

# INDIAN CHILD WELFARE ACT

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# Goal and year establishment of Indian child welfare act

- ▶ Indian child welfare act was established in 1978.
- ▶ The goal of the Indian welfare act is to protect the best interest of Indian children and to promote the stability and security of Indian all children.
- ▶ Act to establish standards for the placement of Indian children in foster or adoptive home , To prevent the break up of Indian families.

# General Indian child welfare act

- ▶ The **Indian Child Welfare Act** of 1978 (**ICWA**) (enacted November 8, 1978), is a Federal law that governs jurisdiction over the removal of Native American (Indian) children from their families in custody, foster care and adoption cases.
- ▶ It gives tribal governments exclusive jurisdiction over children who reside on, or are domiciled on a reservation. It gives concurrent, but presumptive jurisdiction over foster care placement proceedings for Native American children who do not live on the reservation.

# History

- ▶ ICWA was enacted in 1978 because of the disproportionately high rate of forced removal of Indian children from their traditional homes and essentially from American Indian cultures as a whole. Before enactment, as many as 25 to 35 percent of all Indian children were being forcibly removed, mostly from intact American Indian families with extended family networks, and placed in predominantly non-Indian homes, which had no relation to American Indian cultures. In some cases, the Bureau of Indian Affairs (BIA) paid the states to remove Indian children and to place them with non-Indian families and religious groups.

# Jurisdiction - Minimum standards

- ▶ ICWA sets the minimal Federal standards for nearly all Indian child custody proceedings, including adoption, voluntary and involuntary termination of parental rights, and removal and foster care placement of Indian children, but excluding divorce and child delinquency proceedings. ICWA provides that state courts have no jurisdiction over the adoption or custody of Indian children residing within their own tribal reservation. An "Indian child" is "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.

# Exclusive tribal jurisdiction

- ▶ Under ICWA, an Indian tribe has exclusive jurisdiction over an Indian child who resides or is domiciled within the tribe's land. This includes both reservation land, other tribal lands that are held in trust by the Federal government for the benefit of a tribe or individual, or held by a tribe or individual subject to a restriction by the United States against alienation. The last two describe tribal lands such as those in Oklahoma that were transferred to individual Indians under various laws. The Indian tribal courts also have exclusive jurisdiction over Indian children who are wards of the court or tribe, regardless of their location.

# Concurrent jurisdiction

- ▶ Concurrent jurisdiction is shared jurisdiction between the tribal courts and the state courts. State courts have been severely criticized for ignoring the requirements of the law.<sup>[20]</sup> In all cases that the tribal court does not have exclusive jurisdiction, they have concurrent jurisdiction. These cases would include custody proceedings involving Indian children who do not reside or are not domiciled on the tribal lands (such as someone born off the reservation and whose parents do not live on the reservation).

# Good cause

- ▶ A state court may decline to transfer a case for "good cause," but that term is not defined in the ICWA. The BIA has issued an advisory set of guidelines for state courts to use in determining "good cause. While these guidelines are not mandatory, many states have adopted them, and they include:
- ▶ No tribal court as defined by the ICWA,
- ▶ The proceeding was at an advanced stage when the transfer request was made, and the party asking for the transfer did not request the transfer promptly after receiving notice of the proceeding.
- ▶ The Indian child is over the age of 12 and objects to the transfer,
- ▶ It would cause undue hardship on the parties and/or witnesses to travel to a tribal court.
- ▶ The parents of an Indian child over the age of 5 are not available, and the child has had little or no contact with the tribe.



# 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 with respective rights to intervene



Thank you