



## Indian Child Welfare Act (ICWA)

### Research Guide

**Last Updated:** 01/04/10

The following is intended to be an introductory guide only, 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  
CA Rules of Court Rule 5.664(f)

**Resources:**

**Intertribal Court of Southern California**

49002 Golsh Road  
Valley Center, CA 92081  
Ph: 760 751-4142  
Fax: 760 751-3078  
<http://icsc.us/Welcome.html>

**California Indian Legal Services**

609 S Escondido Blvd.  
Escondido, CA 92025  
Ph: 760 746-8941; 800 743 8941  
Fax: 760 746-1815  
[www.calindian.org](http://www.calindian.org)

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

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

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<http://millennium.sdcll.org/>