

INDIAN CHILD WELFARE

What Is The Indian Child Welfare Act?

The Indian Child Welfare Act is a federal law passed by Congress in 1978 to protect Indian families from the loss of their children. The Act was passed because Congress found that many children were being taken from their families by Courts and placed in non-Indian homes and institutions. The Act requires State courts and welfare departments to respect the need of Indian children to grow up within their culture.

When Does The Act Apply?

If an Indian child is involved, then the Act applies to the following situations;

1. Whenever the welfare department or some other person starts a court case which might result in Indian children being removed from their home. Usually this is called a dependency and neglect case.

2. Whenever the welfare department, or some other person, starts a court case to take away a parent's right to their children.

3. Whenever an Indian child is charged in Juvenile Court with doing something wrong which would not be considered a crime if an adult did it; for example skipping school, and running away.

4. Whenever an Indian child is moved from one foster home or institution to another foster home or institution.

5. Whenever an Indian child is placed for adoption.

6. Whenever Indian parents or custodians want to voluntarily place their children in foster care or give up their parental rights.

Who Is Protected By The Act?

The Act protects Indian children, parents of Indian children, people who have custody and are taking care of the Indian child and Indian tribes.

An "Indian Child" is any unmarried person under eighteen who is either a member of an Indian tribe or is eligible for tribal membership.

How Does The Act Work?

When a court case falls under the law, the Act requires the court to notify the Indian Child's parents, the tribe and/or the people who are taking care of the child. The tribe can then ask the court to transfer the child's case to tribal court, if the parents don't object, or the tribe can take part in the State court case. The State court must consider the arguments of the tribe.

What Is Required Before A Child Can Be Taken From An Indian Home?

The police can only remove children from their

home if it can be shown that the children are in physical danger; this removal may continue only as long as is necessary to prevent immediate harm to the child. The child will be returned home as soon as it is safe. If it is not an emergency, the court must be shown that:

1. The welfare department has tried hard to help the family but there's been no change;

2. It is clear that the child will suffer if the child remains with the parents (an expert in Indian life must be one of the people to give the court information).

Can The Court Permanently Take Indian Children Away From Their Parents?

Yes.

When Children Are Placed Outside Their Home, Must Preference Be Given To Indian Families?

Yes. The court and welfare department must try to place the child.

- first with a family;
- second, with a family approved by the child's tribe;
- if that's not possible, then with an Indian foster home which is state approved;

- when no Indian foster home is available the child can be placed in an Indian operated institution;

- and last, if there is no other choice, the child can be placed in a non-Indian home or institution.

Do The Same Standards Apply When Children Are Placed For Adoption?

Yes. The court and welfare department must try to place the child;

- first with family;
- if that's not possible, then other Indian families have priority;

- and, last, if there is no Indian family the child can be placed in a non-Indian home.

How Does The Act Apply When Parents Voluntarily Consent To Adoption?

If the child is placed for adoption, parents can change their minds and get the child back at any time BEFORE a court has ordered their rights to be ended, or BEFORE the child is adopted.

If An Indian Child Was Adopted In The Past, Can The Indian Parents Challenge The Adoption?

In some cases, yes. The Act says that when a voluntary adoption has occurred less than two years ago, the parents can have the adoption set aside - if the parent shows that fraud, trickery, or undue pressure was used to obtain the parent's consent to the adoption.

What Can Be Done If A State Court Or Welfare Department Does Not Follow The Act?

In that case an Indian child, parent, custodian, or tribe may bring legal action to change a state court decision, or the actions of the welfare department. If you think your children have been taken from you unfairly, or if someone is threatening to take your children, contact your local tribe, Indian center, legal services office or public defenders office.

Does The Act Help Indian Families Before They End Up In Court?

Yes. Many Indian centers and most tribes already have programs to assist Indian families, including those going to court.

What Is Required Under The Act Before A Child Can Be Permanently Removed From An Indian Home?

Except for emergencies, a child may not be taken away from its Indian parents without a showing supported by clear and convincing evidence including expert witnesses who qualify as being knowledgeable in Indian customs and social relations, that the child will suffer emotional or physical damage if the child remains with the parents. If parental rights are to be "terminated" that is, the rights to the child permanently lost, the court must find beyond a reasonable doubt that the child will be physically or emotionally damaged by staying with its parents.

What Standards Must The Court Consider In Placing The Child?

In making its decision regarding placement the State court must consider only the Indian community standards of a suitable home and not the standards of the non-Indian community. This is to prevent the state from finding that an Indian home is inadequate because it isn't similar to a white middle-class home.

When An Indian Child Is Subject To Adoption, What Standards Apply?

If no extended family member is available, then a member of the Indian child's tribe has priority. When no member of the Indian child's tribe is available as an adoptive home, members of another Indian tribe have preference over non-Indians. All potential placements must be judged by the standards of the Indian community. The State court and welfare department must keep records of its compliance with these placement preferences.

If the parents of an Indian child voluntarily place the

child for adoption and request that their identity remain unknown, the placement preference may be changed by tribal resolution to comply with the parent's desires.

What Additional Information Should Your Worker Know?

In situations involving involuntary placement proceedings of an Indian child or a child which the court has reason to believe is Indian, the Act requires the State court to notify the Indian child's parents, custodian, and tribe. If the tribe is not known, the court must notify the regional office of the Bureau of Indian Affairs in order to determine the

child's tribal membership. The notice must be in writing, indicating the tribe's right to intervene and it must allow at least ten (10) days after delivery for the tribe to respond. The tribe may have an additional twenty (20) days to respond if so requested.

Once the tribe is notified, the tribe may "transfer jurisdiction," take control of the case itself if the parents don't object, or "intervene." If the tribe intervenes the State court can proceed with the case, but the tribe's arguments and desires must be considered by the State court, and the State court must follow strict guidelines to ensure that whatever action is taken, primary consideration is given to main-

taining the child's Indian cultural environment.

All parties are entitled to see any reports which the State court may use in making its decision. Additionally, the State court is required to notify the parent, and Indian guardian of their right to an attorney, and that the court will appoint an attorney free of charge if they cannot afford to pay for one.

When Won't The Indian Child Welfare Act Apply?

The Act does not apply in cases where the child is charged with criminal wrongdoing and in child custody disputes between the parents in a divorce action.

SILETZ TRIBE

SERVICES AVAILABLE TO SILETZ TRIBAL MEMBERS AND FAMILIES:

- Family/Child Counseling
- Foster Home Certification Assistance
- Information/Referral/Advocacy Services
- Juvenile Advocacy
- Assistance in Adoption Proceedings and Custody Hearings

CONFIDENTIALITY — The policy of the Indian Child Welfare Project is that the utmost care will be taken to assure the confidentiality of information regarding Indian Child Welfare cases. Indian Child Welfare information is subject of the Federal Privacy Act of 1974.

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INDIAN FOSTER HOME RECRUITMENT

The Indian Child Welfare Act gives tribes the right to set placement for tribal children who need to be temporarily removed from their families. To meet this responsibility, the Indian Child Welfare Project is recruiting Siletz and other Indian families to be foster parents for Siletz children in need of temporary placement. For information and assistance in becoming a foster parent, contact Doni White or the CHR in your local Area Office.