

## What if a Social Worker or Probation Officer Removes my Child from me?

Under ICWA, in a juvenile court case, the social worker or probation officer will need to work to prevent the breakup of your family by setting up services appropriate for American Indian/ Alaskan Native families, and making sure your child can be placed with a relative, a family within your tribe, a family of another tribe or a tribally approved institution. These actions are called “active efforts.”

## Will my Child be taken away from me if I Report an act of Domestic Violence?

No. Your child cannot be taken from you for domestic violence in the home. However, if someone makes a report about the safety of your child, then the police or a social worker must investigate. They have to decide if the court should get involved so your child will be safe and protected. Under these circumstances, your child may be removed from you. The court will appoint a lawyer to represent you. If you live in a tribal community, rancheria, or reservation, the tribe may also have a tribal advocate and other resources to help you.

## Will my Tribe know my family Is Involved with the Legal System?

Yes, if there is reason for a state or federal court to know a family is American Indian/Alaskan Native, then any identified tribe, parent, guardian, Indian custodian, and the Bureau of Indian Affairs (BIA) must be notified by the

- ◆ social worker in a dependency case
- ◆ probation officer in a delinquency case
- ◆ parent in a family court case
- ◆ court clerk in a probate guardianship case

## What If I Don't Want my Tribe to Know About my Court Case?

The tribe has the right to intervene in an ICWA case whether the parent agrees to their involvement or not. You cannot waive the rights of the tribe.

## National Domestic Violence Hotline

1-800-799-7233 or TDD: 1-800-787-3224

### FOR MORE INFORMATION

The Tribal/State Programs Unit of the Judicial Council's Center for Families, Children & the Courts, provides support to local courts on tribal issues and assists with the development of policies, positions, and programs to ensure the highest quality of justice and service for California's Native American communities. The unit also serves as a liaison to those communities in cases relating to the Indian Child Welfare Act (ICWA) and family violence matters.

#### STATEWIDE DIRECTORY OF SERVICES FOR NATIVE AMERICAN FAMILIES

<http://www.courts.ca.gov/5807.htm>

To learn more about the Tribal/State Programs Unit or for assistance with issues related to a tribal matter, call 415-865-7739 or visit [www.courts.ca.gov/programs-tribal.htm](http://www.courts.ca.gov/programs-tribal.htm)

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JUDICIAL COUNCIL  
OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION  
CENTER FOR FAMILIES, CHILDREN & THE COURTS

# CROSSOVER ISSUES RELATING TO THE INDIAN CHILD WELFARE ACT AND DOMESTIC VIOLENCE

Important Information for  
American Indian/Alaskan  
Native Families  
in California

This pamphlet contains useful information for of America Indian/Alaskan Native families about the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.), better known as ICWA.

## ICWA is Federal Law and State Law

ICWA is a federal law enacted in 1978 to help prevent the breakup of Native American families. It sets standards that all state courts must follow in child welfare cases and child custody cases involving members of any federally recognized Indian tribe in the United States and to those eligible for membership.

California later passed laws that reinforce and expand on the terms of ICWA. Together, these laws apply in virtually all California court matters involving Indian children, where custody could be granted to a non-parent including dependency, delinquency, guardianship, and some family law cases.

### To be legally recognized as an Indian child, the child must be

- ◆ under 18 and unmarried;
- ◆ a member of a tribe or eligible for membership; AND
- ◆ the biological child of a member of a federally recognized tribe.

Although ICWA is a federal law and applies only to children affiliated with federally recognized tribes, California law extends ICWA's legal scope and requirements to apply in some cases to children from tribes that are not federally recognized.

## ICWA: the Four Types of Court Cases

There are four types of court cases that may directly involve a child; if the child is an Indian child, ICWA will apply in any of these cases.

**Family court** is where parents who separate go to ask a judge to make orders regarding child custody, visitation, parenting time, child support, and so on. ICWA applies in these matters if they touch on the custody or care of an Indian child may be granted to someone other than the child's parents.

**Probate court** deals with the estates of people who have died and to guardianships and conservatorships of people in need of protection. ICWA applies to probate guardianship cases concerning Indian children.

### Juvenile Court—Dependency

Dependency cases arise when there are concerns about abuse or neglect of your children. The dependency court can order that:

- ◆ You and your child receive the services your family needs
- ◆ Your child be removed from your care and go live with relatives, in foster care or group homes
- ◆ Your parental rights be terminated
- ◆ Your child be adopted

ICWA requires that the dependency court's goal must always be to protect your child and, if possible, to keep your family together.

### Juvenile Court—Delinquency

If your child breaks the law and is charged, the case will probably be heard in a delinquency court. (Depending on the child's age and history and the seriousness of the crime, a minor may be tried as an adult in criminal court.) If the child is found guilty, the delinquency court judge can order that your child

- ◆ live with you under court supervision
- ◆ be placed on probation and sent to live in a relative's home, a foster home or group home, or an institution
- ◆ be sentenced to confinement by the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJJ)\* youth facility or, if tried and convicted as an adult, a state prison.

ICWA may apply to the case if the child didn't do anything that would be a crime if committed by an adult, or if the court makes its decision to remove the child from the home is based on conditions in the home and not on the child's criminal conduct.

## If your Child is Involved in one of These Cases:

You will need to provide information about:

- ◆ Which tribe or tribes you are from
- ◆ Names, birth and death dates (for parents, grandparents, great-grandparents), enrollment numbers, and services you are receiving from Native American providers
- ◆ Any current restraining orders
- ◆ If your children are living with someone who is American Indian/Alaskan Native that the court calls an "Indian Custodian"

## What are my Rights as an American Indian/Alaskan Native Individual?

If either parent has ANY American Indian or Alaskan Native ancestry, the child (and the parents) are guaranteed certain rights under ICWA and California law, including:

- ◆ A right to assistance if the child needs help with tribal enrollment.
- ◆ Entitlement to agency services, if available in your area, for American Indian/Alaskan Native families.
- ◆ Specific placement practices that the social worker or probation officer must follow.
- ◆ Additional assistance if the tribe acts to intervene on behalf of the family or child.

In a juvenile court case, it is very important to tell your child's attorney, the court, and the social worker or probation officer right away if you and/or your child are American Indian or Alaskan Native. Your family may be entitled to services and benefits under ICWA, and your tribe will need to be notified of the proceedings.

\* [www.cdcr.ca.gov/Juvenile\\_Justice/](http://www.cdcr.ca.gov/Juvenile_Justice/)