

## **Foster Home:**

### **Foster Children**

Foster children are young people from birth to 17 years old in need of a temporary home. These children are in need of loving and caring families to care for them while their biological parents or guardians prepare for them to return home.

### **Foster Home Care**

Foster families provide short term care for children in the child welfare system. Some of the responsibilities of a Foster parent are as follows:

- \* Transporting foster children to scheduled doctor and therapy appointments
- \* Making sure that the foster child is attending school regularly and assisting them in keeping up with their school work.
- \* Engaging the child in traditional Quechan activities to ensure that the child remains connected to their culture.
- \* Other responsibilities will come on a case by case basis.

### **Becoming a Foster Parent**

1. Stop by the ICWA office located in the Social Services building and pick up an application.
2. Complete the application and return it to the ICWA Program.
3. The ICWA staff will call you to set up and complete the home study. All household members 18 years of age and older residing in the home must be in attendance.
4. Complete all paperwork, health screens and criminal background checks. The criminal background checks must be completed and passed by all persons in the home over the age of 18.

### **Foster Parent Requirements**

Foster Parents must meet the following criteria.

- \* One of the parents must be an enrolled member of the Quechan Indian Tribe
- \* Persons of maturity and stability 21 years of age or older
- \* Must be able to show love and patience for children who have been abused or neglected
- \* Your own children are not currently in foster care nor have been in the past
- \* Everyone living in the home 18 years of age and older must be able to pass a Tribal, State and Federal background check. (No record of child abuse, domestic violence or other violent crimes or felonies.)
- \* Couples must be married either traditionally or legally. (Non-married couples will not be considered, Single parents will be considered).
- \* Foster Parents should have sufficient income to meet their family's basic needs.
- \* Foster Parents should be in good physical and mental health
- \* Foster homes must be able to pass a home inspection
- \* Families residing out of state can apply to become foster parents
- \* Three (3) character references must be submitted
- \* Must attend all eight (8) foster parent training sessions. (Coming Soon)

## Jurisdiction:

### **Minimum Standards**

ICWA sets the minimal Federal standards for nearly all Indian child custody proceedings, including adoption, voluntary and involuntary termination of parental rights, and removal and foster care placement of Indian children, but excluding divorce and child delinquency proceedings. ICWA provides that state courts have no jurisdiction over the adoption or custody of Indian children residing within their own tribal reservation. An "Indian child" is "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 applies to a "child custody proceeding" involving an Indian child. The term "child custody proceeding" involves: (i) "foster care placements", where the child has been placed in a foster home, and the parent cannot have the child returned upon demand, but where parental rights have not been terminated; (2) terminations of parental rights; (3) "preadoptive placements", which means placing the child in a foster home after the termination of parental rights, but before or instead of an adoption; and (4) adoptions.

ICWA does not cover child custody hearings during divorce proceedings. Nor does ICWA cover cases of child delinquency where the child has done something that would be considered a crime if done by an adult. Because Indian tribes play a major part in the upbringing of Indian children that is significantly different than that of the parents, the ICWA gives important jurisdictional powers to Indian tribes in order to preserve the Indian culture. Tribal courts hold either [exclusive jurisdiction](#) or [concurrent jurisdiction](#) dependent on several factors.

### **Exclusive tribal jurisdiction**

Under ICWA, an Indian tribe has exclusive jurisdiction over an Indian child who resides or is domiciled within the tribe's land. This includes both reservation land, other tribal lands that are held in trust by the Federal government for the benefit of a tribe or individual, or held by a tribe or individual subject to a restriction by the United States against alienation. The last two describe tribal lands such as those in [Oklahoma](#) that were transferred to individual Indians under various laws. The Indian tribal courts also have exclusive jurisdiction over Indian children who are wards of the court or tribe, regardless of their location.

The first [Supreme Court](#) case dealing with ICWA was the 1989 case [Mississippi Band of Choctaw Indians v. Holyfield \(490 U.S. 30, 109 S.Ct. 1597\)](#). This Court ruled that the ICWA gives the tribal court [exclusive jurisdiction](#) over a case where the parent was domiciled on the reservation, no matter what their own personal desires are in the custody case.

### **Concurrent jurisdiction**

Concurrent jurisdiction is shared jurisdiction between the tribal courts and the state courts. State courts have been severely criticized for ignoring the requirements of the law. In all cases that the tribal court does not have exclusive jurisdiction, they have concurrent jurisdiction. These cases would be custody proceedings involving Indian children that don't reside or are not domiciled on the tribal lands (such as someone born off the reservation and whose parents don't live on the reservation). In these concurrent decisions, the ICWA expresses a preference for tribal jurisdiction in Indian child custody proceedings.<sup>[161](#)</sup>

## **Procedures:**

### **Notification and rights**

In an involuntary proceeding, the party seeking the placement of the child, which is often but not always the state, must notify both the parent(s) and/or Indian custodian(s) and the child's tribe at least 10 days prior to the proceeding. Emergency proceedings may follow state law, but proceedings after that are controlled by ICWA. If the state cannot determine who the parent or the tribe is, then the state is required to notify the [Secretary of the Interior](#). Notification must contain all the requisite information identified in 25 CFR § 23.111 and be sent by registered or certified mail with return receipt requested, and the parties notified have the right to an additional 20 days to prepare prior to the proceeding. Failure to provide such notice can cause a jurisdictional defect that may result in any such proceeding to be overturned. The child may be provided an attorney, and the parents are entitled to one if they are indigent and cannot afford one. If the state does not have provisions for providing indigent parents an attorney, the Secretary of the Interior is to pay the attorney expenses.

All of the parties have the right to examine all documents and reports related to the proceeding.

In a removal case, the party seeking the removal (normally Child Protective Services or similar agency) is required to make active efforts to provide the parent or custodian with remedial and rehabilitative services designed to prevent the removal of the child from the Indian family. The "active effort" requirement also applies even if the party seeking removal is a private party, as in a private party adoption. The child may not be temporarily removed unless there is a likelihood of "serious emotional or physical damage" to the child if they remain in the home.

### **Intervention**

The tribe and parents or Indian custodian of the Indian child have an unqualified right to intervene in a case involving foster care placement or the termination of parental rights. The intervention may be at any time, and not just at the beginning of the proceedings. This right does not apply to pre-adoption or adoption proceedings unless it also includes the termination of parental rights.

### **Transfer to Tribal Court**

#### **Motion to Transfer**

In a foster care or termination of parental rights case where the tribe and the state exercise concurrent jurisdiction, the tribe, either biological parent, or the Indian custodian may move to transfer the case from the state court to the tribal court. The ICWA technically allows transfer to the tribal court at any time in the proceeding, but state courts vary on how they view transfer requests after state court proceedings are well into the adjudication process. In some cases the state will look to the [Adoption and Safe Families Act](#) to deny such a transfer based on that law's time standards. After a motion for transfer has been made, there is a presumption that the tribal court will receive the case and the state court is required to make the transfer unless one of three factors is present.

#### **Objection to Transfer**

A biological parent, whether Indian or non-Indian may object to and veto a proposed transfer of a case to tribal court. A prospective parent, the Indian child, or another party may object, but may not veto a transfer, and those objections would be covered under the "good cause" provision. In the event that a parent vetoes the transfer, the case will remain in state court. This is most commonly seen where one of the parents is non-Indian.

## **Declination by Tribal Court**

The tribal court may decline to accept the transfer of a case from a state court. An example is where the parents move to transfer the case, but the tribe declines to accept jurisdiction due to a lack of funding for programs that would support the child and the parents at the tribal level that are present at the state level. Note that a tribal court may not be a traditional tribunal, but may be any other administrative body empowered by the tribe to act on child custody matters.

## **Good Cause**

A state court may decline to transfer a case for "good cause," but that term is not defined in the ICWA. The BIA has issued an advisory set of guidelines for state courts to use in determining "good cause." While these guidelines are not mandatory, many states have adopted them, and they include:

- No tribal court as defined by the ICWA,
- The proceeding was at an advanced stage when the transfer request was made, and the party asking for the transfer did not request the transfer promptly after receiving notice of the proceeding,
- The Indian child is over the age of 12 and objects to the transfer,
- It would cause undue hardship on the parties and/or witnesses to travel to a tribal court, or
- The parents of an Indian child over the age of 5 are not available and the child has had little or no contact with the tribe.