NATIONAL CENTER TO ADVANCE PEACE
for Children, Youth, and Families



Determining ICWA Applicability

A Step-by-Step Guide

TOOL 2

Does ICWA Apply to the Survivor I am Working With?

A step-by-step guide to assess whether ICWA applies to child welfare or child custody[1] cases when working with survivors of domestic violence. This is an educational reference, not legal advice. When in doubt, consult with a tribal advocate, Indian child welfare attorney, or contact the child's Tribe directly.

STEP 1: Type of Proceeding

Is there a formal child custody proceeding in state court?

This includes: foster care placement, termination of parental rights, pre-adoptive or adoptive placement. ICWA does NOT apply to: divorce/custody between two parents, juvenile delinquency, or cases in tribal court.[2]

Note: ICWA can apply even without physical removal. If the court issues an order (such as protective supervision) that restricts the parent's ability to regain full custody on demand, this counts as a formal child custody proceeding under ICWA; the child does not need to have left the home.

✓ **YES:** Continue to Step 2.

✗ **NO:** ICWA likely does not apply. If the proceeding type changes, re-assess.

STEP 2: Age & Marital Status

Is the child under 18 years old and unmarried?

Both conditions must be true. ICWA does not apply once a child turns 18 or if the child is married.[3]

✓ **YES:** Continue to Step 3.

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[1] *Custody" in this tool refers to ICWA's specific legal term — child welfare agency involvement, foster care, or termination of parental rights. It does not refer to custody disputes between parents in divorce or family court, which ICWA does not cover.*

[2] 25 U.S.C. § 1903(1)

[3] 25 U.S.C. § 1903(4)

✗ **NO:** ICWA does not apply.

STEP 3: Tribal Enrollment or Eligibility

Is the child enrolled in, or eligible to be enrolled in, a federally recognized Tribe?

Enrollment is not required. Eligibility is enough. A child is eligible if they have a biological parent who is a member of a federally recognized Tribe.

Important: ICWA only applies to federally recognized Tribes[4], meaning Tribes that have a formal government-to-government relationship with the United States. There are hundreds of Indigenous Tribes and communities in the U.S. that are state-recognized or unrecognized by the federal government; ICWA's protections do not extend to them, even though these communities are no less real or valid. This surprises many people, including many advocates, so it's worth confirming status rather than assuming.

You can check a Tribe's federal recognition status against the Federal Register's list of federally recognized Tribes, or by asking the Tribe's enrollment office directly.

Ask the survivor:

- Do you, or the child's other parent, have tribal heritage?
- If so, is that Tribe federally recognized?
- Are you, or is the child's other parent, enrolled in that Tribe — or eligible to be?

✓ **YES / LIKELY YES:** Continue to Step 4.

✗ **NO:** ICWA likely does not apply. Verify against the BIA's list of federally recognized Tribes at bia.gov.

NOT SURE: Investigate further. Ask about AI/AN ancestry on either parent's side. Contact the Tribe's enrollment office or the BIA at (202) 513-7650. If

[4] 25 U.S.C. § 1903(4); 25 C.F.R. § 23.2.

there is any reason to believe ICWA may apply, treat the case as ICWA-covered until confirmed otherwise.

STEP 4: Parent's Tribal Membership

Does the child have a biological parent who is a member of a federally recognized Tribe?

The parent doesn't need to be the one you are working with; either biological parent qualifies. Tribal membership is determined by the Tribe, not the state.[5]

✓ **YES:** **ICWA APPLIES.** Use our ICWA Action Checklist to track progress.

✗ **NO:** ICWA likely does not apply based on available information.

NOT SURE: Treat as ICWA-eligible until confirmed otherwise. Contact the Tribe or BIA immediately. Don't wait for certainty, ICWA's protections apply from the moment of reasonable belief.

Resources: NICWA ICWA Resources | BIA ICWA Page | Child Welfare Information Gateway

[5] 25 U.S.C. § 1903(4); Brackeen v. Haaland (2023).

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