



# Your Rights Under the Indian Child Welfare Act

***If your child is a member of a tribe or is eligible for membership in a tribe, your family has rights under the Indian Child Welfare Act (ICWA), the Minnesota Indian Family Preservation Act, and other laws.*** These laws give rights to the Indian child's family and tribe. The tribe figures out if a child is a member or eligible for membership in the tribe. You have these rights in any case that has to do with:

- child protection / foster care
- termination of parental rights
- adoption
- runaways, if the child might be taken from the home
- truancy, if the child might be taken from the home, and
- some third-party cases where someone who is not the parent wants custody of your child.



**These laws apply in juvenile court and in family court proceedings where someone who is not the parent wants custody of your child.**

## General Parent Rights.

### The Parent Of Any Child Has The Right To:

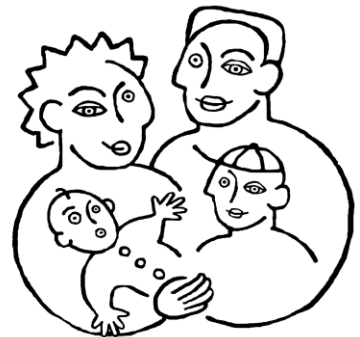
- Get notice of the court case no later than 3 days before the hearing.
- Read all papers filed with the court.
- Have a lawyer. If you have a low income, the court will give you a free lawyer for the Juvenile Court proceeding.
- Ask that the children be placed with family or a close friend.
- Be told any time your children are moved to new foster care.
- Have a lawyer or advocate help you make a case plan to get or keep your family together.
- Get court papers translated into your own language and have an interpreter at hearings if you need it.
- Have a judge tell you the consequences of a decision to give up custody voluntarily.
- Have your children returned within 30 days if you change your mind about voluntary placement out of your home.

- Change your mind about voluntarily terminating your parental rights for purpose of adoption within 10 days after you consented to the termination.
- Ask that your children be placed with someone with the same religious beliefs.
- Ask for services to help your family.
- Get your children back if they were taken on a police hold and a hearing is not held within 72 hours (not counting weekends and holidays).

### **The Parent of An Indian Child Has Additional Rights.**

#### **They Have The Right To:**

- Have the tribe notified of the case.
- Have a tribal representative at every court hearing.
- Ask for transfer of the case to tribal court, if the other parent does not oppose the transfer.
- Have their child placed with:
  - (1) a member of the Indian child's extended family
  - (2) a foster home licensed, approved or specified by the tribe or
  - (3) an Indian foster home.
- Have 20 extra days to get ready for the first court hearing.
- Get a child back from voluntary placement within 24 hours of asking.
- Ask the court to set aside any orders that violate ICWA.
- Have an **Indian** Guardian Ad Litem (person to speak for the child in court), if any are available. See our fact sheet, [What is a Guardian Ad Litem?](#)



#### **The Child's Tribe Has the Right To:**

- Get notice of the case. It must be by registered mail with return receipt requested.
- Have 20 more days to prepare for court.
- Come to all court hearings or become a party in the case.
- Get information from child protection.
- Be told whenever child protection works with a family and it could lead to placing a child out of the parent's home.
- Have the final say about whether a child is a member or eligible for tribal membership.
- Find out what the county did to try to place the child with relatives.
- Ask to transfer the case to Tribal Court.
- Give advice and reports to the court about the case.

### **Indian Relatives Have the Right To:**

- Get first chance to have the children live with them.
- Have their home and family evaluated by Indian community standards.
- Apply for foster care payments, which are more than MFIP, if the child is placed with them.
- The same rights as a parent, if they were raising the children when child protection got involved.
- Take part in all hearings if they are the grandparents and the children lived with them any time in the 2 years before a court case was filed.



### **Indian Children Have The Right To:**

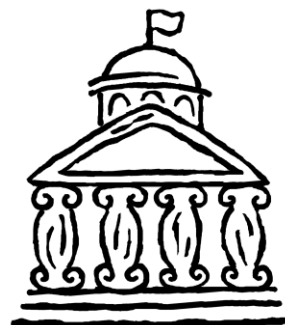
- Be told about court hearings and come to all court hearings if they are age 12 or older.
- Have their own lawyer.
- Give evidence to the court.
- Have a guardian ad litem who is Indian or who knows and appreciates their culture.
- Stay with a relative or close family friend if they cannot be at home.
- Be told of all their rights, including ICWA rights.
- Phone their parents, lawyer, and guardian ad litem.
- Ask for permission to live on their own in some cases, if they are over 16.
- Take part in making their case plan.
- Get family information needed for tribal enrollment if they have been adopted and are at least 18.

### **Child Protection Workers Have To:**

- Try to avoid out of home placement and reunite Indian families.
- Ask questions to know if the children are Indian so that their rights can be protected.
- Notify each parent's tribe if there is **any** chance the children will be taken from the home.
- Try to find relatives and Indian foster homes.
- Fully cooperate with the tribe.
- Return Indian children from voluntary placement within 24 hours if a parent asks them to.
- Keep records of what they did to follow ICWA.
- Provide culturally appropriate services.
- Keep looking for relatives and Indian foster homes, if they are not found at first.
- Tell Indian parents and children of their ICWA rights.
- Defer to the tribe's judgment as to the suitability of a home where the child may be placed.

### The Court Must:

- At the first hearing, ask if any of the children are Indian.
- Send the case to tribal court if the children live on the reservation, or consider the reservation their home. The case also goes to tribal court if the child is a ward of the tribal court.
- Give your children back to you if there are no experts testifying who know Indian child-raising practices. They must return your children unless the expert finds that the children will face serious emotional and physical damage in your care.
- Deny adoption if the parent's consent for adoption was given within 10 days of birth.



### *For more information call:*

- Your Tribe's ICWA worker
- The Minneapolis American Indian Center, (612) 879-1714
- The Indian Child Welfare Law Center, (612) 879-9165
- Southern MN Regional Legal Services, (651) 222-4731
- Legal Aid Society of Minneapolis – Youth Project, (612) 332-1441 or your legal aid office.

Find more fact sheets at [www.lawhelpmn.org/LASMfactsheets](http://www.lawhelpmn.org/LASMfactsheets)

Find your local legal aid office at [www.lawhelpmn.org/resource/legal-aid-offices](http://www.lawhelpmn.org/resource/legal-aid-offices)

**Fact Sheets are legal information NOT legal advice. See a lawyer for advice.**

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