



Your Rights Under the Indian Child Welfare Act

Indian Children and Their Families Have Rights in Court

If your child is a member of or is eligible for membership in a federally recognized 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.



ICWA **does not** apply to juvenile delinquency cases where your child is being tried for offenses that would be crimes if committed by an adult.

ICWA **does not** apply to custody disputes between biological parents.

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 gives 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 as soon as possible but no longer than 24 hours 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 days between the first hearing (the Emergency Protective Care hearing) and the second hearing to get ready for court.
- 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 or certified mail.
- Have 20 days between the first and second hearing to get ready for court.
- Come to all court hearings as 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:

- A lawyer. Kids age 10 and over have a right to a lawyer and a right to go to all court hearings. Kids 10 and older MUST be told of their right to a lawyer. They are assigned a lawyer unless they state they don't want one.
- 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.
- Get family information needed for tribal enrollment if they have been adopted and are at least 18. The worker for the county can also help children under 18 to enroll in their tribe.

Child Protection Workers Have To:

- Try to prevent 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.
- Cooperate with the Tribe as much as possible.

- Return Indian children from voluntary placement within 24 hours if a parent asks them to.
- Keep records of what they did to follow ICWA and report to the Court what they did.
- 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.

The Court Must:

- At the first hearing, the court must ask any party or participant if they know or have reason to believe that the child is an Indian child.
- 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) 879-1700
- The Indian Child Welfare Act (ICWA) Law Center - (612) 879-9165
- Southern MN Regional Legal Services - 1-(877) 696-6529
- Mid-Minnesota Legal Aid (Minneapolis) – Youth Project - (612) 332-1441 or your [local legal aid office](#).

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

Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.

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