

*Nebraska  
Indian Child Welfare Act*

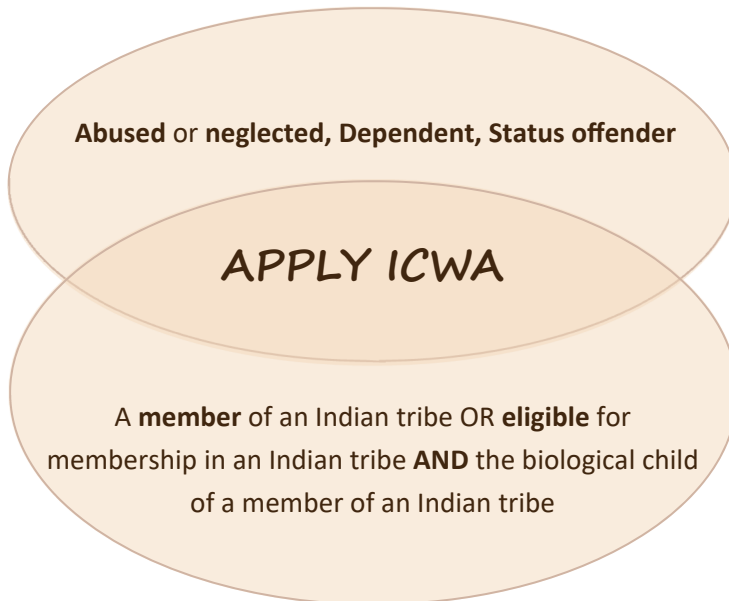
*A Case Management Guide  
August 2023*

# The Law

The federal Indian Child Welfare Act (ICWA) was enacted in 1978. In 1985, Nebraska codified the federal ICWA and in 2015, the Nebraska legislature clarified many ICWA provisions. The law aims to protect Indian children in state child welfare systems and help them remain connected to their families, cultures, and communities. Compliance is mandatory. We apply ICWA once we know, or have reason to know, we are working with an Indian Child.

- Federal Law (1978)—U.S. Code, Title 25, Chapter 21, §§1901, *et seq.*
- Code of Federal Regulations—25 C.F.R. 23 (2016)
- State Law (2015)—Nebraska Revised Statutes, §§43-1501, *et. seq.*

*ICWA applies anytime DHHS becomes  
involved with a child who is:*



# Inquiry

§§ 43-279.01; 43-1514

## When do you or the court ask about membership?

The court and DHHS must inquire about ICWA eligibility at certain intervals to ensure ICWA compliance. This includes:

Both court\* and non-court cases

Whenever a relative, including a parent, is identified

Throughout the case: intake, initial assessment, ongoing

\*Judge required to inquire at the first court hearing

## How might you ask about membership?

**EXPLAIN** that if the child is a member or eligible for membership in a tribe, there could be additional:

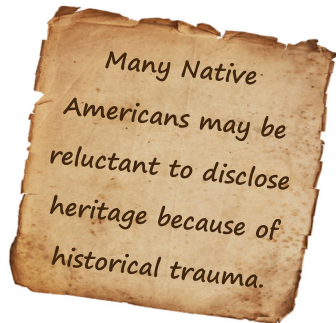
- Protections
- Rights
- Services

**ASK** if the child, or any biological parent, is

- A member in a tribe
- Eligible for membership in a tribe
- Lives on a reservation or has been a ward of tribal court

**ASK** if the child, or any relative of the child, has or may have:

- Any tribal affiliation or Native American ancestry
- Received health services from an Indian Health Center
- Received benefits or assistance from an Indian organization
- Lived on or near a reservation
- Attended a powwow, gourd dance, hand game, sweat lodge or other Native American cultural event or ceremony
- Spoken a Native American language
- Attended a boarding school



# Notice

§§ 43-1505; 43-1505.01; 43-1506

In both non-court and court-involved cases, the tribe(s), parents, and the Indian custodian must receive notice if the CFSS knows or has reason to know that an Indian Child is involved. This notice must include necessary family information for the tribe to make a determination regarding ICWA eligibility and the next court date, if applicable.

	<i>NON-COURT CASE</i>	<i>COURT CASE</i>
<b>WHO</b> do I notify?	1. Tribe(s) 2. Parents 3. Indian Custodian	
<b>HOW</b> do I notify?	<ul style="list-style-type: none"> <li>• Letter on N-FOCUS (send registered mail, return receipt requested)</li> <li>• Telephone OR</li> <li>• Fax OR</li> <li>• Email</li> </ul>	<ul style="list-style-type: none"> <li>• Letter on N-FOCUS (send registered mail, return receipt requested)</li> </ul>
<b>WHEN</b> do I notify?	Within 5 calendar days of DHHS offering services	As soon as there is a reason to know ICWA applies

### *Indian Custodian:*

*Any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom the temporary physical care, custody, and control has been transferred by the parent of such child.*

The CFSS will have reason to know that a child is an Indian child if:

- Any person informs the CFSS that the child is an Indian child or discovered information indicating the child is an Indian child;
- CFSS is informed that the domicile or residence of the child, child’s parent, or child’s Indian custodian is on a reservation or in an Alaskan village;
- The CFSS is informed that the child is or has been a ward of a Tribal Court; or
- The CFSS is informed that either parent or the child possesses an identification card indicating membership in an Indian tribe.

# Active Efforts

§§ 43-1503(1); 43-1505(4); 25 CFR 23.2

## What are active efforts?

Active efforts means providing case management that is:

- 1) more than reasonable efforts to preserve and reunify the family;
- 2) culturally relevant;
- 3) tailored to the facts and circumstances of the case;
- 4) conducted in partnership with the Indian child and the Indian child's parents, extended family members known to DHHS, Indian custodian and Tribe; and
- 5) actively assisting with accessing or developing resources necessary to satisfy the case plan.

## When are active efforts required?

Active efforts are required as soon as CFSS knows or has reason to know that ICWA applies.

Provide active efforts report at  
**EVERY COURT HEARING**  
and send to the Tribe within **3 DAYS** of filing



Active Efforts include, but are not limited to:

- Identifying and engaging Tribe's ICWA Specialist
- Exhausting tribally appropriate family preservation services
- Asking family and Tribe's ICWA Specialist about traditional and customary support and services provided by:
  - ◊ Tribe
  - ◊ Extended family or other Tribal members if extended family unavailable
- Informing and actively assisting family members in accessing resources (housing, financial, transportation)
- Promoting and monitoring family's access to and progress in culturally appropriate resources provided by extended family, Tribe, tribal community, or Indian caregiver

# Active Efforts

The chart below provides examples of how to distinguish what is considered a reasonable effort and what could be considered as an active effort. This list is not exhaustive. Active efforts are meant to creatively provide services and support that are tailored to the unique strengths, needs, and culture of the family.

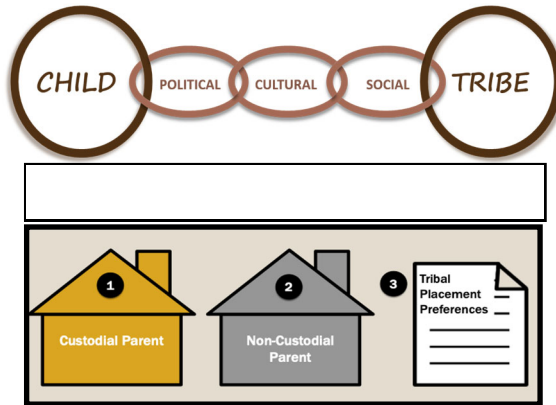
Reasonable Efforts	Active Efforts
	If a child is eligible for membership, assisting the family with the enrollment process
Creating a safety network	Reaching out to relatives and tribal members to participate in the safety network
	Monthly phone and email contact with the Tribal ICWA Specialist to receive input and provide updates even if the tribe does not respond
Asking parents who their informal supports are.	Working with extended family members to provide Informal support for the family
Connecting family to appropriate services	Actively assisting the parents to overcome barriers to obtain such services (i.e. transportation, scheduling, financial)
Placing with appropriate family member	Providing resources/services to relatives to make them an appropriate placement
Placing siblings together when possible	Buying additional beds or bunk beds so the siblings can be placed together
Holding family team meetings	Including ICWA Specialist in the scheduling of the family team meeting and allowing flexibility for attendance (ie phone or video)
Arrange supervised parenting time	Secure or provide transportation to and from supervised parenting time for both parents
Arrange a parent partner for mother to work with	Work with tribal representative to identify a tribal member or tribal elder to serve as a parent partner
Payment for mother's short term residential treatment program	Mother was offered culturally relevant treatment programs through the local Indian Health Center but chose to attend a different program
Home studies for possible placement providers	Arranging visitation and providing hotel and gas vouchers for relatives to establish or maintain family connections for concurrent planning
	Developing a cultural plan specific to the child with input from the biological family and tribe
	Completing a Family Finding Process

# Placement Guidelines

§§ 43-1503(2); 43-1508

## Best Interests for Out-of-Home Placement

Placement should reflect the **unique values** of the **child's Tribal culture** and be able to assist the child in establishing and developing the political, cultural, and social relationship with the child's Tribe or Tribes and tribal community.



If a Tribe does not have its own set of preferences, placements follow standards set forth in statute. A tribe can have its own definition of what is considered extended family.

## Foster Care or Preadoptive Placement Preferences

When considering foster placement for children covered by ICWA, placements must first:

- Be the least restrictive setting
- Consider and meet the child's special needs, if any
- Be within a reasonable proximity to the child's home

Preferences given in descending order:

1. A member of the Indian child's extended family
2. Other members of the Indian child's Tribe or Tribes
3. A foster home licensed, approved, or specified by the Indian child's Tribe or Tribes
4. An Indian foster home licensed or approved by an authorized non-Indian licensing authority
5. A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child's Tribe or Tribes
6. An Indian facility or program for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to the Indian child's needs
7. A non-Indian facility or program for children approved by an Indian tribe

# Placement Guidelines

§§ 43-1503(2); 43-1508

There are also placement guidelines in any adop. ve placement of an Indian child, which apply unless the tribe has its own placement preferences.

## ***Adoptive Placement Preferences***

Preferences given in descending order:

1. A member of the Indian child's extended family
2. Other members of the Indian child's Tribe or Tribes
3. Other Indian families
4. A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child's Tribe or Tribes

## ***Deviation from Placement Preferences***

Any party can present to the court by clear and convincing evidence good cause to deviate from preferences:

- Parent preference
- Child preference if the child is at least 12
- Extraordinary physical or emotional needs of child (need expert testimony)
- Unable to comply with preference after diligent search

## ***Cultural Plan***

A cultural plan is required if:



1. Child is placed in non-Indian home **OR**
2. Child is placed in an Indian home not affiliated with the child's Tribe.

A Cultural Plan contains strategies to promote connectedness to the child's extended family and tribal members and their customs and culture. Cultural plans will be reviewed and updated annually or at the time of a placement change.

### **PRACTICE TIP!**

*Communicate with the ICWA Specialist and child's Tribe about what is their definition of "family." A tribe can have its own definition of what is considered extended family.*

### **PRACTICE TIP!**

*Develop a plan with Tribe's ICWA Specialist, foster family, parent/custodian, family, and child!*



# Tribe's ICWA Specialist

## *What to ask the Tribe's ICWA Specialist*

### **ACTIVE EFFORTS**

- Do you believe active efforts have been provided?
- What services may be available to the child(ren) and family through your Tribe? What culturally relevant services would you like DHHS to seek for this family?

### **NOTICE**

- Did you receive the ICWA notice about the child(ren) involved in this case?
- Do you need additional information to verify eligibility?

### **TRIBAL INVOLVEMENT**

- Do you need more information to make a determination about intervention or transfer of jurisdiction?

### **PLACEMENT**

- Does the Tribe have its own placement preferences?
- Do you know of any relatives or other tribal members who may be willing and available to be considered for placement?
- Do you have information we should include in a cultural plan?
- Are you or is someone in your Tribe able to assist us with developing a cultural plan?

### **QUALIFIED EXPERT WITNESS (QEW)**

- Do you or does someone in your office serve as a QEW for your Tribe's ICWA cases? Or, does the Tribe have a policy about QEW testimony?
- Does your Tribe have a tribal resolution identifying who may serve as a QEW for your Tribe's ICWA cases?
  - ⇒ May the County Attorney contact those QEWs directly or should requests for QEW testimony go through your office?

### **GENERAL COMMUNICATION**

- What is the best way to contact you with updates and to provide case documents — phone, email, fax, or mail?
- Do you want to participate in meetings by telephone? If you cannot participate by phone, may I send you an email update about family team meetings, school meetings and other case meetings?
- Do you know how to participate in court hearings by phone? (Provide contact information for the Judge's bailiff or the clerk of courts.)

# Tribe's Response to Notice

As sovereign nations, tribes have sole authority to determine membership within the tribe. After you provide the required notice to a tribe, there are four possible responses you might receive from the tribe.

**Note: Tribe is not required to respond to notice.**

TRIBE'S RESPONSE	DOES ICWA APPLY?	COULD ICWA APPLICABILITY CHANGE?
Child is a member	YES	NO
Child is eligible for membership and parent is a member	YES	NO
Child is eligible for membership but parent is not a member of the child's Tribe	MAYBE	YES <ul style="list-style-type: none"> <li>• Parent could be a member in a different tribe</li> </ul>
Child is not a member nor eligible for membership	NO	YES <ul style="list-style-type: none"> <li>• Child or parent could be a member in a different tribe</li> <li>• Tribe could change membership requirements</li> <li>• Child or parent could become a member at a later date</li> </ul>
No response regarding child's membership nor eligibility	MAYBE	YES <ul style="list-style-type: none"> <li>• All Cases (Non-Court and Court)               <ul style="list-style-type: none"> <li>⇒ Send email to <a href="mailto:dhhs.icwa@nebraska.gov">dhhs.icwa@nebraska.gov</a> monthly</li> <li>⇒ Contact Tribe's ICWA Specialist monthly</li> </ul> </li> <li>• Court               <ul style="list-style-type: none"> <li>⇒ Share status with county attorney and DHHS legal</li> </ul> </li> </ul>

**PRACTICE TIP!**  
 If family provides information or CFSS has reason to know the child is an Indian child, DHHS must comply with ICWA pending tribe's or tribes' response to notice..

# Tribal Involvement

§§ 43-1504; 43-1506

## How could tribes be involved?

Tribes have five options when an Indian child has been identified. In all cases, the Tribe *may* participate in or consult on family team meetings and other case planning meetings. The Tribe *may* also identify or provide culturally relevant services.

### 1. NO TRIBAL INVOLVEMENT

Tribes are not required to participate in services or proceedings.

### 2. TRIBAL INVOLVEMENT

The Tribe may participate, consult, or provide services in both non-court and court-involved cases.

### 3. INTERVENTION

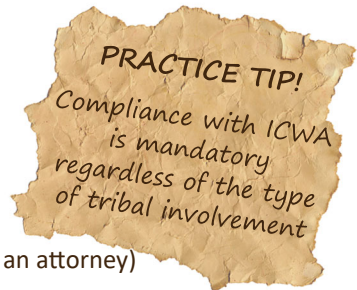
The Tribe could become a party to the juvenile

#### When is intervention for the child's tribe(s) de

- Never

#### What are the Tribe's rights?

- Call witnesses
- Present recommendations
- Have a representative present (may not be an attorney)
- Participate by telephone or live audiovisual means



.....  
*When a Tribe selects any of the options above,  
DHHS is responsible for case management.*  
.....

WHEN CAN THE TRIBE BE INVOLVED?  
ANY stage of the case.



# Tribal Involvement

## 4. EXCLUSIVE JURISDICTION

The tribal court is the only court that has the right to hear the case.

**When does a tribe have exclusive jurisdiction?**

1. Indian child is a ward of tribal court **OR**
2. Indian child resides or is domiciled on a reserva. on

## 5. TRANSFER

The juvenile court sends the case to the tribal court.

**Who can request a transfer to tribal court?**

- Tribe
- Either parent or Indian Custodian

**What qualifies as good cause for the juvenile court to deny transfer?**

- No tribal court to hear case
- Other grounds determined on a case-by-case basis

**When can a case be transferred?**

- Any stage of the case

**When is transfer denied?**

- Either parent objects
- Tribal court declines
- The juvenile court finds good cause not to transfer

### **PRACTICE TIP!**

*Whenever transfer is possible, contact DHHS Legal and DHHS ICWA Program Coordinator*

*If exclusive jurisdiction or tribal court accepts transfer of the case, the Tribe is responsible for case management and DHHS is no longer involved.*

NOTES:

# Qualified Expert Witness (QEW)

§§ 43-1503 (15); 43-1505 (5) & (6)

## What is a QEW?

An expert witness testifies that the “continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.”

## Who qualifies as a QEW?

In identifying a QEW, specific qualifications should be considered. Preference is given to people who are **experienced and/or knowledgeable** about the **social and cultural standards and childrearing practices** within the Indian child’s Tribe. As a last resort, a professional with substantial education in his or her specialty may serve as a QEW.

## How is a QEW identified?

The Tribe’s ICWA Specialist may know if the Tribe has identified tribal members or other individuals to serve as QEWs in ICWA cases. You should share any names and contact information with the county attorney immediately.

## When is a QEW required?

- Child Custody Proceeding
- Termination of Parental Rights

### PRACTICE TIP!

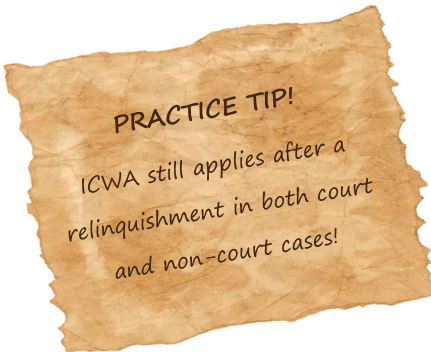
*It is ultimately the responsibility of the county attorney to secure a QEW, but the CFSS can provide information to assist the county attorney. A CFSS can communicate with the QEW and provide requested information and documentation.  
Reach out to your supervisor and DHHS Legal.*

# Relinquishment

§ 43-1506

## Requirements

1. In writing
2. Executed before a judge
3. Certified by a judge that terms and consequences were explained and understood
4. Certified by a judge that hearing was in a language the parent understood
5. Child is at least 10 days old



## Differences for ICWA Cases

- Parent may withdraw relinquishment for *any* reason before the decree or order of final termination
- Parent may withdraw relinquishment if obtained through *fraud or duress* for up to 2 years after adoption decree
- Separate notice of a final adoption order must be sent to the Department of the Interior



NOTES:





# Resources

## Nebraska Resource and Referral System (NRRS)



[nrrs.ne.gov](http://nrrs.ne.gov)

### Specific provider or service

- Enter search terms in the “What can we help you find?” section
- 
- Search by 1) selecting the location of services, 2) entering a keyword or name of provider, or 3) selecting the type of service(s) needed. Then look for the buffalo symbol  to identify the culturally appropriate services.

### Culturally appropriate services by location

- Click on ICWA
- 
- Enter the loca. on and click search
  - All of the services are culturally appropriate and identified with the buffalo symbol 

## Additional ICWA Resources

### Bureau of Indian Affairs

#### Department of the Interior

BIA - Great Plains Regional Office

Human Services - MC-303

115 4<sup>th</sup> Avenue SE, Suite 400

Aberdeen, SD 57401

Telephone: (605) 226-7343 | Fax: (605) 226-7446

<https://www.bia.gov/regional-offices/great-plains>

<https://www.bia.gov/bia/ois/dhs/icwa>



### Code of Federal Regulations

#### Indian Child Welfare Act

[www.federalregister.gov/documents/2016/06/14/2016-13686/indian-child-welfare-act-proceedings](http://www.federalregister.gov/documents/2016/06/14/2016-13686/indian-child-welfare-act-proceedings)



### BIA Guidelines for Implementing the ICWA

[www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf](http://www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf)

### National Indian Child Welfare Association

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

### Native American Rights Fund

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

### NDHHS Public Site

[dhhs.ne.gov/Pages/Indian-Child-Welfare.aspx](http://dhhs.ne.gov/Pages/Indian-Child-Welfare.aspx)

### Nebraska Indian Child Welfare Coalition (NICWC)

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

## FOR ADDITIONAL INFORMATION CONTACT

General ICWA Inquiries: <a href="mailto:dhhs.icwa@nebraska.gov">dhhs.icwa@nebraska.gov</a>	
<b>Amanda Docter</b> DHHS Tribal Program Manager	<a href="mailto:amanda.docter@nebraska.gov">amanda.docter@nebraska.gov</a>
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<b>Jackie Gloystein</b> DHHS ICWA Program Specialist	<a href="mailto:jackie.gloystein@nebraska.gov">jackie.gloystein@nebraska.gov</a>
<b>Christine Henningsen</b> CCFL Trainer	<a href="mailto:chris.ne.henningsen@unl.edu">chris.ne.henningsen@unl.edu</a>
<b>Jill Holt</b> NICWC Trainer	<a href="mailto:jill@nicwc.org">jill@nicwc.org</a>



In Partnership  
Nebraska DHHS and UNL CCFL

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