NICWA undertakes work to support the safety, health, and spiritual strength of Native children along the broad continuum of their lives.

Our programmatic work addresses:



NICWA promotes building tribal capacity to prevent child abuse and neglect through positive systems change at the state, federal, and tribal level. This includes:

- Serving as a resource to individual families. While we do not provide direct legal advice or direct case consultation, we direct nearly 1,000 families annually to information, resources, and programs that can assist them
- Providing technical assistance and training across diverse areas such as understanding and implementing ICWA, and individual consultation on strengthening tribal child welfare policies and procedures
- Advocating at the policy level on issues such as tribal child welfare finance reform and ICWA compliance
- Leading tribal child welfare research efforts on topics such as disproportionality and practice-based evidence
- Empowering youth to become advocates for issues most important to them
- Fostering relationships across Indian Country by hosting the nation's largest gathering committed to tribal child welfare issues

These are just a few examples of the programs and services we offer. See www.nicwa.org for more information.



NICWA

National Indian Child Welfare Association
Protecting Our Children • Preserving Our Culture

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| Our Vision | Every Indian child must have access to community-based, culturally appropriate services that help them grow up safe, healthy, and spiritually strong—free from abuse, neglect, sexual exploitation, and the damaging effects of substance abuse. |
| Our Mission | NICWA is dedicated to the well-being of American Indian and Alaska Native children and families. |

To learn more about NICWA, visit www.nicwa.org.