

NATIVE LIKE ME

The Indian Child Welfare Act (ICWA)

and

The Child Welfare Practice



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UNIVERSITY OF
SOUTH CAROLINA
School of Law

AGENDA

INDIAN CHILD WELFARE ACT (ICWA) AND THE CHILD WELFARE PRACTICE REGIONAL TRAINING Course# 160381

SCHEDULED TIME	TRAINING SESSIONS	PRESENTER	SECTION TIME
8:30-9:00 AM	Registration		30 min
9:00-10:00 AM	The Indian Child Welfare Act (ICWA): The Law <ul style="list-style-type: none"> • <i>The Child Welfare Act and Its Foundation</i> • <i>Applicability of ICWA</i> • <i>Jurisdictional Provisions of ICWA</i> • <i>Procedural Provisions of ICWA</i> • <i>Placement Provisions of ICWA</i> 	Dioné Carroll, Esq.	60 min
10:00-10:15 AM	BREAK		15 min
10:15-11:00 AM	The Indian Child Welfare Act (ICWA): The Law (Continued)		45 min
11:00-11:45 AM	The Catawba Indian Nation (CIN): Services and Programs <ul style="list-style-type: none"> • <i>Determining Tribal Membership</i> • <i>Services and Programs offered at the CIN</i> • <i>Partnering with the CIN</i> 	Linda Love, MSW	45 min
11:45-12:45 PM	The South Carolina Department of Social Services (SCDSS): ICWA Policy and Procedures <ul style="list-style-type: none"> • <i>Memorandum of Understanding between SCDSS and CIN</i> • <i>SCDSS Policy and Procedures in Handling Cases Involving Native American Children</i> 	Dennis M. Gmerek, Esq. or Amanda F. Whittle, Esq.	60 min
12:45-1:00 PM	Questions/Wrap-Up/Closing		15 min

REGIONAL TRAINING PRESENTERS

Dioné Carrol, Esq., serves as legal counsel for the Catawba Indian Nation. She has practiced law since 1994. Ms. Carroll is licensed to practiced law in both Florida and South Carolina. She practices in the areas of environmental law, Native American Indian law, equine law, family law, alternative energy law, public interest law, commercial law criminal law, open government law, civil rights law, government affairs, gaming law, entertainment law, lobbying affairs, litigating and appeals. For 6 ½ years of her career, Ms. Carroll served with distinction as General Counsel to the Miccosukee Tribe of Indians of Florida, and she has spent the vast majority of her career representing the interests of Native Americans and American Tribes and environmental public interest groups. Ms. Carroll resigned her position as General Counsel in February of 2009 to launch Carroll Law Offices, P.A. in her capacity as sole owner and principal attorney to the firm, she continues to represent Native Americans, Native Business and Tribal Nations, as well as other varied clients. Carroll Law Office, P.A., has an office in Miami, Florida and an office in Aiken, South Carolina, which provide bases of support for Ms. Carroll's services. Ms. Carroll holds a Bachelor of Science in Economics, *cum laude*, from the University of South Alabama and graduated, *cum laude*, from Florida State University (FSU) College of Law. Ms. Carroll is an accomplished musician, and horse rider, horse trainer and competitor. She has attained the rank of 4th degree black belt in Yoshukai Karate. She was made a Shihan (teacher of teachers) and is therefore among the elite leaders of this style of karate. Her training and competing includes full contact fighting, breaking and use of weapons such as bo staff, nunchaku, sai and katana (samuri long) sword.

Linda Love, LMSW, is the Social Services Director for the Catawba Indian Nation. She is responsible for providing Social Services to the eligible 2,800 triable members. She manages the Indian Child Welfare Act along with the ICWA case manager. She plan programs and services for tribal members with the Social Services Representatives for the Catawba Indian Nation. She has held this position since 2012. In addition to providing services for members of the tribe, she also manages VAWA and FVSPA grant services. Prior to joining the Catawba Indian Nation, Ms. Love, was employed with the Carolinas Healthcare as Social Worker Supervisor. In that position, she provided social work oversight to the Smart Start Intensive Home visiting program for first time teen mothers in Mecklenburg County, supervised professional staff of caseworkers, monitored and completed intakes, referrals, care plans, and crisis intervention. Ms. Love was also responsible for collaborating and building rapport was community agencies to link families to resources and ensuring compliance with state, county and grant guidelines and procedures. Ms. Love, a native of Rock Hill, South Carolina. She is a graduate of Winthrop University where she earned a Bachelor of Arts degree in Sociology. She is also a graduate of the University of South Carolina where she earned a Master of Social Work degree. In her spare time, she likes gardening and spending time with her five grandchildren.



Dennis M. Gmerek, Esq., is an Assistant General Counsel for the South Carolina Department of Social Services and he is responsible for the supervision of the SCDSS FTE and contract attorneys. He is the designated “point person” in the Office of General to assist counties in issues involving undocumented children. He formerly served as a DSS County Attorney and Circuit Coordinator for legal services in Aiken, Bamberg, and Barnwell counties. He is currently a member of the Best Legal Practices sub-committee of the Family Court Bench Bar Committee. He received a Bachelor of Arts degree from the College of Charleston in 1982. He received his *Juris Doctorate* degree in 1985 from the University of South Carolina, School of Law. He is a former president of the South Carolina Professional Society on the Abuse of Children. Mr. Gmerek was involved with Governor Sanford’s Task Force for Children in Foster Care and Adoption Services. He has been active with the Cumbee Center to Assist Abused Persons, Inc. in Aiken, South Carolina, serving both on the board of directors and as a domestic violence volunteer.

Amanda F. Whittle, Esq., is an Assistant General Counsel for the South Carolina Department of Social Services. She formerly served as a full-time County Attorney for Aiken County DSS. Mrs. Whittle graduated *magna cum laude* with a Bachelor of Arts degree in Political Science from the University of South Carolina at Aiken in May of 1992. She earned her *Juris Doctorate* degree from the University of South Carolina, School of Law in December of 1994. Mrs. Whittle was formerly a law partner with the law firm Johnson, Johnson, Whittle and Snelgrove, Attorneys, P.A. from 1995 until she began her employment with SCDSS in 2005. She is a former Attorney for the Guardian ad Litem Program in Aiken, Bamberg, and Barnwell counties. She is currently a member of the Aiken County Multi-Disciplinary Team (MDT); a trainer for lay guardians with the Guardian ad Litem; and a co-implementer of the Court Coordination Protocol pilot project in Aiken County. She is a former board member at Mead Hall School and former Secretary of the Aiken County Bar. She is an ordained Deacon. She is married to her former law partner, James Whittle, and they have three wonderful children.

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INDIAN CHILD WELFARE ACT OF 1978 – a brief overview

PRESENTED BY:

- ▶ Dionè C. Carroll, Esq.
- ▶ Counsel to the Catawba Indian Nation
(the only federal recognized Tribe in South Carolina)
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Contents

- ▶ Historical Perspective – Pre 1978
- ▶ Federal Policy Behind ICWA
- ▶ Applicability of ICWA
- ▶ Proceedings Not Covered
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- ▶ Procedural Requirements
- ▶ Placement Provisions
- ▶ Recent Developments

Historical Perspectives- Pre 1978

- ▶ In states w/significant Native American populations, 25-35% of children were removed and placed in foster or adoptive homes;
- ▶ In Minnesota, 1 of 4 children under one adopted, usually by non-native families.
- ▶ In a 1969 survey of 16 states, 85% of children were placed in non-native foster homes.
- ▶ In 1971, 17% of Native American children removed and placed in BIA boarding schools.

Historical Perspective - Pre 1978

- ▶ Removal based on Non-Native American practices;
- ▶ Disproportionate rate of removal compared to other families afflicted;
- ▶ Failure to give due process, no counsel, no interpreters, and non-native Social Workers as expert witnesses.

Federal Policy Behind ICWA

- ▶ Recognition that Native Americans have unique practices and traditions regarding child rearing;
- ▶ Social structures differ substantially;
- ▶ Unwritten rules and laws regarding group relations;
- ▶ Removal from group is disastrous.

Federal Policy Behind ICWA

- ▶ ICWA is not based on a racial distinction, but on a political relationship.
- ▶ Tribes are domestic dependent (dependent sovereign) nations.
- ▶ Congress is the exclusive authority to regulate commerce with Indian Tribes.
- ▶ States, without authorization from Congress, have no authority to regulate tribes.
- ▶ State laws may not conflict with Federal laws.

Federal Policy Behind the ICWA

- ▶ Indian Nations retain inherent authority to regulate relations among members, e.g., marriage, divorce/property distribution, adoption, rights and privileges of children
- ▶ ICWA codifies and reaffirms the continued authority of tribes over their members

Federal Policy Behind ICWA

- ▶ "It is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian Tribes and families by the establishment of minimal federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing assistance to Indian Tribes in the operation of child and family service programs."

Federal Policy Behind ICWA

- ▶ Thus, the purpose of ICWA is to further the best interests of NA children; to protect the integrity and future of Tribes; and to provide assistance with programming.

Applicability of ICWA

- ▶ ICWA applies to child custody proceedings in state courts, defined as:
 - "foster care placement" – any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but whose parental rights have not been terminated.

Applicability of ICWA

- ▶ (Continued)
 - TPR – any action resulting in the TPR;
 - Preadoptive Placement – temporary placement of an Indian Child in a foster home or institution after the TPR, but prior to or in lieu of adoptive placement;
 - Adoptive Placement – the permanent placement of an Indian child for adoption including any action resulting in a final decree of adoption;
 - Relative placement is included.
 - Temporary and permanent placement are both included.

Proceedings Covered

- ▶ ICWA applies in child custody proceedings when:
 - There is an Indian child – member of an Indian Tribe or eligible for membership in an Indian Tribe and the biological child of a member of an Indian Tribe;
 - The Indian Tribe is Federally Recognized -- Secretary of Interior publishes a list of Tribes eligible for federal services or programs. There are 567 at this time.

Proceedings Covered

- ▶ (Continued)
 - The federally recognized Indian Tribe declares the child is a member or eligible for membership.
 - The federally recognized Indian Tribe has the inherent authority to determine & such determinations are binding on federal and state governments.

Proceedings Not Covered

- ▶ **Divorce Proceedings:** ICWA did not intend to supplant parents' rights to custody of children in divorce or similar proceedings, with possible exceptions.
- ▶ **Delinquency:** Does not apply to a placement outside of the home if it is a result of an "act which, if committed by an adult, would be deemed a crime." Beware! These can turn into ICWA, e.g. though subsequent foster placement.

Proceedings Not Covered

- ▶ Several state courts have ruled that while notice in certain ICWA voluntary proceedings, by definition, is not required, intervention by the Indian child's tribe is allowed or required. Voluntary proceedings are specifically ICWA covered in other respects, e.g. certain stringent specified procedures necessary.
- ▶ No other exceptions are recognized in the statute or South Carolina, though there are cases from other states proposing judicially created exceptions.

Jurisdiction

- ▶ ICWA vests Tribal Court with exclusive jurisdiction over child custody proceedings "when an Indian child resides or is domiciled within the jurisdiction of such tribe." In the case of South Carolina, the Tribal Court is York County Family Court because of the CIN Settlement Act.
- ▶ Should be construed broadly so as not to frustrate Congressional intent and includes "Indian country."

Jurisdiction – Transfer

- ▶ If a child custody proceeding arises outside the jurisdiction of the Tribe– i.e., State Court, ICWA provides for the proceeding to be transferred to Tribal court (for Catawba, that is York County Family Court). It may be returned to the other case through:
 - declination by the Tribe
 - appropriate objection by a parent
 - good cause

Jurisdiction – Transfer

- ▶ ICWA permits four separate parties to request a transfer to Tribal Court:
 - Mother
 - Father
 - Indian Tribe
 - “Indian Custodian,” which must be recognized by the Tribe on paper

Jurisdiction – Transfer

- ▶ ICWA permits for the objection of transfer:
 - Natural parent, Indian or Non-Indian
 - Indian adoptive parent

Procedural Requirements– Notice

- ▶ Indian Tribe’s role is critical in the initial determination of applicability of ICWA.
- ▶ Notice for involuntary proceedings is imperative whenever the parties suspect a Indian child is involved.
- ▶ Notice to every tribal affiliation and relevant jurisdiction.
- ▶ Generally, the best policy is to notify whether voluntary or involuntary and whether domiciled on or off the Reservation or unsure.

Procedural Requirements–Notice

- ▶ ICWA requires notice by:
 - Registered Mail, return receipt requested;
 - to parents, Indian custodian, and Tribe or Department of Interior if Tribal affiliation is unknown;
 - proceeding cannot advance until at least 10 days after notice has been effected.

Procedural Requirements–Notice

- ▶ Notice shall include:
 - Name of the child
 - Tribal affiliation, if known
 - Copy of petition or documentation
 - Name of petitioner and their attorney
 - Statement informing parents, Indian custodian, and tribe or tribes with respective rights to intervene

Procedural Requirements–Notice

- ▶ (continued):
 - Right of parents or Indian custodian to counsel or appointment of counsel
 - Statement the parties may have up to 20 days to prepare upon request
 - Location, mailing address, and phone # of the Court
 - Statement that the parties have a right to request transfer to Tribal Court

Procedural Requirements–Notice

- ▶ (continued):
 - Potential legal consequences on the rights of parties if the child is adjudicated
 - Statement the child custody proceedings should be kept confidential

Procedural Requirements– Standards of Proof – Foster Care

- ▶ Active Efforts have been made to provide remedial and rehabilitative services designed to prevent the breakup which have been unsuccessful.
- ▶ Clear & Convincing evidence, supported by the testimony of a Qualified Expert Witness that continued custody is likely to result in serious emotional or physical damage.

Procedural Requirements – QEW

- ▶ Member of the Indian child’s Tribe who is recognized by the Tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices.

Procedural Requirements – QEW

- ▶ A lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's Tribe.
- ▶ A professional person having substantial education & experience in the area of their specialty.

Procedural Requirements– QEW

- ▶ The purpose is to provide the court with knowledge of the social and cultural aspects of Indian life to diminish the risk of any cultural bias.
- ▶ Defer to the Tribe to identify the qualified expert witness.

Procedural Requirements – Standards of Proof – TPR

- ▶ ICWA requires that to support a TPR, a petitioner must establish, by evidence beyond a reasonable doubt, that the continued custody of the parents or Indian custodian would result in serious emotional or physical damage to the child.

Procedural Requirements – Full Faith & Credit

- ▶ ICWA unequivocally provides that the United States, every state & federal territory, and every Indian Tribe must give full faith and credit to the “public acts, records, and judicial proceedings of any Indian Tribe applicable to Indian child custody proceeding to the extent that those entities give full faith and credit to... any other entity.”

Placement Provisions Preferences

- ▶ An Indian child shall be placed according to the preferences articulated in 25 U.S.C. § 1915, or as otherwise indicated by resolution of the Indian child’s tribe.
- ▶ Catawba Indian Nation, the only federally recognized tribe in South Carolina, has adopted its own preferences resolution.

Interesting New Developments

- ▶ Updated ICWA Guidelines have been noticed effected February 25, 2015. Citation: 80 FR 10146-10159.
- ▶ Baby Veronica case was decided and illustrates how important it is to identify Indian children early and give appropriate notice.

Helpful Resources

- ▶ NARF.org
- ▶ NICWA.org

THE CATAWBA INDIAN NATION (CIN): SERVICES AND PROGRAMS

LINDA LOVE, LMSW
CIN SOCIAL SERVICES DIRECTOR
CATAWBA INDIAN NATION

The Purpose of this Powerpoint is to:

- Provide information on CIN SS and ICWA
- Serve as a Resource Guide to Access Services
- Our Partnership

CIN RESOURCE GUIDE

- Contents
- Tribal Enrollment
 - Services available to tribal members that can assist with programming, remedial and rehabilitative services
 - Contact names and numbers
 - Forms in packet

Benefits of Tribal Enrollment

- Need tribal verification to determine if ICAW applies
- Enrollment ties them to their culture
- Assures their children's future and heritage
- Housing and health services benefits (need tribal I. D. card)
- Funding from grants depends on number of children enrolled
- Tribal Form in packet

Tribal Enrollment

- Every tribe has a process for becoming an enrolled member of the tribe. Tribes have the right to determine how this is done as long as it remains consistent.
- The Catawba Nation uses three base, tribal membership rolls. The dates of these rolls are 1943, 1961, and 2000. Anyone wishing to be added to the official membership roll has to prove lineal descent from someone listed on these rolls. If you have questions about this process or feel that you can prove lineal descent, please contact Donna Curtis, our Tribal Enrollment Coordinator.
- Donna can be reached at (803) 366-4792 ext. 253 or donna.curtis@catawbaindian.net. Please include the following information when contacting her: ancestors full name, birthdate, deceased date and state. She will research the information and contact you.
- At that time, enrollment forms can be mailed or emailed to you. Current tribal members can request an enrollment form at any time by contacting Donna by phone or email.

Contact Other Tribes Directly

- For a list of other tribes contact Brittaney Price, IFCCS-State Office 803.898.7074 or email: brittaney.price@dss.sc.gov.

CATAWBA BASED ON LINEAL DESCENT NOT BLOOD LINE

Health Care

- The Catawba Service Unit is an ambulatory outpatient care facility serving the Catawba Indian Nation and other federally recognized American Indians and Alaska Natives. The service unit includes a Medical Clinic, Dental Clinic, Pharmacy, Laboratory, Nutritional Department and partners with other ancillary support entities. Services can be obtained through scheduled appointments. The service unit is not an urgent/emergent care facility. If you have a true medical emergency you should call 911 or report to your nearest emergency room
- For members of a Federally Recognized tribe only

CONTACT INFORMATION:
2893 STURGIS RD.
ROCK HILL, SC 29730
TELEPHONE: 803-366-9090 - FAX 803-366-9141
HOURS OF OPERATION: MONDAY, TUESDAY, THURSDAY AND FRIDAY 8:00 AM - 4:30 PM;
WEDNESDAY 8:00 AM - 12:00 PM
SATURDAY CLINICS OFFERED ONCE PER MONTH: PEDIATRIC AND WOMEN'S HEALTH (CALL FOR DATES AND TIMES)

Green Earth Rentals/Homeownership

- Program provides dwellings for families based on number of bedrooms needed. Payments based on 20% of household income. Applicants must meet minimum income requirements based on number of people in household. After one (1) year of residing in a Green Earth Rental unit tenants have option to purchase home if applicant has met criteria and can provide financing from a financial institution.
- ISWA has constructed 124 single and multi-family units in the Green Earth Community located on the Catawba Indian Nation.

CONTACT INFORMATION:
ISWA DEVELOPMENT CORPORATION
REBECCA LACLAIRE, DIRECTOR
2919 STURGIS ROAD
ROCK HILL, SC 29730
PHONE: 803.366.2750 - FAX: 803.366.2110
HOURS: MONDAY-FRIDAY 8:00 AM TO 5:00 PM; CLOSED FROM 12-1 PM



- We offer rides within the York County area, price depends on distance, but is usually \$1 each way
- You must call at least 24 hours in advance to arrange a ride
- Fare must be collected at time of ride
- Children under 16 years old must be accompanied by an adult
- Children must be restrained properly according to SC law, child seats must be provided by the rider not Catawba Transit
- In scheduling, preference is given to essential services such as doctor's appointments, school rides, and job rides
- No alcoholic beverages allowed on the transit vehicle

IF YOU HAVE AN ISSUE PLEASE REPORT IT TO THE DRIVER OR TO THE TRANSIT COORDINATOR, THOMAS CABANISS AT 366-4792

Job Training and Development

Our services include:

- Assessment Testing
- Career Counseling
- Job Readiness Skills
- Resume Development
- Job Search Strategies
- Career networking
- Computer classes

Contact Information:

- To be included in the Talent Bank, download from Catawba Indian Nation website and fill it out. Mail it, email it, or return it in person. If you would like personal assistance with filling this out, please make an appointment with our employment specialist:
- Patricia Leach
Job Training & Development Manager
patricia.leach@catawbaindian.net
803-366-4792 Ext 278

SERVICES FOR CHILDREN

- ISWA Head Start (Indian Preference) Melissa Harris, Director 803-328-2267
- Little People Academy-Carla Smith, Director-803-325-7657
- Spirit Sprinters for boys and girls; Tuesday and Thursday evenings and ends at the beginning of December. Then will start again in March 2016; here on Reservation. Tolani Franks heads up the program along with Heather Rhodes at the Clinic. The program is free and is open to tribal members and those who are part of a tribal household. It is for 3rd-8th graders.
- The Cultural Center *Children's Programs*: has an after school and summer camp program for Catawba children and those living in a Catawba household. These programs offer educational, cultural, and recreational components to our children. If you are interested in these programs please contact Elizabeth Sprott at ext. 246. CIN Tutoring at Long House: Elementary, Middle, and High School (Camp Kick-a-wah also has tutors for students that attend there); Tutor - Adrine Weaks: 803-984-6362
- Boys & Girls Club Site Director
Denise Gilbert: 803-380-4692
Boys & Girls Club: takes rising 6th graders the summer before starting 6th grade and they are eligible until they are 17 years old.

OTHER SERVICES

- Domestic Violence Advocates
- Tribal Therapist 803-366-4792
- Community Planner (cultural events)
- Economic Development
- Real Estate
- Grants writer
- Environmental Control
- Cultural Center
- Senior Program-meals on wheels, pottery, baskets
- Water and Sanitation
- Weather/air quality station
- Public forums
- Evening meetings
- Scholarship Foundation

BARRIERS TO IDENTIFYING NATIVE AMERICAN CHILDREN

- Failing to ask the question upon contact: Are you Native American?
- ICWA says; ask throughout life of case-Are you Native American?
- Parents identify as white on applications rather than Native American
- Fear that they will lose their kids permanently
- Historical trauma
- Poor attitude to their rural life style
- Not believing that a Federal Tribe exist in SC

PARTNERSHIP

Begins when parents say they are Catawba. Ask to see Parent's Tribal Enrollment Card

- If you suspect or know ahead of time; proceed as ICWA until we rule out otherwise
- First Step is to notify Tribe
- Tribe's point of contact-Linda Love
Catawba Indian Nation 996 Avenue of Nations
linda.love@catawbaindiannation.net
803-366-4792; 803-230-0626 – Fax 803-325-1242
- If they say no I'm not Native American-

PROVIDE INFORMATION FOR TRIBAL ENROLLMENT VERIFICATION

Full Names Include: Middle, Maiden, DOB

- Call with particulars of case (initial Intake for us)
- We will contact Enrollment Office determine if on Roll or you may send completed form
- If not on roll but eligible we will more than likely stay in until otherwise ruled out
- Invite us to Probable Cause Hearing (probably not a party to case at that point)

**CASE MANAGEMENT
ICWA WORKER**

Relative Placements

- Do a background check
- Close-knit (all are considered Relatives)
- A lot of choices; neighbors, cousins, grand parents, etc.
- CIN offers Relative Placement/Guardianship Stipend

Foster Care

- Most times we accept homes chosen by County)
- Offer tribal focused information sessions on Foster/Adoption – Recruitment Efforts
- If non-tribal incorporate cultural activities

ROUND TABLES

Childs' School

- Enrollment
- IEP meetings
- Behavior Problems

Family Meetings

- Treatment Team Meetings/Consultations Mental Health, Substance Abuse

Legal Matters

- Foster Care Review Board
- Staff before and after Court
- Placement Meetings
- Medical Concerns
- Developmental issues

- Invite and Notify Us of meetings
- Available to travel if scheduled
- We have utility and housing subsidy (amount depends on situation)
- Offer subsidy for parent's treatment and testing

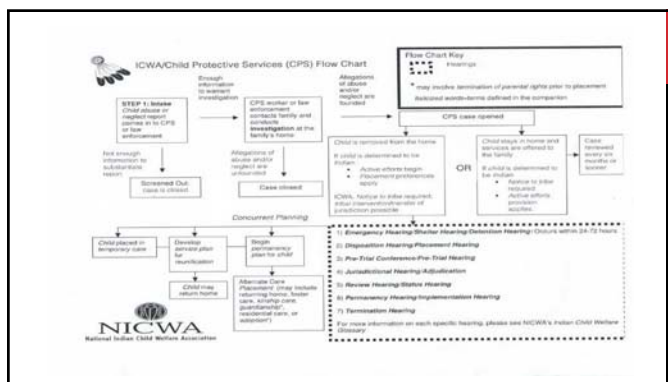
WEB PAGES & FACE BOOK

NICWA.org

www.CatawbaIndian.net

Catawba DSS Facebook page

Facebook.com



CATAWBA INDIAN NATION: APPLICATION FOR ENROLLMENT

FAMILY HISTORY:

Name of Enrollee

Father
Date/place of birth

Grandfather
Date/place of birth

Grandmother
Date/place of birth

Grandfather
Date/place of birth

Grandmother
Date/place of birth

Mother
Date/place of birth

Great Grandfather
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NOTICE: THE BURDEN OF PROOF IS THE RESPONSIBILITY OF THE APPLICANT FOR ENROLLMENT WITH THE CATAWBA INDIAN NATION. THAT IS, ALL APPLICANTS HAVE RESPONSIBILITY FOR PROVING THAT THEY HAVE A RIGHT OF MEMBERSHIP, USING THEIR LONG FORM BIRTH CERTIFICATE OR DNA TESTING. A SEPARATE APPLICATION MUST BE COMPLETED FOR EACH MEMBER OF THE FAMILY.

Application #: _____
Date Received: _____

CATAWBA INDIAN NATION
APPLICATION FOR ENROLLMENT

Applicant's full name _____
Indian, maiden, or other name by which known _____

Mailing address _____

City State Zip Code
Date of Birth Place of Birth Social Security No.

Ancestor on base roll through whom enrollment rights are claimed: _____ *Last 4 digits*

Catawba Parent's Name _____

1962 Roll #: _____ 2000 Roll #: _____

Catawba Grandparent's Name _____

1943 Roll #: _____ 1962 Roll #: _____ 2000 Roll #: _____

Were parents married? NA for Catawba mother Yes _____ No _____

Date parents were married: _____ (May request to see copy of marriage license)

Attach a copy of the Birth Certificate or DNA testing results if parents are not married

Is either of your parents enrolled as a member of another tribe? Yes _____ No _____

If yes, which parent and with what tribe _____

Is applicant enrolled with another tribe? Yes _____ No _____

Is applicant a direct lineal descendant of a member of the tribe? Yes _____ No _____

Date signed _____ Signature of Parent or Grandparent or Sponsor _____

If sponsored application, relationship of sponsor to applicant _____

=====

<u>Applicant's Children</u>	<u>Birth</u>	<u>Death</u>	<u>Marriage</u>
Name/Sex in birth order	Date/Place	Date/Place	Date/Place

Social Security No.

1. _____
2. _____
3. _____
4. _____
5. _____

=====

EXECUTIVE COMMITTEE ACTION:
Vote: _____ For _____ Against _____ DNA Testing Required

Date Signature of Chairman

EX. COMMITTEE ACTION AFTER DNA RESULTS
Vote: _____ For _____ Against _____

Date Signature of Chairman



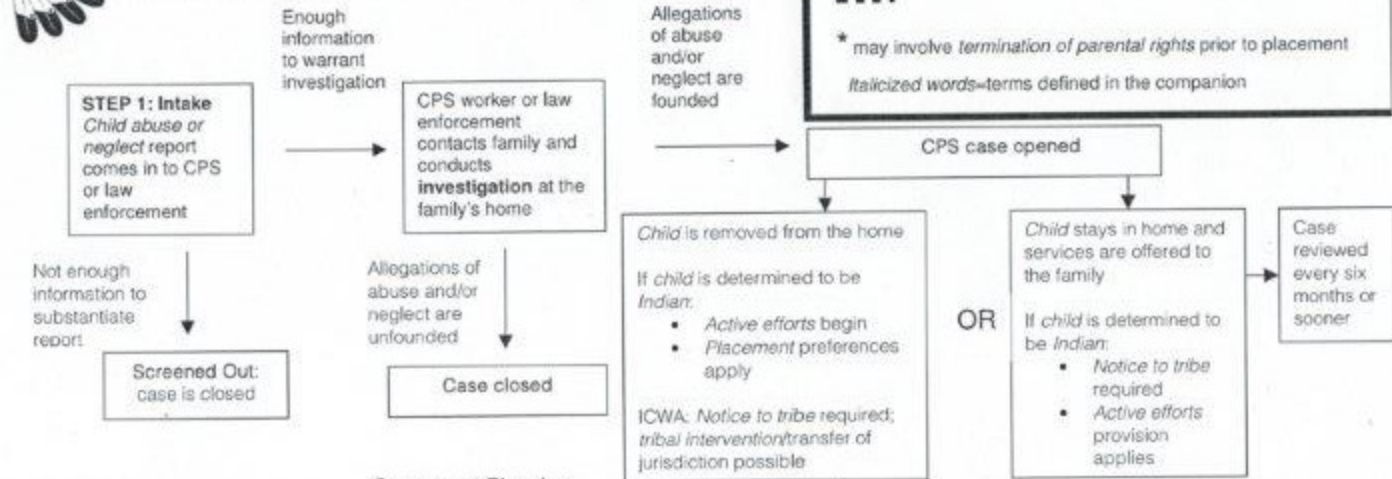
ICWA/Child Protective Services (CPS) Flow Chart

Flow Chart Key

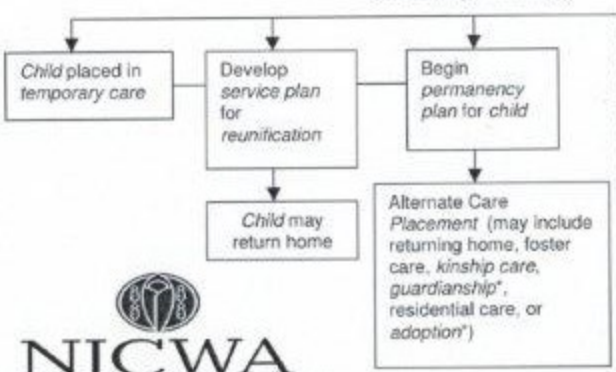
Hearings

* may involve *termination of parental rights* prior to placement

Italicized words—terms defined in the companion



Concurrent Planning

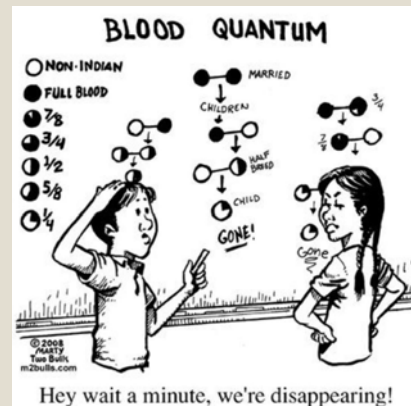


- 1) **Emergency Hearing/Shelter Hearing/Detention Hearing:** Occurs within 24-72 hours
 - 2) **Disposition Hearing/Placement Hearing**
 - 3) **Pre-Trial Conference/Pre-Trial Hearing**
 - 4) **Jurisdictional Hearing/Adjudication**
 - 5) **Review Hearing/Status Hearing**
 - 6) **Permanency Hearing/Implementation Hearing**
 - 7) **Termination Hearing**
- For more information on each specific hearing, please see NICWA's *Indian Child Welfare Glossary*

DSS POLICY AND PROCEDURE REGARDING THE INDIAN CHILD WELFARE ACT (ICWA)

Presented by
Dennis M. Gmerek, Assistant General Counsel
and
Amanda F. Whittle, Assistant General Counsel

"Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe **or** (b) is eligible for membership in an Indian tribe **and** is the biological child of a member of a member of an Indian tribe.



SCDSS Human Services Policy and Procedure Manual

Policy 710 - Intake Procedures:

INTRODUCTION TO PROCEDURES

Section 710 includes procedures related to job functions of the Child Protective Services Unit in each county office.

These procedures are intended to be applied in conjunction with the South Carolina Children's Code, the Indian Child Welfare Act and other pertinent laws. (See Section 750, SC Code Section 63-7-10 et seq., and the Indian Child Welfare Act (ICWA))

These procedures are also intended to ensure that the agency is meeting the federal requirements of Child Abuse Protection and Treatment Act (CAPTA) as amended (42 U.S.C. 5101 et seq.), to have a triage system that assesses reports received to determine which reports require an intense intervention and which require a referral to a program that will offer voluntary prevention services to reduce risk of abuse and/or neglect.

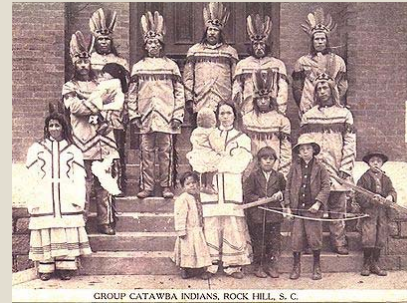


Image taken from Catawba Indian Nation website

These are not the only questions to be asked but are helpful suggestions for determining ICWA applicability:

These are variations on the standard ICWA question that workers can use throughout the life of a case.

- Are the parents and/or the child Native American?
- Are the parents or the child affiliated with any Native American tribal groups?
- Are any of the family's relatives or the child's relatives affiliated with any Native American tribal groups?
- Has anyone ever mentioned to you that someone in the family or the child may have Native American/Indian ancestry or family?
- Has anyone in the family ever received services or benefits for connection with a Native American tribe?
- Does the family have any connections to the Catawba tribe here in South Carolina?
- Is there a family member who knows the family history who might know about any Native American heritage?
- Does anyone one on either side of the child's family claim Native American ancestry?
- (For asking youth) When you think about your family, did anyone in your family or extended family talk about being Native American or Catawba?

Determination of ICWA applicability should continue throughout the case until it is determined that ICWA does or does not apply.

SCDSS Human Services Policy and Procedure Manual
Policy 754 - Indian Child Welfare Act

The Indian Child Welfare Act in its entirety was added to Chapter 7 as a reference in July of 2006.



25 U.S.C. § 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.



Image taken from Catawba Indian Nation website

SCDSS Human Services Policy and Procedure Manual
Policy 719 – Child Protective Services Investigation/Assessment

7. Initiates an assessment of all other reports as soon as possible but no later than 24 hours from receipt of the report.

During initial contact or as soon as possible, gathers information from the child and family to identify the ethnicity (defined to include race, religion, national origin, or cultural group) and immigrant status of the child and family to determine what services might be necessary and appropriate, such as translation/interpreting, attending to specific culturally sensitive issues, and/or for meeting state and federal law regarding unqualified or undocumented immigrants. Undocumented immigrants are eligible for protective services but may not qualify for other federally funded services.

If the information gathered supports or confirms that the child is a member of a federally recognized Native American tribe or nation, notifies the tribal office for the purpose of coordinating the investigation and possible placement with tribal authorities. Immediately staffs the case with the county attorney to assure that Indian Child Welfare Act (ICWA) required notices are provided and other procedures are followed in the event of removal of the child. See Chapter 8 Foster Care for removal and placement guidance. (Reference Sections 754 and 811 - Indian Child Welfare Act)

Documents ethnicity and Native American affiliation in CAPSS

The screenshot displays the CAPSS software interface for a person record (ID: 0001484621). The interface is divided into several sections: 'Person' information at the top, 'Associated' entities, 'Language' options, and 'Immunizations'. The 'Tribal Enrollment' field is highlighted in pink, and the word 'CAPSS' is written in pink at the top left of the screenshot.

SCDSS Human Services Policy and Procedure Manual
Policy 723 - Cases Involving Indian (Native American) Children

Purpose: To outline specific requirements and responsibilities under the Indian Child Welfare Act. (See **Section 754, Indian Child Welfare Act.**)

Social Service Worker

1. Determines through interviews with parents, guardians, or from tribal enrollment lists that the subject child meets the definition of an "Indian child" as defined in the **Indian Child Welfare Act, 25 USCA, Section 1903.**
2. Investigates allegations involving Indian children as outlined in **Section 719, Child Protective Services Investigation.**

3. Notifies the agency legal representative if an Indian child is to be removed from his/her custodian, or if a voluntary placement is to be signed.

4. In the event that a petition involving a child custody action is filed with the Family Court, forwards notice of pending action to the parent or Indian custodian and the Indian child's tribe by registered mail with return receipt requested (See **Section 754, Indian Child Welfare Act, 24 USCA, Section 1912.**)

5. Places an Indian child who must be removed for reasons of protection, in the least restrictive setting which most approximates a family and in which his/her special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home (See **Section 754, Indian Child Welfare Act, 25 USCA, Section 1915.**)

6. Considers that in any foster care or pre-adoptive placement, preference shall be given in the absence of good cause to the contrary, to a placement with:
- a. a member of the Indian child's extended family;
 - b. a foster home licensed, approved or specified by the Indian child's tribe;
 - c. an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
 - d. an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs (**See Section 754, Indian Child Welfare Act, 25 USCA, Section 1915**).
7. Follows procedures in Chapter 8, Foster Care Manual, for placement and Chapter 9, Foster Home Licensing for licensing of home as appropriate.

SCDSS Human Services Policy and Procedure Manual
Policy 810.01 Entry into Foster Care

3. Notification to the Tribe

If the child is a member or eligible for membership in a recognized tribe, the tribe must be notified immediately by telephone with follow up in writing. See Section 811, Indian Child Welfare Act and Section 810 Entry into Foster Care Item 15 e.

The local agency attorney also is notified when a tribe is notified.



LCMS

Party Additional Information

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SCDSS Human Services Policy and Procedure Manual
Policy 810.01.04 Regarding the Child's Plan includes the following language regarding ICWA:

A representative for ICWA or the tribe is invited to participate in the family meeting if the parent requests the representative to be present. The information gathered is included in the Health and Education Passport (DSS 30245).
 Note: Expressed placement preferences from the child or birth parent concerning RCNO shall not be considered in foster care placements, except in the case of an individual child who has received an individualized assessment by a licensed professional, and that assessment has found that it is in the child's best interest to be placed into a family of a specific RCNO.

See the following sections for additional information:
 818.025, Initial Family Meeting: includes the foster parent.
 818.05 Education and Health Passport (DSS 30231)
 811 Indian Child Welfare Act.

SCDSS Human Services Policy and Procedure Manual
Policy 811- Procedures for the Transfer of Placement and Care Responsibility of a Child from a State to a Tribe

- Note: MEPA and Title VI do not impact the placement preferences for an American Indian child who is a member of, or is eligible for membership in, a federally recognized Tribe. MEPA and Title VI apply fully to American Indian children who are not covered under ICWA.

The purpose of this section is to establish procedures for the transfer of responsibility for the placement and care of children from SCDSS to a federally recognized Indian Tribe. SCDSS will comply with all rules, regulations and laws governing the Indian Child Welfare Act and make a diligent effort to identify those children subject to the act and transfer those children to the Catawba Indian Nation or other appropriate federally recognized Indian Tribe. When referenced in this policy, the term "Indian Tribe" means the Catawba Indian Nation or other federally recognized Indian tribe.

What Children and Youth are Affected by the Policy:

Any Indian Child taken into custody by SCDSS will be affected by this policy. In this policy, "Indian Child" or "Indian Children" means a child who is a member of a federally recognized Indian Tribe or the biological child of a member of a federally recognized Indian Tribe and the child is also eligible for membership.

Policy:

The Indian Tribe will exercise tribal jurisdiction over issues related to child support, custody and placement for any case involving members of their tribe. To this end, for any child identified as belonging to the Indian Tribe, taken into custody by SCDSS, accountability and responsibility for case management and record keeping can be transferred to the Indian Tribe when the child or family is established to be a member of an Indian Tribe and accepted by the tribe.

Procedures:

SCDSS shall provide child protective services that ensure the health and safety of Indian Children while protecting their cultural heritage to the greatest extent possible. SCDSS shall begin promptly to determine if the child is an Indian child as defined by this policy. SCDSS shall make diligent efforts to contact a caseworker for the Indian Tribe within 5 working days of the child being taken into custody to:

Notify the Indian Tribe that the child is in SCDSS custody.

Explore available services of the Indian Tribe that may address the safety needs of the child.

Assist the parent to retain custody of the child.

Explore with the Indian Tribe whether the Indian Tribe will accept responsibility of the child

Identification of Tribal Cases:

State/SCDSS Responsibilities:

During the first initial contact with the child/family, if there is reason to believe that a child is an Indian Child; SCDSS must confirm the child's membership status. The caseworker will, upon taking a child into protective custody, ask a parent, legal guardian or relative of the child, if available, whether the child is an Indian Child. In the event that a party is identified as a tribal member, or candidate for tribal membership, SCDSS shall request verification of tribal membership, or eligibility for membership from the Indian Tribe. The SCDSS case worker will complete SCDSS form #30266 and contact the Indian Tribe to request that the Indian Tribe confirm the child's membership in or eligibility for membership in the tribe. SCDSS will provide the Indian Tribe's worker with all identifying information listed above to assist in the confirmation or determination of membership. This verification process is waived if the party presents documented proof of enrollment in the Indian Tribe to the county DSS. All diligent efforts made to identify Indian Children must be documented in CAPSS.

Tribe Responsibilities:

The Indian Tribe will be responsible for identifying tribal members who are a party in State cases. Upon receiving SCDSS form #30266 from SCDSS, (to verify tribal membership or eligibility for membership for a party in a state case) the Indian Tribe shall verify tribal enrollment and notify SCDSS to transfer the case to the Indian Tribe. Upon receipt of form # 30266, the Indian Tribe will identify Indian Children and will notify the parents of these children in writing that the Indian Tribe has requested that their cases be transferred. If any written notices are returned as undeliverable, the Indian Tribe is responsible for follow-up to identify the participant's current address, and if found, the Indian Tribe will resend the letter. The Indian Tribe is responsible for providing SCDSS with updated address information or with information about cases in which they were unable to locate the participant.

Transfer of Case:

SCDSS will determine if the Indian Tribe can assume responsibility for the placement and care of the child. The county worker will obtain the date and time and the name of the tribal representative who will take physical custody of the child.

When a child is determined to be an Indian Child, the SCDSS caseworker will then complete documentation and update the case information related to the transfer in CAPSS. The Indian Tribe's Human Services worker will be notified to pick up the child. Copies of any SCDSS documented information will provided to the Indian Tribe's worker.

IV-E Eligibility Requirements:
Children who are determined to be IV-E eligible receive federally funded services through the Department of Social Services. These services allow the agency to match state funding with federal funding to increase the agency's ability to serve children in need of protection, foster care and adoption. The same eligibility requirements are in place for any child that may be deemed an Indian Child. Please see section 813, IV-E Eligibility Requirements. The child's IV-E status will follow each child when placed with an approved family with the established tribe. An Indian Child's IV-E eligibility for medical assistance under Medicaid is not affected by transfer.

Applicable Federal Law

Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351)
Patient Protection and Affordable Care Act (P.L. 111-148)
Family Services Improvement and Innovation Act (P.L. 112-34)
45 C.F.R. 1355 and Appendices

**INDIAN CHILD WELFARE ACT –
DETERMINING TRIBAL ELIGIBILITY**

Use one page for each child. If information unknown, specify UNK. File copy in each child's case. The following names and related information is to assist with determination.

Child's name

Date taken into custody

Address

DOB

Mother's name

Father's name

Tribal Affiliation

Enrollment # (if known)

Specify residence

Grandparents- Specify Maternal or Paternal

Additional explanation as needed

Form 30266

SCDSS Human Services Policy and Procedure Manual
Policy 819.01.01 Permanency: Continuity of Relationships & Parent/Child Visitation

This section focuses on permanency in the continuity of the child's relationships and connections.

7. Maintaining child's connections to his/her neighborhood, community, faith, extended family, tribe, school and friends.

If the child is a member or eligible for membership in a tribe, see the following sections:

810.01 Entry into Foster Care

811 Indian Child Welfare Act for federal requirements specific to the Indian Child Welfare Act



Image taken from Catawba Indian Nation website.

SCDSS Human Services Policy and Procedure Manual
Policy 412.02 Termination of Parental Rights - Children Who Enter Care Through Relinquishment

Adoption Specialist

4. Informs attorney if:

- a. GAL needs to be appointed for any defendant if s/he is mentally retarded, disabled or mentally ill, incarcerated or a minor; and/or
- b. Parent(s) is/are in the military; and/or
- c. Parent(s) is/are a member of an Indian tribe or eligible for membership [see Adoption and Birth Parent Services manual, "American Indian Ancestry (Indian Child Welfare Act)".

NOTE: TERMINATION OF PARENTAL RIGHTS ACTIONS UNDER THE INDIAN CHILD WELFARE ACT (ICWA) HAVE TO COMPLY WITH SEVERAL ADDITIONAL FEDERAL LAW REQUIREMENTS. IT IS CRITICAL THAT ALL OF THEM BE FOLLOWED. FAILURE TO DO SO MAKES ANY SUBSEQUENT ADOPTION SUBJECT TO REVERSAL]

SCDSS Human Services Policy and Procedure Manual
Policy 418.01 Placement Process - Children of American Indian Ancestry (Indian Child Welfare Act) (ICWA)

NOTE: The provisions of MEPA/Title VI do not apply to children of American Indian ancestry if the child at issue is covered under ICWA. If an American Indian child is not a member of or is not eligible for membership in a Federally recognized tribe, the provisions of MEPA apply in full.

Adoption Specialist

1. Determines if ICWA applies. ICWA covers foster care (both voluntary and involuntary), termination of parental rights, pre-adoptive and adoptive placements of children who are enrolled members of a recognized Indian tribe or eligible to be enrolled. ICWA defines an Indian child as "...any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." The tribe must be a federally recognized tribe. Confirms with the foster care worker that the tribe has been notified, which should have been done as soon as enrollment/eligibility for enrollment was suggested. However, if it has not been done, notifies tribe. For help in obtaining contact information for a particular tribe, go to <http://www.angelfire.com/pa/COTRAIC> or <http://www.statelocalgov.net> (select Tribal Governments), or contact (as of October 2002) general Bureau of Indian Affairs information, 202-208-3710, Tribal Leaders Directory, 202-208-3711.

2. If the child falls within the ICWA, the placement must be made in accordance with ICWA (if the tribe assumes jurisdiction over the child, DSS will probably not be responsible for placement and/or selection of an adoptive home). Any court action, especially termination of parental rights and/or relinquishments, must be done in accordance with ICWA's statutory provisions; and

3. If tribe declines jurisdiction, places the child for adoption in accordance with the Indian Child Welfare Act.

§ 1901. Congressional findings.

United States Statutes

Title 25. INDIANS

Chapter 21. INDIAN CHILD WELFARE

Current through P.L. 113-103

§ 1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds-

- (1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes ¹" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;
- (2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;
- (3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;
- (4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and
- (5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

¹ So in original. Probably should be capitalized.

Cite as 25 U.S.C. § 1901

Source: Pub. L. 95-608, §2, Nov. 8, 1978, 92 Stat. 3069.

Notes from the Office of Law Revision Counsel

current through 4/24/2014

SHORT TITLE Pub. L. 95-608, §1, Nov. 8, 1987, 92 Stat. 3069, provided: "That this Act [enacting this chapter] may be cited as the 'Indian Child Welfare Act of 1978'."

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings.

United States Statutes

Title 25. INDIANS

Chapter 21. INDIAN CHILD WELFARE

Subchapter I. CHILD CUSTODY PROCEEDINGS

Current through P.L. 113-103

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) **Exclusive jurisdiction**

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) **Transfer of proceedings; declination by tribal court**

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) **State court proceedings; intervention**

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) **Full faith and credit to public acts, records, and judicial proceedings of Indian tribes**

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

Cite as 25 U.S.C. § 1911

Source: Pub. L. 95-608, title I, §101, Nov. 8, 1978, 92 Stat. 3071.



Indian Child Welfare Act Facts & Fiction



NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

WWW.NCJFCJ.ORG

The National Council of Juvenile and Family Court Judges® (NCJFCJ), headquartered on the University of Nevada campus in Reno since 1969, provides cutting-edge training, wide-ranging technical assistance, and research to help the nation’s juvenile and family courts, judges, and staff in their important work. Since its founding in 1937 by a group of judges dedicated to improving the effectiveness of the nation’s juvenile courts, the NCJFCJ has pursued a mission to improve courts and system practice and to raise awareness of the core issues that touch the lives of many of our nation’s children and families.

This Technical Assistance Bulletin is a publication of the NCJFCJ in collaboration with Casey Family Programs, whose mission is to provide, improve –and ultimately prevent the need for – foster care.

NCJFCJ staff would like to recognize Craig Dorsay, consultant with the National Resource Center on Legal and Judicial Issues and the American Bar Association, for lending his experience in representing Indian tribes, parents, and children and his knowledge in training professionals on the Indian Child Welfare Act to this document.

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Dorsay, C., Aycok, S. & Duarte, C. ICWA Facts & Fiction.

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- 07. BEST INTERESTS FOR THE INDIAN CHILD**
- 08. QUALIFIED EXPERT WITNESSES**
- 09. PLACEMENT**
- 10. TERMINATION OF PARENTAL RIGHTS**

The Indian Child Welfare Act (ICWA) became Federal law in 1978. Congress was very clear in its intent when enacting this important protection for Indian children, families, and federally recognized tribes: "...there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;...The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families."¹ The history of forced removal of Indian people from their land and separation of children and families as part of government policy created the need for strong and directive legislation. ICWA is such legislation; however, it has not been fully implemented by state courts. The National Council of Juvenile and Family Court Judges (NCJFCJ), together with other national partners, has developed tools and strategies for judges to achieve full compliance with ICWA. In addition to this publication, the NCJFCJ has developed *Indian Child Welfare Act Checklists for Juvenile and Family Court Judges*, an ICWA Implementation Discussion Guide and Assessment Toolkit, and publications encouraging collaboration among state courts and tribal courts in order to improve outcomes for children, families, and tribal communities.

The following resource was developed as a tool for state court judges and court professionals involved in dependency hearings. It may also be useful when preparing for hearings. The Tribal Judicial Leadership Group, coordinated by the NCJFCJ and Casey Family Programs, and comprised of tribal and state court judges, identified the need to dispel common misconceptions and misunderstandings around ICWA. Included below are common misunderstandings, facts, recommended practices, and statutory references surrounding application, notice, membership, intervention, transfer, active efforts, best interests, qualified expert witnesses, and placement. This structure is meant to allow users to jump to issues of particular concern in their jurisdictions, but can also be reviewed as a whole. The misconceptions listed below do not reflect the opinions of the author, the NCJFCJ, or Casey Family Programs, but were developed from years of experience working with state courts to comply with ICWA and are intended to confront misconceptions in order to improve compliance with the Act. Judges and other professionals are encouraged to consult state and federal case law to further their understanding of ICWA's requirements.

ISSUE

Many times questions arise whether ICWA applies in a particular case because the facts and law can vary so much. Questions about the Indian status of the child and/or family, the involvement of the tribe, what proceedings are covered or excluded under the Act, and what the intent of Congress was with regard to specific language can all make determination of whether the Act applies in a specific case challenging.

COMMON MISCONCEPTIONS

ICWA does not apply...

- Unless the tribe intervenes.
- In voluntary proceedings.
- In custody proceedings between unwed parents or where a relative or non-relative is seeking custody of an Indian child.

FACTS AND SUMMARY OF LAW

- Tribal intervention is not necessary to trigger ICWA. Only two basic facts are necessary for a case to come under the law 1) the child who is the subject of a child custody proceeding is an “Indian child” as defined by ICWA, and 2) the proceeding in question is a “child custody proceeding” as defined by ICWA. Statutory definitions are included on the following page.

- ICWA does apply in voluntary proceedings. While some case law says notice to the tribe is not necessary in a voluntary proceeding, tribes still have the right to intervene at certain points in the case. Even in voluntary proceedings the tribe’s interests remain.

Judicial exceptions to coverage of ICWA are not favored and have been discouraged in state case law.

ICWA covers a broad range of child custody proceedings,

including proceedings involving unwed parents, relatives, and non-relatives. While ICWA only expressly excludes an award of custody to one parent in a divorce proceeding, case law also excludes custody proceedings between unwed parents. ICWA does apply if a relative or non-relative seeks custody of an Indian child.

RECOMMENDED PRACTICES

It is best to treat a case as an ICWA proceeding whenever it is suspected that an Indian child as defined by ICWA is involved. This practice avoids revisiting decisions and determinations months down the road if it is determined to be an ICWA

proceeding because revisiting placement or jurisdiction decisions may impact the best interests of the Indian child and delay permanency. Judges should conduct a thorough initial hearing; explaining ICWA and reasons for asking about Native heritage, and engaging with parents directly regarding their heritage.

Alert: In *Adoptive Couple v. Baby Girl*, 570 U.S. ____, 133 S.Ct. 2552, 2013 WL 3184627 (June 25, 2013) (“Baby Girl Veronica”), the U.S. Supreme Court held that §§ 1912(d), 1912(e), and 1912(f), do not apply to an unwed Indian father who has not previously had physical or legal custody of his Indian child, or who has not had visitation or provided child support.

STATUTORY REFERENCES

§ 1902 Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

§ 1903 Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term:

- (1) “**Child custody proceeding**” shall mean and include:
 - (i) “foster care placement” which shall mean for any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
 - (ii) “Termination of parental rights” which shall mean any action resulting in the termination of the parent-child relationship;
 - (iii) “Pre-adoptive placement” which shall mean the temporary placement of an Indian child in a foster home or institution after the termination

of parental rights, but prior to or in lieu of adoptive placement; and

- (iv) “Adoptive placement” which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(4) “**Indian child**” means any unmarried person who is under age eighteen and either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

Citations related to findings in Adoptive Couple v. Baby Girl

25 USC § 1912. Pending court proceedings

(d) Remedial services and rehabilitative programs; preventive measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

ISSUE

It is not always easy for the court to determine when and to whom notice should be given in a potential ICWA proceeding, and whether notice may need to be repeated during different phases of an ICWA state court proceeding.

COMMON MISCONCEPTIONS

- Giving notice is not required in voluntary proceedings.
- Parents have a right to determine whether or not to notify their own tribe.
- A child must be an enrolled member for notice requirements to be triggered.
- Notification is required only at the beginning of the case.
- Tribes are difficult to notify because it is confusing to locate the right person(s) to give notice to and even when notice is given, tribes tend not to respond or intervene.
- Rather than give notice to the actual tribe, you can notify the Bureau of Indian Affairs (BIA).

FACTS AND SUMMARY OF LAW

- ICWA expressly requires notice only in involuntary proceedings but many provisions of ICWA that apply to tribes cannot be invoked if the tribe does not get notice of an ICWA proceeding. A number of states have implemented ICWA laws that expressly require notice in ICWA voluntary proceedings.
- Parental preference regarding notice does not determine whether the tribe receives notice for an ICWA proceeding, whether involuntary or voluntary.
- A child must only be eligible for enrollment and be the biological child of a member of an Indian tribe. Eligibility for enrollment differs by tribe and can only be determined by the tribe. A lack of response from a Tribe is not proof of non-eligibility.
- If notice is not provided to the tribe at the beginning of a case and the tribe is later identified, the tribe must be notified as soon as possible thereafter.
- There are many tools available to identify tribes and to locate the correct address or contact information to contact a tribe. The BIA publishes a list of ICWA Federally Designated Agents. This list can be found online on the BIA website. Tribes' ability to respond and participate actively in a case varies with each tribe's resources and budget, but each tribe has the right to notice and the right to participate.

- Where the identity or location of the parent, Indian custodian, or the Tribe cannot be determined, giving notice to the BIA is required.

RECOMMENDED PRACTICES

Tribes should be given notice as soon as there is information that a child may be Indian. Judges should make appropriate findings and child welfare agencies should proceed accordingly if there is reason to believe a child may fall under the provisions of the law or if ICWA cannot be definitively ruled out.

Notice should be sent by registered mail to the Tribal Chairperson or ICWA representative and contact should be initiated through other avenues of communication such as email and telephone, in conjunction with registered mail, to facilitate response.

Use the internet, contact the BIA or State Indian Affairs Office to find tribal addresses and contact information.

Notice is required to be provided to the tribe, parents, and Indian custodian in all ICWA proceedings.

STATUTORY REFERENCES

§ 1912 Pending court proceedings

(a) Notice; time for commencement of proceedings; additional time for preparation.

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their rights of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

ISSUE

Membership and eligibility for membership in an Indian tribe can be a complicated issue because every tribe has different membership requirements, especially for a child who may be eligible for membership in more than one tribe. While tribes have exclusive authority to determine membership, in cases where children may be members of more than one tribe the court may have to make a determination as to which tribe is the Indian child's tribe. This decision affects all parts of an ICWA proceeding, including which tribe will participate in a case and where the child may be placed.

COMMON MISCONCEPTIONS

- ICWA does not apply to a child who is not an enrolled member of a tribe.
- Tribes try to get as many members as possible, even children who do not really qualify for membership.
- Indian children can be members of more than one tribe at a time.

FACTS AND SUMMARY OF LAW

- A child who is eligible for membership in a tribe is covered by ICWA so long as one biological parent is a member of a tribe.
- Tribes have exclusive authority to determine their own membership. Membership is a political classification under the United States Constitution, not a racial one, and special treatment of tribes and Indians under federal law is justified. Tribes tend to be quite strict about who they allow to become tribal members and applying for tribal membership can be a difficult process.
- Membership criteria and qualifications vary between tribes. Most tribal constitutions as well as some federal requirements prohibit a person from being a member of more than one tribe at the same time even though they may be eligible for membership in more than one tribe, and it is eligibility that triggers ICWA.

RECOMMENDED PRACTICES

A Tribe should be immediately contacted anytime there is a question about whether an Indian child is involved in a child custody proceeding to seek the tribe's determination of membership eligibility and to provide as much relevant information as possible so the tribe can make an accurate and timely determination of the membership eligibility of the child.

The child welfare agency should assist the child in becoming a member of his or her tribe. Some state ICWA laws require the state agency to assist an Indian family in becoming members of

a tribe.

If a child is a member of or eligible for membership in more than one tribe, the court may be required to determine which tribe "has the more significant contact" for purposes of notice and intervention. Recommended practice would be to give notice to all tribes that may have an interest in the child.

STATUTORY REFERENCES

§ 1912 Pending court proceedings

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602 (c) of title 43;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;...

ISSUE

ICWA gives Indian tribes a right to participate in state court child custody proceedings involving tribal children that does not exist normally under state law. The details of tribal intervention in an ICWA proceeding can be complicated.

COMMON MISCONCEPTIONS

- If a tribe does not intervene in an ICWA proceeding, ICWA does not apply.
- If a tribe does not immediately intervene after receiving notice, the tribe loses its right to intervene later.
- If a parent objects, the tribe cannot intervene in an ICWA proceeding.

FACTS AND SUMMARY OF LAW

- ICWA applies even if a tribe chooses not to intervene.
- Tribes have the right to intervene at any time in the proceeding including intervening for the first time on appeal.
- Parents cannot object to tribal participation in a case; the tribe's right to intervene exists independently of parental rights.

RECOMMENDED PRACTICES

Developing and maintaining relationships with local tribes and with tribal enrollment offices for those tribes whose members appear in court can help improve the timeliness of responses to notice and intervention.

Judges should ask at every hearing what the child welfare agency has done to involve the tribe and should expect that the agency is applying the active efforts standard to ICWA cases, even when the tribe has not intervened.

The court should allow for tribal participation by telephone or video conferencing, and to the extent possible, schedule court hearings to facilitate the attendance of tribal participants. State courts should also allow a tribal representative to present the tribe's case to the court even if they are not an attorney and should allow tribal attorneys to participate even if they are not licensed in that particular state.

Judges should fully explain to parents, in easily understandable language, the requirements of ICWA and the tribe's rights to intervene.

STATUTORY REFERENCES

§ 1911(c) State court proceedings; intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

ISSUE

Transfer of jurisdiction of a state child custody proceeding to tribal court under ICWA is subject to more litigation than any other provision of ICWA. Terms in ICWA for determination by a state court as to whether transfer should be allowed or can be denied are not well defined, and consideration of whether to grant a motion to transfer jurisdiction to tribal court is dependent upon the weighing of a complicated list of different factors.

COMMON MISCONCEPTIONS

- The state court can deny transfer of jurisdiction to a tribal court under the “good cause” language of ICWA for any reason, including inconvenience to state workers.
- Parents and tribes wait until the last minute to petition to transfer, until they know they will lose if they stay in state court.
- Transfer of jurisdiction of an ICWA proceeding to tribal court must always be denied if a motion to transfer is not made immediately after the tribe received notice and intervened.

FACTS AND SUMMARY OF LAW

- ICWA presumes that transfer of jurisdiction is in the best interests of the child and tribe, and requires good grounds before such a motion can be denied, unless a parent or child objects. Case law has also allowed for children to object. Reasons that might constitute good cause are set out in the 1979 BIA Guidelines. The Guidelines give broad examples that may or may not be appropriate in a particular case. The good cause language of § 1911(b) is designed to give the state court flexibility to meet the best interests of the Indian child, for reasons consistent with the intent of ICWA.
- Tribes may decide to leave an ICWA case in state court when the case management goal is to reunite the family. Placement of the Indian child is always of paramount concern to the tribe and parents. Once the decision to terminate parental rights has been made the tribe or parents may choose to request transfer at that point to ensure appropriate placement of the child.
- Tribes are not required to file a motion to transfer within a given time frame.

RECOMMENDED PRACTICES

Parties should be asked about transfer of jurisdiction as soon as practicable after initiation of an ICWA proceeding.

The court should revisit the issue of transfer of jurisdiction when permanent placement of an Indian child is being considered.

Judges should first consider the unique facts of each case before them before relying on the BIA Guidelines for making good cause findings related to transfer.

The state court should not cite best interests of the child to substitute its judgment as to what is the preferred outcome for the child or that of the tribe in a transfer of jurisdiction motion or in any other hearing.

The court and state social services agency should not impose the dominant culture’s notions of what constitutes a normal family and home situation for the adequate family conditions on the reservation. The Statute requires consideration of the prevailing standard of the Indian Community.

STATUTORY REFERENCES

(b) Transfer of proceedings; declination by tribal court

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child’s tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child’s tribe: *Provided*, that such transfer shall be subject to declination by the tribal court of such tribe.

ISSUE

ICWA imposes a standard of active efforts to prevent removal and placement of an Indian child that is not specifically defined and that imposes a higher burden of proof and success on state agencies in cases where ICWA standard applies. Congress did not consider the interaction of ICWA and the Adoption and Safe Families Act when it enacted the latter law in 1997.

COMMON MISCONCEPTIONS

- If aggravated circumstances exist under state law, the State does not have to provide remedial and rehabilitative services to the Indian family.
- Whatever is required under state and federal law meets the active efforts requirement under ICWA. The family is responsible on their own for complying with the service requirements of the case plan.
- Tribes are too under-resourced and do not have anything to offer with regard to providing services to the family.
- No services have to be provided if a parent is in prison.

FACTS AND SUMMARY OF LAW

- ICWA active efforts standard exists independently of standards enacted pursuant to ASFA that allow remedial efforts to be terminated when aggravated circumstances exist, and case law consistently confirms the requirement to provide remedial efforts under ICWA even when the ASFA standard has been met.
- The remedial and rehabilitative services requirement of § 1912(d) requires something more than is required under general state law. The social services agency must actively assist the Indian family in achieving the case service plan objectives. If remedial and rehabilitative services are offered and the parent refuses to engage in services, the active efforts requirement has been met.
- Tribes can be valuable partners in providing services in general as well as culturally appropriate services that will meet the active efforts standard even if they have few resources.
- Active efforts for a parent in prison are judged by the services available in that environment.

RECOMMENDED PRACTICES

The State and Tribal social services workers should jointly develop a case plan designed to meet the needs of the Indian family to achieve reunification.

Tribal services should be an integral component of any such case plan.

Social services workers should actively assist family members in accessing and completing recommended services. Service provision designed to address the specific needs of the particular family and active participation in assisting the family in accessing and participating in those services will allow permanency to be achieved more quickly for Indian children, whether that permanency is reunification or an alternative permanent placement.

Judges, as leaders, can advocate for services necessary to meet the needs of parents and children involved in the child welfare system. Judges should partner with community members, tribal leaders and other judges to advocate on behalf of children and families.

STATUTORY REFERENCES

§ 1912(d) Remedial services and rehabilitative programs; preventive measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

Alert: The Supreme Court in *Baby Girl Veronica* held that § 1912(d) ICWA does not apply to a parent who has not had prior legal or physical custody of an Indian child, because § 1912(d) applies only in cases where the “breakup” of the Indian family would be precipitated by termination of the parent’s rights, and in the case of a parent without prior legal or physical custody, there is no Indian family relationship that would be discontinued. *Baby Girl Veronica* involved a voluntary adoption, and **this holding likely does not apply in an involuntary ICWA child custody proceeding.**

ISSUE

ICWA imposes a statutory standard for the best interests of an Indian child that may be somewhat different from the standard that a state court normally applies in juvenile proceedings. In particular, ICWA is intended to prohibit application of a best interests standard that is detrimental to tribal family rearing practices, extended family relationships, and tribal traditional and cultural practices.

COMMON MISCONCEPTIONS

- ICWA requires state courts to apply its requirements even when they are not in the best interests of the Indian child.
- ICWA applies a kind of generalized notion of protecting Indian culture and identity.
- Only biological family relationships need to be considered when applying ICWA.

FACTS AND SUMMARY OF LAW

- Case law holds that ICWA as a whole is in the best interests of the Indian child.
- What is thought of generally as the “best interests” of a child is very subjective and is culturally linked to the dominant culture. In actuality, family units are extremely diverse in character, and there are many satisfactory ways to address the best interests of a child. In enacting ICWA, Congress determined that retaining an Indian child in his or her culture or placing an Indian child in a culturally appropriate placement best serves the needs of that Indian child.
- ICWA expressly states that the “unique values of Indian culture” should be considered in hearings regarding the placement of Indian children. In most tribal communities, the extended family and the community share child-rearing responsibilities. These interests are also protected under ICWA.

RECOMMENDED PRACTICES

It is in the best interests of the Indian child to be able to maintain or develop a connection to family members and the tribe. Judges and other system professionals can keep, foster, and encourage a child’s connection to and involvement with their Indian and tribal culture. Knowledge of tribal culture and family connection serves the best interests of the Indian child and is most likely to lead to a healthy, well-rounded Indian adult.

Courts should identify and include Qualified Expert Witnesses or tribal experts in hearings to ensure they are incorporating the unique values of Indian culture in their decisions.

STATUTORY REFERENCES

§ 1902 Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

ISSUE

ICWA imposes a requirement of expert witness testimony in ICWA cases to avoid removal or placement of an Indian child based on a misunderstanding of tribal culture or family relationships and child rearing practices. It may be difficult to identify qualified expert witnesses. This requirement applies even when the case seems, upon initial review, to be based upon non-cultural factors.

COMMON MISCONCEPTIONS

- Expert witnesses as set out in ICWA are required only in a case where cultural factors affect the family's fitness to parent.
- The expert witness provision of ICWA can be used to avoid responsibility for the actions of the parents.

FACTS AND SUMMARY OF LAW

- ICWA requires an expert witness to testify to whether the parent's conduct has caused emotional or physical harm to the Indian child, and whether it is likely that the parent can be persuaded to change or remedy the conduct that led to removal of the Indian child from the parent's custody. An expert witness is always required for cases involving foster care placement or termination of parental rights.
- In ICWA cases, an expert with knowledge of tribal cultural and family rearing practices will be helpful in explaining the family's conduct and in identifying appropriate culturally relevant services that will assist in returning the child to the family.

RECOMMENDED PRACTICES

Requiring the involvement of a qualified expert at an early stage of any ICWA proceeding will help identify from the Tribe's perspective the services, including culturally relevant services, that will be most likely to address the conditions that lead to removal of the child, and lead to successful reunification of the family.

The qualifications for a culturally knowledgeable expert witness will often be broader and less technical than that required for expert witnesses in other cases.

The use of state social services workers or state employees as expert witnesses to meet ICWA requirements generally should be avoided.

Tribal community members may be able to serve as qualified expert witnesses. This could include a tribal elder or community leader.

Regardless of specific tribal affiliation, tribal expert witnesses may have a better understanding of tribal cultural and family rearing practices.

State courts should develop lists of Qualified Expert Witnesses with knowledge of tribes in their area and for tribes whose children may appear frequently that can be called upon to appear at proceedings and contribute to the courts' understanding of a family's circumstances or tribal cultural tradition.

STATUTORY REFERENCES

§ 1912(e) Foster care placement orders; evidence; determination of damage to child

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

§ 1912(f) Parental rights termination orders; determination of damage to child

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

ISSUE

Placement of an Indian child may be the tribe's highest interest in an ICWA case. In many cases the tribe may defer to the state primary responsibility to try to reunite a family while still remaining involved. But when reunification does not work, the Tribe has primary interest in continuing or developing its relationship to a child or children, and ensuring placement of tribal children within the extended family and/or tribal community. Normal practice and procedure in state courts, including the general placement of Indian children in non-Indian foster or adoptive homes, is in conflict with the placement requirements of ICWA.

COMMON MISCONCEPTIONS

- A parental preference as to placement of an Indian child is controlling and overrides the preference of the Tribe and relatives as to placement of that Indian child.
- ICWA does not apply and the tribe does not need to be notified if the parent wants to remain anonymous in a voluntary placement.
- The placement preferences in ICWA trump a tribe's placement preferences.
- Bonding of an Indian child with non-Indian caretakers is good cause not to follow ICWA placement preferences.
- A general placement search conducted by the agency will suffice in ICWA cases.

FACTS AND SUMMARY OF LAW

- Parental preference in placement of an Indian child is a factor to be considered "where appropriate" but should not automatically override the right of the Indian child to be placed pursuant to ICWA.
- The tribe's right to participate in an ICWA proceeding cannot be affected by the wishes of the parent for anonymity.
- If the tribe's preferences are different from the ICWA preferences, the court must follow the tribe's preferences.
- In most cases, bonding cannot be used as grounds to avoid the placement preferences. There may be a few cases with extraordinary circumstances that could be considered, along with other factors, in determining whether good cause to avoid the placement preferences exists.
- The placement provision is the most important section of the Act. ICWA sets out specific preferences for placement

of an Indian child which must be followed in the absence of good cause to the contrary. The burden of proof is on the party opposing application of the placement preferences. A comprehensive and diligent search of placements within the placement preference order must be conducted. A home within the placement preferences must be found unsuitable before an alternative placement can be considered.

RECOMMENDED PRACTICES

State agencies should be encouraged from the earliest moment to look diligently for placements that comply with the placement preferences of ICWA and to involve the relevant tribe and family in placement search efforts as much as possible. Agencies should also find out if the tribe's preferences are different from the ICWA preferences.

Good cause should be narrowly applied to limit avoidance of ICWA's placement preferences.

Placement in a non-preferential home should not occur just because the non-preferred home that is available might offer more opportunities for an Indian child.

Parental preference for a particular placement should not be used without good reason to avoid the placement preferences of ICWA.

STATUTORY REFERENCES

§ 1915 Placement of Indian children

(a) Adoptive placements; preferences

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Foster care or pre-adoptive placements; criteria; preferences

Any child accepted for foster care or pre-adoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or pre-adoptive placement, a preference shall be given in the absence of good cause to the contrary, to a placement with:

- (i) a member of the Indian child's extended family;
- (ii) a foster home licensed, approved, or specified by the Indian child's tribe;
- (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section.

Where appropriate, the preference of the Indian child or parent shall be considered: provided that where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

ISSUE

Terminating parental rights is a last resort and the ultimate consequence in child welfare cases. Due to the parents' and tribe's rights in ICWA cases, termination of parental rights may not always be an option. The concept of family is broader in tribal communities, which can provide for a greater array of options when identifying a permanent home for an Indian child.

COMMON MISCONCEPTIONS

- Tribes never support termination of parental rights.
- State law standards to terminate parental rights are sufficient in ICWA cases.
- There are exceptions to providing active efforts and remedial services prior to terminating parental rights.

FACTS AND SUMMARY OF LAW

- Some tribes disapprove of terminating parental rights. They may choose to place the child outside the parent's home with relatives or others under a guardianship or customary adoption without terminating parental rights. Family ties have significant cultural and spiritual meaning in many tribal communities. Severing those ties can harm not only children and parents, but the extended family and the community.
- The standard for termination in ICWA cases is "beyond a reasonable doubt"; a higher standard than that required in non-ICWA cases. State law may require courts to apply both state and ICWA standards in termination proceedings.
- Unlike ASFA, which allows for certain exceptions to the reasonable efforts requirement placed on the child welfare agency, ICWA requires active efforts be provided to parents in all cases in which ICWA applies.

RECOMMENDED PRACTICES

Some state courts, those in California for example, have begun conducting customary adoptions. At the option of their tribe, children who cannot be returned home are eligible for adoption by and through the laws, traditions, and customs of the child's tribe without requiring termination of parental rights. More information is available at the California Court's website at <http://www.courts.ca.gov/programs-tribal.htm>. State court judges can advocate for this ability in order to provide permanency for Indian children whose parents are no longer able to care for them. In addition, services to support relative guardianship placements or other permanent guardianship arrangements can be useful in ICWA as well as non-ICWA cases, as an alternative to termination of parental rights.

Regardless of specific tribal affiliation, tribal expert witnesses may have a better understanding of tribal cultural and family rearing practices.

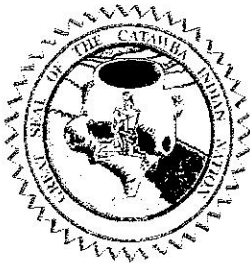
State courts should develop lists of Qualified Expert Witnesses with knowledge of tribes in their area and for tribes whose children may appear frequently that can be called upon to appear at proceedings and contribute to the courts' understanding of a family's circumstances or tribal cultural tradition.

STATUTORY REFERENCES

25 U.S.C. § 1912. Pending court proceedings

- (f) **Parental rights termination orders; evidence; determination of damage to child**

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.



THE CATAWBA INDIAN NATION
OFFICE OF TRIBAL GOVERNMENT
996 AVENUE OF THE NATIONS ROCK HILL, SOUTH CAROLINA 29730
TELEPHONE (803) 366-4792 FACSIMILE (803) 366-0629

Catawba Indian Nation Tribal Enrollment Verification Letter

DOB: _____

Attn: To Whom It May Concern:

Please be advised that the inquiry that you made regarding **enrollment** has been carefully reviewed by our Roll Coordinator. It is our finding that the above listed individual(s) are:

- _____ a member of the Catawba Indian Nation;
- _____ not a member of the Catawba Indian Nation;
- _____ required to provide further documentation before we can include them on our Tribal Membership Roll (please see the explanation below);
- _____ does not meet criteria for inclusion on our Roll as stipulated in (Public Law 103-106, October 23, 1993); information on how you appeal this decision is attached to this document.

Further or other explanations: _____

Thank you for your interest in the Catawba Indian Nation. If you have any further questions please do not hesitate to contact us at (803) 366-4792. Questions regarding the Roll should be directed to our Roll Coordinator, Donna Curtis.

Sincerely,

Updated 04/11/2012

Wayne George Assistant Chief	William Harris Chief	Roderick Beck Sec/Treasurer
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Instructions for Completing IHS Form 810 --

AUTHORIZATION FOR USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION

1. Print legibly in all fields using dark permanent ink.
2. Section I, print your name or the name of patient whose information is to be released.
3. Section II, print the name and address of the facility releasing the information. Also, provide the name of the person, facility, and address that will receive the information.
4. Section III, state the reason why the information is needed, e.g., disability claim, continuing medical care, legal, research-related projects, etc.
5. Section IV, check the appropriate box as applicable.
 - a. **Only information related to** -- specify diagnosis, injury, operations, special therapies, etc.
 - b. **Only the period of events from** -- specify date range, e.g., Jan. 1, 2002, to Feb. 1, 2002.
 - c. **Other (specify)** -- e.g., CHS, Billing, Employee Health.
 - d. **Entire Record** -- complete record including, if authorized, the sensitive information (alcohol and drug abuse treatment/referral, sexually transmitted diseases, HIV/AIDS-related treatment, and mental health other than psychotherapy notes).
 - e. **IN ORDER TO RELEASE SENSITIVE INFORMATION REGARDING ALCOHOL/DRUG ABUSE TREATMENT/REFERRAL, HIV/AIDS-RELATED TREATMENT, SEXUALLY TRANSMITTED DISEASES, MENTAL HEALTH (OTHER THAN PSYCHOTHERAPY NOTES), THE APPROPRIATE BOX OR BOXES MUST BE CHECKED BY THE PATIENT.**
 - f. **Psychotherapy Notes ONLY -- IN ORDER TO AUTHORIZE THE USE OR DISCLOSURE OF PSYCHOTHERAPY NOTES, ONLY THIS BOX SHOULD BE CHECKED ON THIS FORM. AUTHORIZATIONS FOR THE USE OR DISCLOSURE OF OTHER HEALTH RECORD INFORMATION MAY NOT BE MADE IN CONJUNCTION WITH AUTHORIZATIONS PERTAINING TO PSYCHOTHERAPY NOTES.**

IF THIS BOX IS CHECKED WITH OTHER BOXES, ANOTHER AUTHORIZATION WILL BE REQUIRED TO AUTHORIZE THE USE OR DISCLOSURE OF PSYCHOTHERAPY NOTES ONLY.

Psychotherapy notes are often referred to as process notes, distinguishable from progress notes in the medical record. These notes capture the therapist's impressions about the patient, contain details of the psychotherapy conversation considered to be inappropriate for the medical record, and are used by the provider for future sessions. These notes are often kept separate to limit access because they contain sensitive information relevant to no one other than the treating provider.
6. Section V, if a different *expiration* date is desired, specify a new date.
7. Section V, Please sign (or mark) and date.
8. A copy of the completed IHS-810 form will be given to you.

OMB STATEMENT

Public reporting burden for this collection of information is estimated to average 20 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Indian Health Service, 801 Thompson Ave., TMP Suite 450, Rockville, MD 20852, RE: PRA 0917-0030. Please **DO NOT SEND** this form to this address.

AUTHORIZATION FOR USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION

COMPLETE ALL SECTIONS, DATE, AND SIGN

I, _____, hereby voluntarily authorize the disclosure of information from my health record. (Name of Patient)

II. The information is to be disclosed by:	And is to be provided to:
NAME OF FACILITY	NAME OF PERSON/ORGANIZATION/FACILITY
ADDRESS	ADDRESS
CITY/STATE	CITY/STATE

III. The purpose or need for this disclosure is:

Further Medical Care
 Attorney
 School
 Research
 Personal Use
 Insurance
 Disability
 Other (Specify) _____

IV. The information to be disclosed from my health record: (check appropriate box(es))

Only information related to (specify) _____
 Only the period of events from _____ to _____
 Other (specify) (CHS, Billing, etc.) _____
 Entire Record

If you would like any of the following sensitive information disclosed, check the applicable box(es) below:

Alcohol/Drug Abuse Treatment/Referral
 HIV/AIDS-related Treatment
 Sexually Transmitted Diseases
 Mental Health (Other than Psychotherapy Notes)
 Psychotherapy Notes ONLY (by checking this box, I am waiving any psychotherapist-patient privilege)

V. I understand that I may revoke this authorization in writing submitted at any time to the Health Information Management Department, except to the extent that action has been taken in reliance on this authorization. If this authorization was obtained as a condition of obtaining insurance coverage or a policy of insurance, other law may provide the insurer with the right to contest a claim under the policy. If this authorization has not been revoked, it will terminate one year from the date of my signature unless a different expiration date or expiration event is stated.

(Specify now date)

I understand that IHS will not condition treatment or eligibility for care on my providing this authorization except if such care is:
(1) research related or (2) provided solely for the purpose of creating Protected Health Information for disclosure to a third party.

I understand that information disclosed by this authorization, except for Alcohol and Drug Abuse as defined in 42 CFR Part 2, may be subject to redisclosure by the recipient and may no longer be protected by the Health Insurance Portability and Accountability Act Privacy Rule [45 CFR Part 164], and the Privacy Act of 1974 [5 USC 552a].

SIGNATURE OF PATIENT OR PERSONAL REPRESENTATIVE <small>(State relationship to patient)</small>	DATE
SIGNATURE OF WITNESS <small>(if signature of patient is a thumbprint or mark)</small>	DATE

This information is to be released for the purpose stated above and may not be used by the recipient for any other purpose. Any person who knowingly and willfully requests or obtains any record concerning an individual from a Federal agency under false pretenses shall be guilty of a misdemeanor (5 USC 552a(i)(3)).

PATIENT IDENTIFICATION	NAME (Last, First, MI)	RECORD NUMBER
	ADDRESS	
	CITY/STATE	DATE OF BIRTH

EVALUATION

INDIAN CHILD WELFARE ACT (ICWA) AND THE CHILD WELFARE PRACTICE REGIONAL TRAINING

Presented By
USC Children's Law Center

Location _____

Date _____

Please rate using the following scale:

1	2	3	4	5
Significantly Below Average	Below Average	Average	Above Average	Excellent

- | | | | | | |
|-----------------------------|---|---|---|---|---|
| 1. Relevance to your needs | 1 | 2 | 3 | 4 | 5 |
| 2. Format of training | 1 | 2 | 3 | 4 | 5 |
| 3. Presentation of training | 1 | 2 | 3 | 4 | 5 |
| 4. Written materials | 1 | 2 | 3 | 4 | 5 |
| 5. Overall value of seminar | 1 | 2 | 3 | 4 | 5 |

Additional Comments/Recommendations for Improvement:
