

Frequently asked questions about the Indian Child Welfare Act (ICWA) notice

Q: What is the Indian Child Welfare Act?

- A. The Indian Child Welfare Act, also referred to as ICWA, is a federal law that strives to keep Indian children with Indian families. Its passage in 1978 was in response to compelling evidence of the large number of Indian children removed from their families by public and private agencies and placed with non-Indian families.

Q: In what types of proceedings is an ICWA notice required?

- A. Any involuntary proceeding in a state court where it is known, or has reason to know, that Indian children are involved and foster care placement or termination of parental rights is sought.

Q: Who must receive notice?

- A. Parent/s, Indian custodian, and Indian children's tribe/s; copies of notices must be sent to the regional office of the Bureau of Indian Affairs (BIA).

Q: When should notices be sent?

- A. Send ICWA notices when the court knows, or has reason to know, that Indian children are involved in a child welfare case. No foster care placement or termination of parental rights proceedings occur until at least 10 days after receipt of notice by parent/s, Indian custodian, Indian children's tribe/s, and BIA; upon request, they have the right to be granted up to 20 additional days from the date ICWA notice was received to prepare for a hearing.

Q: How is an ICWA notice served?

- A. Send ICWA notices by registered or certified mail with return receipt requested. When the return receipt (green card) is returned to agency, best practice is to file in the Minnesota Government Access (MGA) system. It is important that all green cards are signed and dated by person being served, as the date signed determines if an agency is compliant with notice requirements of the ICWA.

Q: What happens if the green card is not dated?

- A. Agency should date stamp green cards when they come in, which assists with determining when notice was served. Alternatively, when agency staff sends out notices, the U.S. Postal Service (USPS) provides a tracking number used to acquire detailed delivery information by USPS online reporting. This alternative tracking number does not meet the ICWA notice requirement.

Q: What if notice is returned to agency with *return to sender* or *address unknown*?

- A. Agency should make multiple attempts to locate party being served; if service is not possible after several attempts, efforts should be documented and presented to the court so a determination can be made if diligent efforts were made to locate party.

Q: What if tribal affiliation is unknown?

- A. Send ICWA notice to the local BIA regional office by registered or certified mail with return receipt requested, or by personal delivery requesting assistance, including information required in the notice. Upon receipt of notice, the BIA will make reasonable efforts to locate and notify children's tribe. After receipt of notice, the BIA has 15 days to notify, and if within that period it is unable to verify that children meet criteria of Indian status, BIA will inform the court and state agency how much time, if any, will be needed to complete verification or a search.

If tribal nation is known but specific tribe is not, send the notice to all known federally recognized tribes in that nation. For example, if a parent says they are of Cherokee heritage, but do not know the specific tribe, send ICWA notices to all three federally recognized Cherokee tribes.

Resources

- For questions about ICWA/MIFPA email: DHS.ICWA.MIFPA@state.mn.us
- [Indian Child Welfare Act Notice](#)
- [Indian Child Welfare Act/Minnesota Indian Family Preservation Act Genogram](#)
- [Indian Child Welfare Landing Series](#)

Relevant state and federal laws and guidelines

- Indian Child Welfare Act, 25 U.S. Code (U.S.C.) 1901 – 1923
- Bureau of Indian Affairs 2016 Regulations for Indian Child Welfare Act Proceedings, 25 Code of Federal Regulations (CFR), part 23
- BIA 2015 Guidelines for State Courts and Agencies in Indian Child Custody Proceedings