

Top 10 ICWA Myths Fact Sheet

A publication of the National Indian Child Welfare Association

Dispelling Myths About the Indian Child Welfare Act of 1978 (ICWA)

Myth 1: ICWA was overturned by the U.S. Supreme Court in *Adoptive Couple v. Baby Girl*.

False. *This decision did not overturn ICWA.* ICWA still remains law and still applies to private adoptions and child welfare cases. However, the decision limited ICWA's protections for *unwed fathers without custody* when their children are *voluntarily placed for adoption* and changed how ICWA's placement preferences are applied in *voluntary adoptions*.

Myth 2: ICWA is a race-based law.

False. ICWA, like other federal Indian legislation, is based on the **unique political status of tribes and Indian people**, not race. This status—established by Congress, the Constitution, statutes, and treaties—has been affirmed and reaffirmed by U.S. Supreme Court decisions for 200 years.

Myth 3: ICWA applies in divorce proceedings and custody battles between two biological parents.

False. ICWA only applies in **child welfare proceedings** and **adoption proceedings**.

Myth 4: ICWA applies to all children who identify as Native American.

False. ICWA covers any child who is either a **member** of a federally recognized tribe/Alaska Native village or is **eligible for membership** in a federally recognized tribe/Alaska Native village and is the biological child of a member of a federally recognized tribe/Alaska Native village.

Myth 5: ICWA ignores the best interests of Indian children.

False. ICWA is designed to promote the best interest and unique needs of the Indian child. ICWA is not just considered good practice for Native children by experts and practitioners, but the principles and processes ICWA embodies were recently described by 18 national child welfare agencies as the **"gold standard" for child welfare practice for all children**.

Myth 6: ICWA favors Indian family members over non-Indian family members.

False. Nowhere in ICWA does it indicate placement preferences favor placement with a Native relative over placement with a non-Native relative.

Myth 7: ICWA only requires efforts to protect Indian children after they are removed from their home.

False. ICWA requires something called **"active efforts"**. This means that the state must work closely with the family to ensure they receive any services necessary **before a child is removed** to prevent removal from the home, or—if removal was necessary—they receive services and support so that the child can be safely returned.

Myth 8: ICWA applies only to involuntary proceedings.

False. ICWA was designed to also protect Indian children in voluntary proceedings. While some of the provisions of ICWA do not apply in voluntary proceedings, **many important provisions still apply, including those provisions that speak specifically to procedures for voluntary adoptions and foster care placement.**

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Myth 9: ICWA funnels Indian children into placements on reservations that are bad places for children.

False. ICWA has no such requirements regarding reservations. Unfortunately, issues of child abuse and neglect—and the need to place children into foster care that result—are a nationwide problem, and not relegated to any specific community. In fact, NPR recently reported that when it comes to child maltreatment, **“statistically, tribes are no different from many other communities nationwide.”**

Myth 10: ICWA was important in the 1970s but it’s no longer needed now.

False. ICWA still provides much-needed protections for Indian children and families. Statistics tell us that Indian children today face many of the same issues as when ICWA was enacted.

The Indian Child Welfare Act of 1978: Then & Now

ICWA Then

- Congress passed ICWA in response to the fact that nearly one in three Indian children was removed from their homes by both public and private agencies.
- When children were removed, they almost always were placed outside of their culture and tribal community, with devastating consequences.

ICWA Now

- Native children are removed from their homes at 2–3 times the rate of their white counterparts and often are not placed with relatives or other Indian families, even when such placements are available and appropriate.
- In private adoption systems where little regulation is present, Indian children can face practitioners who focus on financial incentives or are operating from narrow understandings of what the law requires.
- Native families are the most likely to have children removed from their homes as a first resort, and the least likely to be offered family support interventions intended to keep children within the home.

These abusive practices have decreased since the passage of ICWA, but are still widespread today.



NICWA

National Indian Child Welfare Association
Protecting Our Children • Preserving Our Culture

NICWA works to support the safety, health, and spiritual strength of Native children along the broad continuum of their lives. We promote building tribal capacity to prevent child abuse and neglect through positive systems change at the state, federal, and tribal level.

Our Vision Every Indian child must have access to community-based, culturally appropriate services that help them grow up safe, healthy, and spiritually strong—free from abuse, neglect, sexual exploitation, and the damaging effects of substance abuse.

Our Mission NICWA is dedicated to the well-being of American Indian and Alaska Native children and families.

To learn more about NICWA, visit www.nicwa.org.