

Children's Cases in Tribal Court (and ICWA Basics)



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Types of Children's Cases Heard in Tribal Courts:



1. Adoptions
2. Child Custody
3. Child Protection
4. ICWA

Adoptions



Tribes in Alaska have been doing traditional child adoptions for centuries.

Tribal Courts can issue Orders of Adoption. The State of Alaska should issue a new Birth Certificate

“The Kaltag court’s adoption orders are entitled to full faith and credit, and the Bureau shall grant said status to the adoption order by issuing ...a substitute birth certificate.”

- Judge Burgess- Kaltag Case, Feb. 2008
 - The State of Alaska appealed this case to the US Supreme Court.

Child Custody



Tribal courts may be asked to settle custody disputes between parents or to formalize child custody agreements between parents.

Because of *John v. Baker*, Tribes in Alaska have clear jurisdiction over custody disputes between parents of tribal children

“We hold that Alaska Native tribes, by virtue of their *inherent powers as sovereign nations*, do possess that authority...

Tribes derive the power to adjudicate internal domestic matters, including child custody disputes over tribal children, from a source of sovereignty independent of the land they occupy.” -*Alaska Supreme Court*

Child Protection



For many years Tribes in Alaska have been involved protecting tribal children through tribal courts.

- Child protection cases are cases where children may be neglected, abandoned, or subject to physical, emotional, or sexual abuse.
- These cases usually begin with someone petitioning the tribal court about a particular child's situation.
- The tribal court may decide to hold an emergency hearing if the child is in immediate danger or hold a regular hearing if immediate danger is not present.

Child Protection



“...tribes retain concurrent jurisdiction to legislate, to initiate, and to adjudicate CINA cases in tribal courts. There is nothing in ICWA that prohibits or limits tribes from passing laws that would allow the tribe to initiate CINA cases in tribal court.”

- Alaska Superior Court- Tanana Case, May 2007
 - The State of Alaska appealed this case to the Alaska Supreme Court

Child Protection



- The Tribal Court may decide to take the child into the legal custody of the Tribe and place the child into a safe home, or keep the child in the parents' home with certain conditions.
 - Conditions are set by the Tribal Court, and the Judges should work with local service providers in order to make the most of available resources.
- Child protection cases can lead to placing a child in a temporary foster home. Tribes may set guidelines for certifying or licensing tribal foster homes

ICWA: The Basics



The Indian Child Welfare Act (ICWA) was passed by Congress in 1978 in an attempt to remedy a long-standing problem of Native children being removed from their homes and placed in non-Native homes.

ICWA places restrictions on State Court cases involving Alaska Native children.

ICWA: The Basics



The Act requires state courts to follow three steps in ICWA cases:

1. ICWA requires a state court hearing a ‘child in need of aid’ custody case or an adoption case concerning a Native child, to notify the tribal government of the case.
 2. The state court is required to offer the tribal government the opportunity to intervene as a party in the case. Intervening means that the tribe has the legal right to be a party to a case and give advise to the state court on placement.
 3. The Tribal government can requested that the case be transferred to the tribal court, and the state court is generally required by ICWA to transfer the case to the tribal court.
- If the case stays in State Court, ICWA imposes a **“placement preference”** that generally says Native children should be placed into Native homes

ICWA: The Basics



Why can there be a Denial of Transfer of Jurisdiction

1. The Tribe Declines jurisdiction
2. An objection by the parents of the child to transfer the case to the Tribe
3. The State finds “Good Cause” not to transfer jurisdiction.

ICWA: The Basics

What is “Good Cause”



1. The absence of an active Tribal Court.
2. An objection by the child (if over 12).
3. The child is over 5, the parents are not available and the child has had little or no contact with the Tribe or members of the Tribe.
4. Not a timely request, proceedings are at an advanced stage.
5. The evidence necessary to decide the case could not be presented in Tribal Court without undue hardship on the witnesses or parties.

Remember:
ICWA only applies in State Court!



Tribal courts handle child protection matters, but they are not 'ICWA cases' because the ICWA law applies only to state courts.

Remember:
ICWADoes Apply to:

- Foster care placement
- Termination of Parental Rights
- Pre-adoptive placement
- Adoptive placement

...in State court





Remember:
ICWA Does Not Apply to:

- Juvenile delinquency cases
- Divorce or Custody disputes between parents

..or any case brought before Tribal court

In Many Cases Several Tribes can
have Jurisdiction:

Tribes should have their own rules
for sharing jurisdiction with other
tribes



Tribes can adopt written laws similar to those in the Indian Child Welfare Act, or tribes may adopt laws according to their own traditional values and follow their own best judgment in protecting the interest of their children.

Tsin'aen...



Thank You