

Module 1: Overview of the New Rule

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- Background
- ICWA The Statute
- Development of the Rule
- New Rule Topics
- Definitions
- Effective Date
- How to Contact Tribe

This module will help you understand the context for, and give you foundational information on, ICWA and the rule.

Module 1: Overview of the New Rule Background

- Framework for U.S. Government & Tribal Relations
 - Tribes are sovereigns who pre-dated establishment of the U.S.
 - Federal Government has:
 - A government-to-government relationship with Tribes
 - A trust relationship with Tribes
 - As government, U.S. recognizes the sovereignty of Tribal governments
 - As trustee, U.S. must protect Tribal children

Module 1: Overview of the New Rule Background

- Indian Child Welfare Act (ICWA)
 - Federal law passed by Congress in 1978
 - 25 U.S.C. § 1901 *et seq.*
 - Established minimum Federal standards for State child custody proceedings involving an “Indian child”



Module 1: Overview of the New Rule Background

- Why was ICWA enacted?
 - State and private agencies were:
 - Removing Indian children from their homes and communities at a higher rate than non-Indian children
 - Placing them in non-Indian homes
 - Congress concluded, based on extensive fact-finding:
 - Cause included cultural biases & ignorance of Native cultural and social standards
 - Effects on children, families, and Tribes are negative
 - As trustee, U.S. must protect Tribal children

Module 1: Overview of the New Rule ICWA The Statute

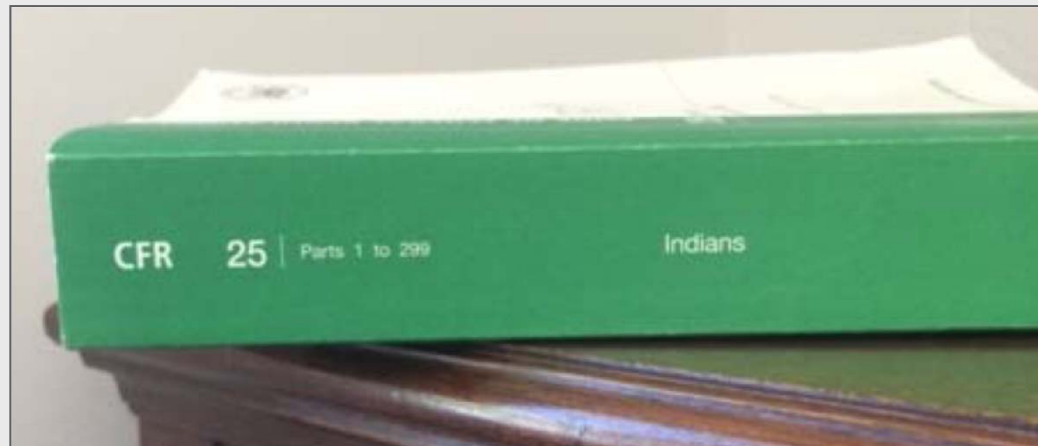
- ICWA addressed the issues by:
 - Applying certain requirements to child-custody matters involving an “Indian child”
 - Recognizing Tribal jurisdiction when an “Indian child” is involved
 - Establishing minimum standards for voluntary proceedings:
 - To ensure consent is voluntary
 - To allow revocation of consent under certain circumstances (continued on next slide)

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- ICWA addressed the issues by (cont'd):
 - Establishing minimum Federal standards for involuntary proceedings
 - Limiting when an Indian child can be removed
 - Allowing foster care and TPR only if certain standard of evidence met and qualified expert witness testifies
 - Requiring active efforts to prevent involuntary removal and reunify the Indian family
 - Where foster-care placement or adoption are appropriate, requiring the child be placed with “preferred placements,” such as extended family

Module 1: Overview of the New Rule ICWA The Statute

- ICWA authorized the Department of the Interior to promulgate regulations
 - The Department promulgated limited ICWA regulations in 1979 and in 1994
 - The Department addressed other areas of ICWA compliance through voluntary “best practice” Guidelines published in 1979 and 2015



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Development of Rule

- Why this rule? Why now?
 - In 30+ years since ICWA enacted:
 - Indian children are **still** removed from their homes and communities at a disproportionately higher rate than other children
 - Implementation of ICWA by States has been inconsistent
 - Different interpretations from State to State
 - Different interpretations even from court to court within States

Module 1: Overview of the New Rule Development of Rule

- Why this rule? Why now? (continued)
 - The rule implements the substantive & procedural standards of ICWA (the Act) to:
 - Provide a uniform Federal standard
 - Promote nationwide consistency
 - Provide clarity that will reduce litigation and produce better outcomes for children

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New Rule Topics

- Final Rule published at 81 Fed. Reg. 38778 (June 14, 2016).
- Adds a new subpart (Subpart I) to 25 CFR 23
 - Identifying Whether ICWA Applies
 - Verifying Whether Child is an “Indian child” and identifying Child’s Tribe
 - Notice of Proceedings
 - Procedures for Transfer to Tribal Court
 - Adjudication of Involuntary Placements, Adoptions, or TPRs
 - Placement Preferences
 - Voluntary Proceedings
 - Post-Trial Rights and Recordkeeping

Module 1: Overview of the New Rule Definitions

- Significant new definitions (addressed in detail in later modules)
 - Active Efforts
 - Continued custody
 - Custody
 - Domicile
 - Status offenses
 - Upon demand
 - Voluntary proceeding
- Revises several other existing regulatory definitions

Module 1: Overview of the New Rule Effective Date

- The rule is effective on **Monday, December 12, 2016**
 - Affects all Indian child-welfare proceedings initiated after **Monday, December 12**
 - None of the provisions of this rule affects a proceeding initiated prior to Monday, December 12, **but note:**
 - The rule applies to any subsequent proceedings in the same matter or subsequent proceedings affecting the custody or placement of the same child initiated after Monday, December 12; and
 - Some regulatory requirements are statutory and so apply via the statute even before December 12.

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How to Contact a Tribe

- Contacting Tribes
 - Find the Tribe’s designated Tribal agent for service of notice
 - BIA publishes list each year in the Federal Register each year
 - The list is also available at www.bia.gov under the “Office of Indian Services” and “Division of Human Services”

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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**Indian Child Welfare Act; Designated
Tribal Agents for Service of Notice**

AGENCY: Bureau of Indians Affairs,
Interior.

ACTION: Notice.

SUMMARY: The regulations implementing the Indian Child Welfare Act provide that Indian Tribes may designate an agent other than the Tribal chairman for service of notice of proceedings under the Act. This notice includes the current

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How to Contact a Tribe

- Contacting Tribes (cont'd)
 - For a Tribe without a designated Tribal agent for service of notice:
 - Contact the Tribe to be directed to the appropriate office or individual
 - Tip: Calling may be the most direct method
 - If you do not have accurate contact information for a Tribe, or the contacted Tribe fails to respond to written inquiries:
 - Seek assistance from the BIA local or regional office or the BIA's Central Office in Washington, DC (see www.bia.gov)

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Key Points to Remember

- Congress passed ICWA to address biases toward and negative effects on Indian children, families, and Tribes
- ICWA is focused on keeping Indian children in their families and, when that is not possible, in their Tribal communities
- The BIA ICWA rule is needed to ensure ICWA rights are equally protected no matter what State or court the proceeding is in
- To contact a Tribe, look on www.bia.gov for the Tribe's designated Tribal agent for service of ICWA notice. If all else fails, ask BIA.