

# The Indian Child Welfare Act: A Family's Guide

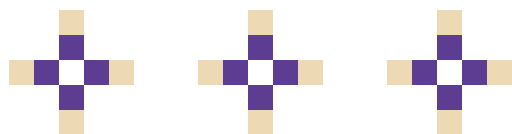
Updated April 2026



## NICWA

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

Here we provided some tips for self-advocacy and examples of guiding questions for families to use when navigating cases that involve the Indian Child Welfare Act.



## What is ICWA and Why Was It Passed?

The Indian Child Welfare Act, or ICWA, is a federal law passed in 1978, in response to the disproportionately high number of American Indian and Alaska Native children removed from their homes by both public and private agencies. The intent of 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 foster care, guardianship, Termination of Parental Rights (TPR), and adoption proceedings involving a child who is a member of, or eligible for membership in, a federally recognized Tribe.

*Note: The terms “Indian” and “American Indian/ Alaska Native” are used interchangeably throughout this document. Additionally, the term “Tribe” includes all federally recognized Alaska Native villages and Tribes located in the United States.*

### Disclaimer:

The Indian Child Welfare Act (ICWA) applies to state courts and not Tribal courts.

This brochure is not a substitute for legal counsel. You should always contact a lawyer for advice or any legal matter relating to ICWA, or child custody issues.

### ★ Tips for Families

- Start a family file: gather birth certificates, family tree information, Tribal affiliations, and any prior enrollment documents for you and your children.
- Keep a calendar of all hearing dates and deadlines; ask for plain-language summaries of what each hearing will be about.
- Request an ICWA agent or Tribal Liaison by contacting your child/ren’s Tribe. The Bureau of Indian Affairs (BIA) has a resource on how to find an ICWA agent for your Tribe. [ICWA Designated Agents Listing](#)
- Take note of cultural practices, language, and ceremonies that support your child’s well-being so they can be reflected in services and visitation.
- Ask for communications in your preferred language, and ask the court for the process in requesting necessary accommodations.
- You can ask your case worker or lawyer to find out which court proceedings are upcoming for your family.



## ★ Questions to Ask

- Does ICWA apply to my child's case?
- Who is the ICWA specialist on my case, and how can I reach them?
- Does the department provide a cultural specialist or Tribal Liaison?
- What is the purpose of the next hearing, and how can I participate?
- What documents should I bring or share to support ICWA compliance?
- How will my child's cultural needs be reflected in the case plan?
- What cultural services are available to help me or my family?
- What is the process of approval if I have family members that are able and willing to be a placement for my child/ren?



## 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 parents have an opportunity to be involved in decisions affecting services and placement decisions for the Indian child. A Tribe or a parent can also petition to transfer the case to a Tribal court.

ICWA sets out federal requirements about removal and placement of Indian children in foster care, guardianship, or adoptive homes, and allows the child's Tribe to intervene in the case, (e.g., participate in court proceedings, access court information, share information with the court).

## ★ Tips for Families

- Request that representatives from your child's Tribe and/or ICWA representatives are invited to family team meetings and case planning sessions.
- Sign releases so the agency and your Tribe can share information and coordinate services.
- Keep track and copies of any notices sent to the Tribe, responses, and contact information.
- Ask for meeting times that accommodate Tribal participation, including time-zone differences and remote options.
- Discuss with your attorney early on the potential of transferring the case to Tribal court, if available.
- Inform your attorney or legal counsel of available family members who could be a placement option, should that need arise.
- Request that cultural activities, ceremonies, and community connections be included in visitation and services where available and possible.

## ★ Questions to Ask

- Has formal notice been sent to the Tribe(s)? Can I receive a copy and proof of service?
- Who is the contact person at the Tribe, and how will they participate?
- Does the child's Tribe have a Tribal court or social services department that can support a case being transferred out of state court?
- Can we request that the case be transferred to the Tribal court? What would that process look like?
- What are the ICWA placement preferences, and how will they be applied to my child's case?
- How will cultural connections be documented and supported in the case plan?





## Who Is Covered by ICWA?

Indian children involved in state foster care, guardianship, TPR, or adoptive proceedings are covered by ICWA. In addition, ICWA applies to status offenses involving a juvenile offense that would not be considered a criminal violation if committed by an adult (e.g. truancy, incorrigibility). A person may define themselves as Indian but for ICWA to apply, the involved child must be an Indian child as defined by the law.



ICWA defines an ICWA eligible child as:

- Unmarried;
- Under age 18; and
- Either a **member of an Indian Tribe** *or* **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).

Only the child's Tribe can determine the child's eligibility for membership in their Tribe.

ICWA does not apply to:

- Custody disputes between parents (e.g., divorce/separation proceedings or cases determining which parent has custody of a child);
- Juvenile delinquency proceedings (e.g., proceedings involving a criminal violation by a juvenile that would also be a violation if the juvenile were an adult); or
- Voluntary placements
- Non-federally recognized Tribes; or
- Cases in Tribal court



### Tips for Families

- Clarify your child's eligibility early in their case. Provide names of parents, grandparents, and Tribes with which your family identifies as being connected to.
- Share any Tribal enrollment information such as an enrollment number, letter of confirmation of enrollment status from the Tribe, or application for enrollment — even if incomplete.
- Document all attempts to verify eligibility with Tribe(s)' BIA.
- Ask the agency to continue diligently verifying eligibility if initial responses are pending.
- Request that the court note eligibility inquiries on the record.



### Questions to Ask

- What information do you need from me to determine if my child is an "Indian child" under ICWA?
- Which Tribe/s have been contacted to verify eligibility and when? How will follow-up be handled?
- If eligibility is later confirmed, how will ICWA change what the court requires in this case?



## How Do I Know If My Child is Eligible for Membership in a Tribe?

All Tribes have the right to determine who is a citizen of their Tribe, and different Tribes have different requirements for eligibility. In order to understand these requirements for a particular Tribe in question, contact the child's Tribe. For more information on how to contact the child's Tribal enrollment officer, please visit the BIA's website at [www.bia.gov](http://www.bia.gov).

### ★ Tips for Families

- Contact the Tribe's enrollment office to learn requirements and specific timelines; ask your case worker or attorney to help if needed.
- Gather required documents such as birth certificates and family ancestry charts identifying Tribal heritage.
- Request help covering the cost for obtaining vital records and for completing forms, if cost is a barrier.
- Track deadlines and ask the court for time to complete eligibility verification when appropriate.
- Identify relatives who can help supply the family history or documentation.

### ★ Questions to Ask

- Can you help me contact the Tribe's enrollment office and the BIA if needed?
- What documents are required for eligibility or enrollment, and who can help me obtain them?
- Who is responsible for following up with the Tribe about enrollment status or eligibility, and by what date?
- How will the court treat the case while eligibility or enrollment is being verified?



## What If My Child is Indian but Is Not a Member of a Federally Recognized Tribe?



If your child does not meet the definition of “Indian child” outlined in the law, ICWA would not apply to your child’s case. Other federal and state laws, however, may provide other protections, including support for placing your child with relatives and the opportunity to be heard in court. Check in with the Tribal enrollment office to see if they can help with the child’s enrollment and ask your attorney or caseworker about these laws.

### ★ Tips for Families

- Ask about state and federal laws and policies that support kinship placement and family preservation, even when ICWA does not apply.
- Immediately identify relatives and trusted community members who could provide temporary or long-term care.
- Request culturally relevant services and visitation that maintain your child’s identity and community ties.
- Connect with local Native organizations for cultural support, mentoring, or ceremonies.
- Keep the court informed of cultural considerations you want reflected in future decisions.

### ★ Questions to Ask

- If ICWA does not apply, what protections do apply (e.g., kinship placement, family preservation, reasonable efforts)?
- How do I request a kinship placement or placement with a trusted community member?
- Will the court consider my child’s identified cultural identity in placement services?
- What services are available to help me keep or reunify with my child, and how can I access them?
- Am I eligible for free or low-cost legal representation, and can you give me a referral?
- How can I share my concerns with the judge, or request a review of placement decisions?



## What Considerations Should Be Made in an ICWA Case?



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

1. Providing active efforts to the family, (see below on “What Are Active Efforts?”);
2. Finding a placement that fits under the ICWA preferences;
3. Notifying the child’s Tribe and parents of the child’s custody proceeding; and
4. Working actively to involve the child’s Tribe parents in the proceedings

Your case worker should be able to explain your rights under ICWA, and any other case actions for you.

### ★ Tips for Families

- Keep a written log of “active efforts” provided by the agency (dates, services offered, contact with your assigned worker, transportation/ childcare support).
- Keep important certificates and records together in a binder or a folder.
- Provide names and contact information for relatives or community members willing to be a resource in helping to meet ICWA placement preferences.
- Ask for prompt, documented notice to the child’s Tribe, and verify the Tribe was notified.
- Request that your Tribe is invited to all family team meetings and case plan reviews.
- Review your rights under ICWA with your attorney and ask for explanations of each step.

### ★ Questions to Ask

- What specific active efforts are being provided to prevent removal, or to support reunification?
- How are ICWA placement preferences being applied in my case, and have any good-cause findings been considered or requested to deviate from those preferences?
- When, and how, were notices sent to the Tribe and parents? Can I see proof of efforts to contact the Tribe?
- How will my child’s Tribe and parents be meaningfully involved in all of the proceedings and decisions?
- Who is the qualified expert witness (QEW), (if removal/termination of parental rights is sought) and what is their role?

## What Are Active Efforts?

States are required to provide active efforts to families, and the court will be asked to determine whether active efforts have been made. Under the federal regulations, “active efforts” mean the active and engaging, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with their family. They also address the unique culture of the Indian child, family and extended family (25 C.F.R. § 23.2). The federal regulations give 11 examples of active efforts including; providing culturally appropriate services, actively engaging and consulting with the child’s extended family and community (e.g., inviting them to family team meetings, involving them in the development of the case plan), and supporting regular visitation with the parents.

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

1. To provide services to the family to prevent removal of an Indian child from their parent or Indian custodian.
2. To reunify an Indian child with their parent or Indian custodian after removal.

A cornerstone of active efforts is active, early participation, and consultation with the child’s Tribe in all case planning decisions. Additionally, active efforts are different from “reasonable efforts.” For example, reasonable efforts might be only a referral for services, but active efforts would be to arrange for culturally appropriate services, and to help families overcome obstacles, (e.g., transportation, finances, childcare, etc.), to engage in those services. ICWA (25 U.S.C. § 1901 et. seq.) and the federal regulations (25 C.F.R. Part 23) apply whether or not the child’s Tribe is involved in the custody proceedings.

### ★ Tips for Families

- Work with your caseworker and Tribe to design a culturally responsive plan tailored to your family’s needs.
- Ask for concrete help with barriers (transportation, scheduling, childcare, fees), so you can participate in services.
- Include extended family and community supports in visitation and case planning.
- Request regular check-ins to review progress and adjust services as needed.
- Ensure documentation of services provided, and that your participation is shared with you and the court.

### ★ Questions to Ask:

- What specific services can you help me with for my case, (who will provide them, where, and how often)?
- How will the agency help me overcome barriers to participation, (transportation, childcare, cost)?
- How will my child’s Tribe and extended family be engaged in planning and services?
- How are “active efforts” being documented for the court, and how can I review or add information?
- When will we meet to evaluate progress and make changes if needed?
- What is the best way to contact you for any needs that come up while working on my plan?

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## Who Should You Contact If You Feel That Your Rights Under ICWA Are Being Ignored or Violated?



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:

- **Contact a Qualified Attorney:** A lawyer, (seek legal counsel with experience in ICWA and Indian law immediately). Link for Low Cost or Free Lawyers.
- Contact the Tribe: The child’s Tribe, (ICWA Tribal contacts are listed on the BIA website, [www.bia.gov](http://www.bia.gov)).
- **Petition to Invalidate Action:** Under 25 U.S.C. 1914, parents, Indian custodians, or the Tribe can petition any court of competent jurisdiction to invalidate foster care placements or terminations of parental rights that violate ICWA.
- **Request Correct Placement:** If a state agency placed a child in violation of ICWA, you, your Tribal representative or your legal counsel can petition the court to change the placement to one that conforms with ICWA preferences.
- **File Complaints:** Write a formal complaint if necessary with the supervisor. You may need to contact the correct department for your state to inquire about avenues for complaints. You can also contact the state’s ombudsman or child welfare hotline to report the violation.
- Ensure ICWA QEWs are testifying at the foster care placement hearing and the Termination of Parental Rights(TPR) hearing.

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

### ✦ Tips for Families

- Create a contact list (attorney, caseworker, supervisor, Tribal ICWA contact, court clerk, ombuds office, etc.).
- Document concerns with dates, who you spoke with and what was said; keep emails and letters.
- Request a meeting with a supervisor if issues are not resolved promptly.
- Ask your attorney about filing motions or request a hearing to address ICWA compliance.
- Seek help from legal aid, Native advocacy organizations, or Tribes/ social services offices.

### ✦ Questions to Ask

- What is the child welfare agency's grievance procedure if I believe ICWA is not being followed?
- Can I receive copies of all ICWA notices, proofs of services, and court orders?
- Is there an ombud or complaint process I can use, and how do I submit a concern?
- How do I request a hearing or court review to address ICWA compliance?



# NICWA

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## NICWA'S MISSION

The National Indian Child Welfare Association (NICWA) protects the safety, health, and cultural identity of all Native children and families—today and for future generations—by upholding culturally based services, community strength, and Tribal sovereignty.

Portland, Oregon • (503) 222-4044 • [www.nicwa.org](http://www.nicwa.org)