

### What if our family doesn't want the tribe to know about the court case?

The tribe has the right to intervene or participate without intervening in an ICWA case. The parents cannot waive the rights of the tribe.

### Participating in court hearings

While in custody, you may participate in your child's court hearing in person, by phone, or virtually.

### Can a tribal home visiting program assist my family?

Yes. A tribal home visiting program may be able to assist a parent in custody and their children. Reach out to your tribe or a tribal home visiting program for information. [acf.gov/ecd/tribal/tribal-home-visiting](http://acf.gov/ecd/tribal/tribal-home-visiting)

### Lactation in custody

California Penal Code section 4002.5 requires county jails or sheriffs to develop policies around lactation support and storage and delivery of breast milk to an infant or toddler. [california breastfeeding.org/wp-content/uploads/2023/06/cbc-supporting-lactation-in-jails-DRAFT-5.pdf](http://california-breastfeeding.org/wp-content/uploads/2023/06/cbc-supporting-lactation-in-jails-DRAFT-5.pdf)

### Are there traditional resources for tribal parents in custody?

Yes. The American Indian Religious Freedom Act of 1978 legalizes traditional ceremonies and the use of tribal resources. For information, ask for your facility's rules on religious or tribal accommodations. Traditional healers or tribal service providers may be able to enter your facility to meet with you and conduct ceremonies and traditions. Visit our services directory to find resources. [courts.ca.gov/programs-initiatives/tribalstate-programs/indian-child-welfare-act-icwa/statewide-directory](http://courts.ca.gov/programs-initiatives/tribalstate-programs/indian-child-welfare-act-icwa/statewide-directory)

### FOR MORE INFORMATION

The Tribal/State Programs Unit of the Judicial Council's Center for Families, Children & the Courts provides support to local courts on tribal issues and assists with the development of policies, positions, and programs to ensure the highest quality of justice and service for California's Native American communities. The unit provides educational and technical assistance on the Indian Child Welfare Act, domestic violence, dating violence, sexual assault, trafficking, elder abuse, and stalking impacting tribal communities.

To learn more about the Tribal/State Programs Unit, or for assistance, call 415-865-7874 or visit [courts.ca.gov/programs/tribalstate-programs](http://courts.ca.gov/programs/tribalstate-programs).

This unit is supported with funds from the U.S. Department of Justice, Office on Violence Against Women, that are administered through the Governor's Office of Emergency Services, the U.S. Department of Health and Human Services, the Court Improvement Program, and the California Department of Social Services.

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# The Indian Child Welfare Act for Incarcerated Parents

Important Information for  
Incarcerated Parents of  
American Indian/Alaska Native  
Children in California

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Judicial Council of California

## What is the Indian Child Welfare Act?

The Indian Child Welfare Act (ICWA) is a federal law created to keep American Indian/Alaska Native (AI/AN) children with their families and connected to their cultures and communities. Congress passed ICWA in 1978 to protect the best interests of Indian children, keep AI/AN families together, and “promote the stability and security of Indian tribes and families” (25 U.S.C. § 1902). ICWA sets minimum federal requirements that apply to state child custody proceedings involving Indian children. California has passed laws that set higher standards and additional requirements. For more information about ICWA, visit [courts.ca.gov/programs-initiatives/tribalstate-programs/indian-child-welfare-act-icwa](https://courts.ca.gov/programs-initiatives/tribalstate-programs/indian-child-welfare-act-icwa).

## What are the four types of ICWA court cases?

### Family court

ICWA applies if custody or care of an Indian child may be given to someone other than the child’s parents or if parental rights may be terminated.

### Probate court

ICWA applies to probate guardianship cases involving Indian children.

### Juvenile Court—Dependency

ICWA applies in cases involving concerns about abuse or neglect of an Indian child. In these cases, the court may order that:

- Parents or Indian custodians and the child receive culturally appropriate services;
- The child be removed from the parents’ care and live in relative or foster care during the reunification process; or

- Parental rights be terminated or that the child is eligible for Tribal Customary Adoption per the laws, traditions, and customs of the tribe without termination of parental rights.

### Juvenile Court—Delinquency

If a child is charged with breaking the law, the case may be heard in a delinquency court. ICWA’s requirements (other than inquiry) apply to delinquency proceedings only when an Indian child is in foster care or at risk of entering foster care. [courts.ca.gov/sites/default/files/courts/default/2024-08/icwa-delinquency-factsheet.pdf](https://courts.ca.gov/sites/default/files/courts/default/2024-08/icwa-delinquency-factsheet.pdf)

## What are the rights of children and families under ICWA and related laws?

If ICWA applies, the case will include important legal protections, including the following:

- \* Notice of court hearings to the parent(s), Indian custodian, and tribe for placement changes or termination of parental rights
- \* Testimony of a qualified expert witness
- \* Active efforts to keep families together and connected to the tribal community
- \* Placement preferences
- \* Transfer to tribal court in some cases
- \* Tribal Customary Adoption

For additional information, please visit [courts.ca.gov/programs-initiatives/tribalstate-programs/indian-child-welfare-act-icwa/icwa-job-aids](https://courts.ca.gov/programs-initiatives/tribalstate-programs/indian-child-welfare-act-icwa/icwa-job-aids).

The Foster Youth Bill of Rights applies to all youth in foster care and includes specific provisions for AI/AN children whether ICWA applies or not. [fosteryouthhelp.ca.gov/foster-youth-rights/](https://fosteryouthhelp.ca.gov/foster-youth-rights/)

## How can I give the court information about our tribal lineage?

You can download this fillable family tree to provide to the court during a hearing or to your attorney: [courts.ca.gov/documents/ICWA-Familyfillable\\_tree.pdf](https://courts.ca.gov/documents/ICWA-Familyfillable_tree.pdf).

## What if we are not from a federally recognized tribe?

In California, the court can apply “Spirit of the Law” for a Native American family that is not ICWA eligible to provide the same services and protections required by ICWA.

## Can the tribe participate in my child’s court hearings?

Yes. A tribal representative or attorney may represent the tribe in a court hearing. The tribe can intervene at any stage of an ICWA case. If ICWA doesn’t apply, the court can allow the tribe to participate in hearings on a case-by-case basis.

## Will the tribe know that our family is involved with the legal system?

Yes. If there is reason to know that a family is American Indian/Alaska Native, then the tribe, parent, guardian, Indian custodian, and Bureau of Indian Affairs must be notified by the:

- Social worker in a dependency case;
- Probation officer in a delinquency case;
- Parent in a family court case; or
- Court clerk in a probate guardianship case.