

# Understanding ICWA: Safeguarding the Rights of Native American Children and Families

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# The Indian Child Welfare Act (ICWA)

ICWA is a federal law that protects the rights of American Indian and Alaska Native (AI/AN) children and families. The law was enacted in 1978 in response to the disproportionate rate at which AI/AN children were being removed from their homes and communities.

The purpose of ICWA is to protect the best interest of Indian Children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children and placement of such children in homes which will reflect the unique values of Indian culture...  
"(25 U.S. C. 1902).

ICWA mandates the State's practices regarding the handling of child abuse and neglect and adoption cases involving Native children and sets minimum standards for the handling of these cases.





# ICWA's Goals

- ❖ *Protect the best interests of AI/AN children*
- ❖ *Promote the stability of AI/AN families and tribes*
- ❖ *Establish minimum standards for the removal of AI/AN children*
- ❖ *Provide protections for parents*
- ❖ *Give preference to placement with family and tribal members*

# Tribes

As of January 8, 2024, there are 574 federally recognized tribes in the United States.

In the state of Louisiana we have four Federally Recognized Tribes and nine State Recognized Tribes. DCFS has Interagency Agreements with the four Federally Recognized Tribes and they are:

- ❖ Chitimacha Tribe (St. Mary Parish)
- ❖ Coushatta Tribe (Allen, Beauregard, Jeff Davis, Cameron and Calcasieu Parishes)
- ❖ Tunica Biloxi Tribe (Avoyelles Parish)
- ❖ Jena Band of Choctaw (Rapides, Grant and LaSalle Parishes)

# Interagency Agreements (IAs)

Interagency Agreements between DCFS and the Federally recognized Tribes are working agreements to establish and maintain an effective cooperative relationship between the Tribes and the Louisiana Department of Children and Family Services (DCFS) for the parishes within tribal service areas.

These agreements allow Tribes and DCFS to share responsibility for the protection of tribal children and the investigation of reports of child abuse and/or neglect within the tribal service areas, as per Louisiana Revised Statute 14:403.

# Interagency Agreements

## Outlines:

- ❖ *The Rights Under ICWA*
- ❖ *Parents, Child, Relatives and Tribe Rights*
- ❖ *Child Protection Services and Family Services (CPS/FS) Responsibilities*
- ❖ *Foster Care Responsibilities*
- ❖ *Continued work with the Native American Families*



# ICWA Designated Agent Bureau of Indian Affairs

<https://biamaps.geoplatform.gov/ICWA-Agents-Directory/>

ICWA Designated Agents Listing    BIA ICWA NOTICE Contacts    Download Excel    Filter Download

ICWA Designated Agent Listing    Select by state here    Select by Tribe here    Select by Tribal Affiliation here

**Contact Information**

Search...

**Absentee-Shawnee Tribe of Indians of Oklahoma**  
105 N. Kimberly Ave.  
Shawnee, OK 74801  
**ICW Director Shawnee Martinez**  
Phone: (405) 395-4492 Fax: (405) 395-4490  
Email: icw@astribe.com  
**Affiliated Tribes:**  
Shawnee

**Agdaagux Tribe of King Cove**  
Aleutian Pribilof Islands Association Inc. 1131 East International Airport Road  
Anchorage, AK 99518-1408  
**Family Services Coordinator Amanda McAdoo**  
Phone: (907) 276-2700 Fax: (907) 279-4351  
Email: amandam@apiai.org  
**Affiliated Tribes:**  
Aleut

**Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California**  
5401 Dinah Shore Drive  
Palm Springs, CA 92264  
**Chairman Reid D. Milanovich**  
Phone: (760) 669-6877 Fax: (760) 699-6865  
Email: ACBCL\_ICWA@aquacaliente.net  
**Affiliated Tribes:**  
Cahuilla

**Ak-Chin Indian Community**  
42507 West Peters & Nall Road  
Maricopa, AZ 85138  
**Enrollment Coordinator Dorissa R. Garcia**  
Phone: (520) 568-1074 Fax: (520) 568-1079

Bureau of Indian Affairs, National Park Service, Natural Earth, National Forest Service, US Census | Branch of Geospatial Support (BOGS), Bureau of Indian Affairs (BIA), E... Powered by Esri

ICWA Map    More Information    Disclaimer

**ICWA Agents**  
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The ICWA Designated Agent Listing will be updated quarterly on the following dates each calendar year: January 15th, April 15th, July 15th, and October 15.

# LA Tribe Contact

Chitimacha Tribe  
3231 Chitimacha Trail  
P.O. Box 661  
Charenton, LA 70523  
Phone: (337) 923-7000  
Fax: 337-923-2475  
[karen@chitimacha.gov](mailto:karen@chitimacha.gov)

Coushatta Tribe  
1940 C.C. Bel Rd.  
P. O. Box 10  
Elton LA 70532  
(337) 584-1560  
Fax: 337-584-1616  
[RLangley@coushatta.org](mailto:RLangley@coushatta.org)

Tunica Biloxi Tribe  
150 Melacon Road  
P. O. Box 331  
Marksville, LA 71351  
Avoyelles Parish  
Phone: (318) 253-9767  
or (318) 253-5100  
[ecass@tunica.org](mailto:ecass@tunica.org)

Jena Band of Choctaws  
1052 Chanaha Hina St.  
Trout, LA 71371  
P. O. Box 14  
Jena, LA 71432  
Phone: 318-992-0136  
Fax: 318-992-4162  
[mmaxwell@jenachoctaw.org](mailto:mmaxwell@jenachoctaw.org)  
[kpurvis@jenachoctaw.org](mailto:kpurvis@jenachoctaw.org)



# Applicability

- ❖ *Determining Which Requirements Apply Based on Proceedings*
- ❖ *Identifying the Tribe*
- ❖ *Contacting the Tribe*
- ❖ *Verifying Tribal Membership*

*Source: Guidelines for Implementing the Indian Child Welfare Act, December 2016, U.S. Dept. of the Interior, Office of the Assistant Secretary – Indian Affairs, Bureau of Indian Affairs*

# Emergency Proceedings

- ❖ *Emergency Proceedings in the ICWA Context*
- ❖ *Threshold for Removal on an Emergency Basis*
- ❖ *Standards and Processes for Emergency Proceedings*
- ❖ *Contents of Petition for Emergency Removal*
- ❖ *Outer Limit on Length of Time of Emergency Removal*
- ❖ *Emergency Placements*

*Source: Guidelines for Implementing the Indian Child Welfare Act, December 2016, U.S. Dept. of the Interior, Office of the Assistant Secretary - Indian Affairs, Bureau of Indian Affairs*

# ADJUDICATION OF INVOLUNTARY PROCEEDINGS

- ❖ *Standard of Evidence for Foster-Care Placement and TPR Proceedings*
- ❖ *Qualified Expert Witness in Termination of Parental Rights*

# Jurisdiction

- ❖ *Tribe's Exclusive Jurisdiction*
- ❖ *State and Tribe's Concurrent Jurisdiction*
- ❖ *Contact with Tribal Court on Potential Transfer*
- ❖ *Criteria for Ruling on a Transfer Petition*
- ❖ *Good Cause to Deny Transfer*
- ❖ *Transferring to Tribal Court*

*Source: Guidelines for Implementing the Indian Child Welfare Act, December 2016, U.S. Dept. of the Interior, Office of the Assistant Secretary – Indian Affairs, Bureau of Indian Affairs*



# NOTICE

## Under ICWA

*How do we know notice should be given?*

ICWA notice is REQUIRED for involuntary foster care placements OR termination of parental rights (TPR) proceedings but NOT REQUIRED for voluntary placements.

Indian child is a member of a federally recognized Indian Tribe or the biological child of a member of a federally recognized Indian Tribe AND is eligible for membership in a federally recognized Indian Tribe.

Source: ICWA NOTICE, U.S. Department of Interior, Indian Affairs, [ICWA Notice | Indian Affairs \(bia.gov\)](https://www.bia.gov/ICWA-Notice)

# NOTICE

## Under ICWA

### *When is notice given?*

ICWA requires notice “where the court knows or has reason to know that an Indian child is involved.”

Notice is given to:

- ❖ The parents;
- ❖ The Indian custodian; and
- ❖ The child’s tribe – If the tribe is unknown, notice is given to the BIA;
- ❖ Copy to the appropriate BIA Regional Director.

Notice is required to be given by certified mail with return receipt requested; but in emergency removals, the agency has an obligation to give prompt notice whether it is by phone, email or in person. EARLY INQUIRY ensures that notice is given as timely as possible.

# NOTICE Under ICWA

## *What is contained in the notice?*

- 1) The information for the child, birth parents, grandparents, and other direct lineal ancestors:
  - ❖ Birth Name;
  - ❖ Birthplace;
  - ❖ Date of Birth;
  - ❖ Tribal Enrollment Information and Tribal Identification Number (TIN), if applicable.
  
- 2) A copy of the relevant child-custody proceeding documents or petition, and the date, time, and location of any scheduled hearing.

# Active Efforts





# Active Efforts

- ❖ Affirmative
- ❖ Active;
- ❖ Thorough;
- ❖ Timely

Source: *Guidelines for Implementing the Indian Child Welfare Act, December 2016, U.S. Dept. of the Interior, Office of the Assistant Secretary – Indian Affairs, Bureau of Indian Affairs*

# Active Efforts

## Prior to Removal

- ❖ Begin before or at initial contact with the family;
- ❖ Inquiry into whether or not the child is an Indian Child;
- ❖ Exploring ALL alternatives to removal;

❖ Notice to the Tribe  
Source: Guidelines for Implementing the Indian Child Welfare Act, December 2016, U.S. Dept. of the Interior, Office of the Assistant Secretary – Indian Affairs, Bureau of Indian Affairs

# Active Efforts

## After Removal

- ❖ Communication with tribe;
- ❖ Follow through with inquiry of child's status;
- ❖ Placement Preference.

Source: Guidelines for Implementing the Indian Child Welfare Act, December 2016, U.S. Dept. of the Interior, Office of the Assistant Secretary – Indian Affairs, Bureau of Indian Affairs

# Placement Preference

In any foster care or preadoptive placement of an Indian child, where the Indian child's tribe has not established a different order of preference, preference must be given to placement of the child with:

- 1) A member of the child's extended family;
- 2) A foster home approved or specified by the child's tribe;
- 3) An Indian foster home; or
- 4) An institution for children approved by the Tribe or operated by an Indian organization which has a program to meet the child's needs.

Source: FREQUENTLY ASKED QUESTIONS, U.S. Department of Interior, Indian Affairs, [ICWA Rule Public QA \(bia.gov\)](#)

# Active Efforts In Foster Care

- ❖ *Case plan Creation and Execution;*
- ❖ *Continued Communication with Tribe;*
- ❖ *Documenting in Case Notes;*

*Source: Guidelines for Implementing the Indian Child Welfare Act, December 2016, U.S. Dept. of the Interior, Office of the Assistant Secretary – Indian Affairs, Bureau of Indian Affairs*

# Active Efforts In Court

- ❖ Continued Custody Hearing;
- ❖ Adjudication;
- ❖ Case Reviews and Permanency hearings;
- ❖ Termination of Parental Rights

Source: *Guidelines for Implementing the Indian Child Welfare Act, December 2016, U.S. Dept. of the Interior, Office of the Assistant Secretary – Indian Affairs, Bureau of Indian Affairs*

A yellow rectangular sign with a black border. On the left side, there is a black triangle containing a white exclamation mark. To the right of the triangle, the word "CAUTION" is written in large, bold, black, sans-serif capital letters.

# ⚠ CAUTION

*Failure to follow ICWA may result in the proceedings being ruled an*  
**Absolute Nullity**  
*which treats the case as if it never happened.*

# Reflections on ICWA

- ❖ *Realize the cultural and sociological purpose behind ICWA.*
- ❖ *Do not be intimidated or frustrated by the requirements of ICWA.*
- ❖ *Seek assistance from DCFS ICWA Consultants, BGC, tribal agreements, and the tribe itself.*



# Thank you!

## Questions?









