

# Indian Child Welfare Act (ICWA)

## Research Guide

**Last Updated:** February 2013

The following is intended to be an introductory guide to assist the reader in beginning research related to the Indian Child Welfare Act.

### Overview:

The 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.

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 (ICWA) (USC §§ 1901-1923). 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 subject 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.

### 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:           SB 678  
                  WIC §224  
                  Family Code §175  
                  Probate Code §1459 et seq  
                  CA Rules of Court Rule 5.480 et seq

**Resources:**

**Intertribal Court of Southern California**

49002 Golsh Road  
Valley Center, CA 92081  
Ph: 760 751-4142  
Fax: 760 751-3078  
Email: [tribalcourt@icsc-court.us](mailto:tribalcourt@icsc-court.us)  
[www.courts.ca.gov/14902.htm](http://www.courts.ca.gov/14902.htm)  
<http://icsc.us/Welcome.html>

**California Indian Legal Services**

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

Local office:

609 S Escondido Blvd.  
Escondido, CA 92025  
Ph: 760 746-8941; 800 743 8941  
Fax: 760 746-1815

**Library Resources:**

American Indian Law In a Nutshell, William C. Canby Jr. Thompson West  
KF 8205.Z9 C36 2009

American Indian Law Deskbook  
KF 8205.A76 2008

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

Landmark Indian Law Cases – AALL Publications KF 8204.5 .L36 2002

The Rights of Indians and Tribes – Stephen L. Pevar, Southern Illinois University Press,  
KF 8210.C5 P48 2002

Search the SDCPLL online catalog for access to some electronic/online resources.  
<http://millennium.sdcll.org/>