

Indian Child Welfare Act (ICWA)

- In 1978, the Federal Indian Child Welfare Act (ICWA) was passed. Under the Act, Indian Tribes were granted extensive jurisdiction in child welfare cases involving Indian children recognizing “that there is no resource that is more vital to the continued existence and integrity of Indian Tribes than their children.”
- The Act “established minimum standards for the removal of Indian children from their families and placement of such children foster or adoptive homes which will reflect the unique values of Indian culture.”
- In any involuntary proceedings in 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 must notify the parent, or custodian and the Indian child’s Tribe, or if the Tribe is unknown, the Secretary of Interior.
- Extensive jurisdiction in child welfare cases involving Indian children is given to Indian Tribes including:
 - Identification of Indian children by the State child welfare agency
 - Indian parents and Tribes have the right to notice of, and to intervene, in State proceedings involving Indian children
 - Special preference for placement of Indian children with (1) a member of the child’s extended family, (2) other members of the Indian child’s Tribe, or (3) other Indian families and as specified in the law, or (4) a different order of preference if ordered by Tribal resolution.
 - Active efforts to prevent the breakup of the Indian family, including use of Tribal community services and culturally appropriate programs
 - Use of Tribal courts in child welfare matters. Tribes have the right to intervene in State proceedings, or have the proceedings transferred to the jurisdiction of the Tribe or to decline such transfer.
- States are required to comply with this law in their child welfare practices.
 - In October 1994, the Social Security Act was amended to require States, in consultation with Tribes and Tribal organizations, to include a description of the State’s compliance with ICWA in the Title IV-B, subpart 1 State plan (now combined with other programs into the State Child and Family Services Plan).
 - In addressing ICWA, states are required to describe in their plan, (1) the Indian population of the State, (2) the consultation process used with all of the Tribes, (3) procedures for addressing cases involving children from out-of-State Tribes, and (4) the areas of concern that are raised by the Tribes through the consultation process.