

## What Are My Rights as an American Indian/Alaskan Native?

If either parent has ANY American Indian/Alaskan Native ancestry, the children and the parents may benefit under a law called the Indian Child Welfare Act (ICWA). These benefits include:

- Assistance with tribal enrollment
- Services through agencies for American Indian/Alaskan Native families if available in your area
- If your children are removed from your care, the social worker or probation officer by law will need to follow certain placement practices to ensure your children will be placed in a tribal home
- Your tribe may intervene and offer additional assistance for your family

**In a juvenile court case, it is very important to tell the social worker or probation officer, your child's attorney and the court right away if you are American Indian/Alaskan Native! Your family may qualify under the ICWA and your tribe will need to be notified of the proceedings.**

## Will My Tribe Know If We Are Involved With The System?

Yes, by law if there is reason to know a family is American Indian/Alaskan Native then the identified tribe, parents, guardian(s), Indian custodian and the Bureau of Indian Affairs (BIA) must be notified by the petitioner. This is the:

- Social worker in a dependency case
- Probation officer in a delinquency case
- Parent in a family court case
- Court clerk in a probate guardianship case

## What If I Don't Want My Tribe To Know About My Court Case?

You cannot waive the rights of the tribe. The tribe has the right to intervene in an ICWA case whether a parent agrees to their involvement or not.



## Where Can I Find More Information?

Visit us at:

<http://www.courts.ca.gov/programs-tribal.htm>

Or call:

(415) 865-7739

# Information For American Indian/ Alaskan Native Families In California

## A Guide to the Indian Child Welfare Act (ICWA)



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This pamphlet is for American Indian/Alaskan Native families to get basic information about the Indian Child Welfare Act (ICWA).

## **Indian Child Welfare Act Is Federal And State Law**

The Indian Child Welfare Act (ICWA) is federal law and the law in California. It exists to prevent the breakup of American Indian/Alaskan Native families. It sets standards for child welfare cases and other child custody cases involving Indian children. ICWA applies to members of any federally recognized tribe in the United States and to those eligible for membership.

This law affects California dependency, delinquency, guardianship and some family cases involving Indian children.

### **To qualify as an Indian child, the child must be:**

- Under 18 and unmarried;
- A member of a tribe or eligible for membership; AND
- A biological child of a member of a federally recognized tribe.

Although the ICWA applies to those in federally recognized tribes, some counties may follow aspects of ICWA for children from non-federally recognized tribes.

## **Types Of Cases Where ICWA Applies**

### **Family Court**

If you and your child's other parent separate and need orders regarding custody, visitation, parenting time and child support, you may have to go to family court. ICWA applies to child custody cases involving Indian children.

### **Probate Court**

This court deals with probate conservatorships, guardianships, and the estates of people that have died. ICWA applies to probate guardianship cases involving Indian children.

### **Juvenile Court-Dependency**

These cases start when there are concerns about abuse or neglect of your children. The court can order that:

- You and your child receive the services your family needs
- Your child be removed from your care and go live with relatives, in foster care or group homes
- Your parental rights be terminated
- Your child be adopted

The court's goal is to protect your child and keep your family together, if possible.

### **Juvenile Court-Delinquency**

Your child may end up in delinquency court if he or she has committed a crime. It usually depends on the child's age, the seriousness of the crime, and the child's criminal history. The delinquency court can order that your child:

- Live with you under court supervision
- Be put on probation and may have to live with a relative, in a foster home or group home, or in an institution
- Be sent to the Department of Corrections and Rehabilitation, Division of Juvenile Justice ("DJJ"). If in adult court, will be sent to the Department of Corrections and Rehabilitation, Division of Adult Operations (also called "CDCR")

## **If Your Child Is Involved in One Of These Cases:**

### **You will need to provide information about:**

- Which tribe or tribes you are from
- Names, birth and death dates (for parents, grandparents, great-grandparents), enrollment numbers, and services you are receiving from Native American providers
- Any current restraining orders
- If your children are living with someone who is American Indian/Alaskan Native that the court calls an "Indian Custodian"

## **What If A Social Worker Or A Probation Officer Removes My Child From Me?**

Under ICWA, in a juvenile court case, the social worker or probation officer will need to work to prevent the breakup of your family by setting up services appropriate for American Indian/Alaskan Native families, and making sure your child can be placed with a relative, a family within your tribe, a family of another tribe or a tribally approved institution. These actions are called "active efforts."

## **Will My Child Be Removed If There Is Domestic Violence?**

No, but if the county child protective services (CPS) agency investigates allegations and a court determines that a child is at risk of harm in the home, the court may make the child a dependent of the court. If you live in a tribal community, rancheria, or reservation, the tribe may also have a tribal advocate and other resources to help you.

### **National Domestic Violence Hotline:**

1-800-799-7233 or TDD: 1-800-787-3224