



## WHO IS COVERED BY ICWA?

American 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 child must be an Indian child as defined by the law.

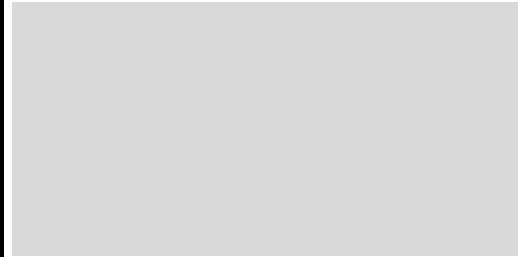
ICWA defines an “Indian child” as “any unmarried person who is under age 18 and is either (A) a member of an Indian tribe or (B) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe” (25 U.S.C. § 1903).

In New York State, the definition broadens to define the biological child of a member of an Indian nation or tribe that resides on, or is domiciled within, an Indian reservation (Section 2 [36 {iii}] of the Social Services Law). 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.



## New York State Office of Children & Family Services

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Andrew M. Cuomo - Governor

Information has been adapted with  
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# *A Family's Basic Guide*



# *to the Indian Child Welfare Act (ICWA)*





## WHAT IS ICWA?

The Indian Child Welfare Act (ICWA) is a federal law that seeks to keep American Indian children with American Indian families. Congress passed ICWA in 1978 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.

## 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 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.



## WHAT STEPS SHOULD BE TAKEN IN AN ICWA CASE?

Caseworkers must take several steps when handling an ICWA case, including:

1. Notifying the child's tribe and the child's parents of the child custody proceeding;
2. Identifying a placement that fits under the ICWA preference provisions;
3. Providing "active efforts" to the family (see section entitled "What are active efforts?"); and
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.

## WHOM SHOULD I CONTACT IF I FEEL THAT MY RIGHTS UNDER ICWA ARE BEING IGNORED?

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) or legal services;
- The child's tribe; and
- New York State Office of Children & Family Services, Native American Services Division.

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



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

Active efforts are 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.

## HOW DO I KNOW IF MY CHILD IS ELIGIBLE FOR MEMBERSHIP IN A TRIBE?

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.

For more information on how to contact the child's tribe, call *New York State's Office of Children & Family Services, Native American Services Division, at 716-847-3123.*

