

## About ICWA

Enacted in 1978, the Indian Child Welfare Act ("ICWA") sought to reduce the alarming rate of Indian child removals. At the time, experts estimate that one third of American Indian children had been removed from their families and placed into the homes of non-Indians. This caused great injury to many Indian communities. ICWA preserves Indian culture by adding procedural protections before a state court can remove an Indian child into a non-Indian home. It also strengthens Indian sovereignty by requiring state courts to transfer custody cases to tribal courts.

If a state court does not comply with ICWA, the child, the child's parent or Indian custodian, and the child's tribe may all petition any court with jurisdiction to **invalidate the order**. ICWA does not place a time limit on how long a person or tribe has to petition the court to invalidate the order.

*If you believe your rights under ICWA have been violated or if you are a party to a custody proceeding in which you believe ICWA applies, our office may be able to help you. **Please call or visit one of our offices nearest you to see if you qualify for our no-cost legal services.***



### **RENO OFFICE**

204 Marsh Avenue, Suite 101

Reno, NV 89509

Phone: 775-284-3491

Toll Free within Nevada: 800-323-8666

Fax: 775-284-3497

### **ELKO OFFICE**

380 Court Street, Suite D

Elko, NV 89801

Phone: 775-753-5880

Fax: 775-753-5890

### **LAS VEGAS OFFICE**

530 S. Sixth Street

Las Vegas, NV 89101

Phone: 702-386-0404

Toll Free: 866-432-0404

Fax: 702-388-1641

PLEASE NOTE: This publication provides general information concerning rights and responsibilities under ICWA. It is not intended as a substitute for specific legal advice.

## The Indian Child Welfare Act:

Keeping American Indian Families  
Together, Strengthening American  
Indian Communities



Nevada Legal Services, Inc.

# Your Rights Under ICWA

## - TRANSFERS TO TRIBAL COURT -

Both ICWA and Nevada law may require a state court to transfer a custody case to tribal court, even if the child does not live on the reservation.

Either one of the child's parents, custodian, or Indian tribe to which the child belongs can petition the state court for transfer.

## - NOTICE OF PROCEEDINGS IN STATE COURT -

Under ICWA, the party seeking to remove the child from the child's Indian family must notify the child's parents *and* the child's tribe whenever there is an involuntary proceedings involving foster care placement or termination of parental rights in state court.

## - TERMINATION OF PARENTAL RIGHTS -

A state court cannot order the foster care placement or termination of parental rights without "expert witness" testimony that continued custody by the parent or custodian is likely to result in serious emotional or physical damage to the child.

## - ADOPTION PREFERENCES -

If an adoption case remains in state court, ICWA requires the state court to follow certain preferences when placing the child in an adoptive or foster home. When placing the child in an *adoptive* home, the state must place

the child, in this order of preference, with: (1) the child's extended family, (2) other members of the child's tribe, then, (3) any other Indian family.

Other preferences apply for placement in a foster home.

## - INVALIDATION OF PLACEMENTS -

ICWA allows a parent to petition to invalidate an adoption if the parent consented to the adoption because of pressure or misleading information. A parent can invalidate for up to two years after the child has been adopted.

ICWA also allows a parent to withdraw consent to place the child in foster care. A parent can withdraw consent at any time.

## - RIGHT TO COUNSEL -

If you are an indigent parent or custodian, you have the right to a court-appointed lawyer in any case involving removal or placement of an Indian child from his or her parent or custodian, as well as in any case involving the termination of parental rights to an Indian child.

## Does ICWA Apply to My Case?

### ICWA APPLIES ANY TIME A STATE COURT TRIES TO:

- Place an Indian child in foster care
- Place an Indian child in pre-adoptive foster care
- Place an Indian child in an adoptive home, or

- Terminate the parental rights of an Indian child

### ICWA DOES NOT APPLY TO:

- Custody disputes between parents and extended family members
- Custody disputes between natural parents
- Emergency removals of Indian children not on tribal lands

### ICWA ONLY APPLIES IF THE CHILD INVOLVED IS:

- A member of an Indian tribe, or
- Eligible for membership in a tribe in which the mother or father belongs

### DOES AN UNWED FATHER HAVE ANY RIGHTS UNDER ICWA?

ICWA's definition of parent does not include an unwed father where paternity has not been established. If an unwed father wants to assert his rights under ICWA, he must attempt to acknowledge or establish his fatherhood. If he does not do so and the child's Indian blood comes only from the father, the child may not be considered an Indian child under ICWA.<sup>1</sup>

Additionally, an unwed father has no rights under ICWA if he has not had custody of the child prior to the child's adoption.

---

<sup>1</sup> Establishing paternity may have other legal implications. In order to obtain legal assistance you should seek an attorney.