

QUICK REFERENCE: DEFINITIONS AND TERMS USED IN THE INDIAN CHILD WELFARE ACT & IN THE ALASKA LEGAL PROCESS

1. **Adoptive Placement** – permanent placement of an Indian child for adoption. 25 U.S.C. § 1903(1)(iv)
2. **Adjudication** – the court proceeding when the case facts are presented by the state to show that custody of the child needs to remain with the state for the safety of the child. The state has to put on evidence to support the need to keep custody, or all parties need to agree to the adjudication (called a “stipulation”)
3. **Child Custody Proceeding** – includes all of the following: 1) foster care placement, (2) termination of parental rights, (3) pre-adoptive placement, or (4) adoptive placement. 25 U.S.C. § 1903(1)
4. **CINA (pronounced “China”)** – “Child In Need of Aid” is the term used to define the Alaska legal proceeding involving any abused or neglected child.
5. **Extended Family** – defined by the law or custom of the Indian child’s tribe; the “default” definition, in the absence of such law or custom, shall be a person who is at least 18 years old and is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin or step-parent. 25 U.S.C. § 1903(2)
6. **Foster Care Placement** – any action removing an Indian child from its parent or Indian custodian for temporary placement in foster home or other placement where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated. 25 U.S.C. § 1903(1)(i)
7. **Indian** – a member of an Indian tribe or an Alaska Native and a member of a Regional Corporation as defined in ANCSA. 25 U.S.C. § 1903(3)
8. **Indian Child** - an unmarried person under the age of 18 who is (a) a member of an Indian tribe or (b) eligible for membership in an Indian tribe **and** is the biological child of a member of an Indian tribe. 25 U.S.C. § 1903(1) and (4).
9. **Indian Child’s Tribe** – where the child is a member, or if more than one tribe, the tribe with which the child has the most significant contacts. 25 U.S.C. § 1903(5)
10. **Indian Custodian** – any Indian person who has legal custody of an Indian child under tribal law or custom, or under state law, or to whom temporary physical care, custody and control has been given by the parent of the child. 25 U.S.C. § 1903(6)
11. **Indian Tribe** - any federally recognized Indian tribe, band, nation or other organized group or community of Indians, including, any federally recognized Alaska Native village. 25 U.S.C. § 1903(8)
12. **Parent** – biological parent/s or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. An unwed father that has not established or acknowledged paternity is not considered a parent. 25 U.S.C. § 1903(9)
13. **Pre-adoptive Placement** – temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement. 25 U.S.C. § 1903(1)(iii)
14. **Probable Cause Hearing** – the first court proceeding when the decision about taking a child into state custody is made; sometimes called “Temporary Custody” hearing



15. **Termination of Parental rights** – any action resulting in the termination of the parent-child relationship. 25 U.S.C. § 1903(1)(ii)
16. **Tribal Court**- a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe with authority over child custody proceedings. 25 U.S.C. § 1903(12)

Other Important Terms:

- **Active Efforts** – support, services and assistance provided to the Indian family to prevent the removal of the child and when removal has taken place, to reunify the child with the family. Greater efforts must be made in Indian Child Welfare Act cases, than in non-Indian cases. 25 U.S.C. § 1912(d).
- **Burden of Proof** – The agency seeking to place the Indian child in foster care or to terminate parental rights (usually the state) must meet their “burden of proof” and provide evidence to the court to support their position.
- **Discovery** – each party to the foster care placement or termination of parental rights proceedings have a right to examine all reports or other documents filed with the court upon which any decision may be based. 25 U.S.C. § 1912(c).
- **Domicile** – the place that a person calls home. In the context of ICWA cases, the U.S. Supreme Court determined that a child’s domicile was the same as the parent’s domicile, and that it didn’t have to be the “current residence” but the place the parent considered home, such as the reservation or village where their family members lived.
- **Due Process** – Fairness. Due process requirements vary in detail by situation, but their core is that a person should always have notice and a real chance to present his or her side in a legal dispute and that no law or government procedure should be arbitrary or unfair. (From Oran's Law Dictionary for Non-Lawyers)
- **Expert Witness** – Generally, a person who has special knowledge and qualifications and is recognized by the court based on these credentials. Although it is not defined in the Act, legislative history for ICWA indicates that a “qualified expert witness” should have particular and significant knowledge of and sensitivity to Indian culture. Courts have also interpreted an expert witness in an ICWA case to be either (1) an expert in the child rearing practices of the child’s Tribe, or (2) an expert in child development, child protection and family systems.
- **Intervention** – Process to become involved via a document filed with the court (and copies to other parties) indicating the Tribe is exercising its right to participate as a party to the case involving a tribal member child. 25 U.S.C. § 1911(c).
- **Notice** - document generated by the State with information about the Indian child and parents, the status of the child custody proceeding, and the right for the Tribe to intervene. The state must notify the parent, Indian custodian and the Tribe by registered mail with return receipt requested. If the parent, Indian custodian or the tribe cannot be identified or located, the notice must be given to the Bureau of Indian Affairs. 25 U.S.C. § 1912(a).
- **Parties** – Individuals that have a legal right to participate in the court case because of their relationship to the child, because they represent the state agency, or because the court has appointed them to represent the interests of the child or parent/Indian custodian. The Tribe has a unique right to become a party in cases involving abused and neglected Tribal member children.

