

A Family For Every Child Matching Assistance



"We should not be asking who this child belongs to,
but who belongs to this child."

Indian Child Welfare Act (ICWA)

The Indian Child Welfare Act (ICWA) was passed in 1978 and seeks to keep American Indian children with American Indian families. At its core, ICWA was passed to promote the best interests of American Indian children and their families, and promote stability amongst American Indian families.

Per ICWA, states are required by law to seek American Indian placements for an American Indian child before looking elsewhere. The State must consider family, other tribe members, and other American Indian homes first under ICWA.

When Does ICWA Apply?

ICWA applies when the child is [defined](#) as an Indian child, and when the custody hearing is in regards to foster care placement; TPR, pre-adoptive placement; or an adoptive placement.

An *Indian child* is defined as someone who is under the age of 18 and not married, and who is a member or an Indian tribe, OR is the biological child of a member of an Indian tribe, and therefore eligible for membership. An *Indian tribe* is defined as a federally recognized tribe.

When Does ICWA Not Apply?

Terms

Active Efforts -

Requires intensive effort to reunify a child with his/her parent. While active efforts is not defined in ICWA, it refers to actions more intense than "reasonable effort".

Adoption - Transfer of legal custody to a child's adoptive parents. Adoption does not always include TPR; birth parents, relatives, past foster families and other significant connections may be maintained and be part of the new family network.

Foster Care -

Temporary care of the child by someone who is not biologically related to the child.

Notice to tribe -

Under ICWA, when

ICWA does not apply to divorce proceedings and juvenile delinquency cases.

The following flow chart may provide helpful in determining if ICWA will apply or not:

[Will ICWA Apply?](#)

Additional Information

Native American Rights Fund - [ICWA Topics](#)

NICWA - [A Family's Guide to the Child Welfare System](#)

NICWA - [Frequently Asked Questions about ICWA](#)

NICWA - [Indian Child Welfare Act of 1978](#)

NICWA - [Indian Child Welfare Flow Chart and Glossary](#)

NICWA - [ICWA Online Training Materials](#)

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the state takes control of the child, they must notify the tribe and let them decide how they would like to intervene.

Placement - Occurs when a child is placed in a home other than his/her original home. It could be temporary, long-term, or permanent. When it comes to Indian children, placement preferences exist. They are as follows:

1. A member of the child's extended family (Indian or non-Indian)
2. A foster home that is licensed, approved, or specified by the tribe
3. An Indian foster home that is authorized by a non-Indian licensing authority
4. An institution that is approved by the tribe or operated by an Indian organization, and it deemed as suitable to meet the child(ren)'s needs.

For a full glossary, click [here](#).