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## Research Guide

### Indian Child Welfare Act

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#### **Scope:**

The following is intended to be an introductory guide only, to assist the reader in beginning research related to the Indian Child Welfare Act (25 USC §§ 1901-1923).

#### **Overview:**

The Indian Child Welfare Act (ICWA) establishes minimum procedural and substantive federal standards that govern the removal of Indian children from their families and subsequent placement in foster or adoptive homes. The ICWA applies to voluntary as well as involuntary proceedings.

In 1978, acting in response to concerns about the high rate of Indian children being removed from their families or placed in non-Indian homes, Congress passed the Indian Child Welfare Act. The overall goal is the stability and integrity of not only children, but their tribes and culture. Basically, a child custody proceeding involving an Indian child is the same as any other, only under the ICWA not only are the child's interests considered, but the interests of the child's Indian tribe as well.

There are two main prongs to consider: (1) whether the proceeding is one covered by the Act, and (2) whether the child involved is an "Indian child", as defined by the Act. (There is an affirmative duty to inquire whether the child is an Indian child, as defined by the Act, and this duty extends not only to parties but to counsel, agencies, and anyone connected with the action). If both prongs are present, then the ICWA applies and all provisions must be followed.

The ICWA defines "Indian child" as 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.

**ICWA and Related Law:**

Federal:

25 USC §1901 et. seq.

25 CFR § 23.1 et. seq.

BIA Guidelines for State Courts (Fed Reg. 67584)

State of California:

2006 Senate Bill 678 codifies Federal ICWA requirements into the California Family, Probate, and Welfare & Institutions Code

Welfare & Institutions Code §224

Family Code §§175-185

Probate Code §1459

California Rules of Court Rule 5.664(f)

***Resources:***

Intertribal Court of Southern California - Administration Office 365 West 2nd Ave, Suite 215 Escondido, CA 92025 Ph: 760 739 1470 Fax: 760 739 1472

Email: [tribalcourt@sdtv.net](mailto:tribalcourt@sdtv.net) California Indian Legal Services

[www.calindian.org](http://www.calindian.org)

<http://www.courtinfo.ca.gov/selfhelp/family/adoption/icwaadoptforms.htm>

American Indian Law in a Nutshell, William C. Canby Jr., Thompson West KF 8205.Z9 C36 2004

Bench Handbook – The Indian Child Welfare Act – Administrative Office of the Court, KF 8210.C45 B46 2008