
10. TRIBAL-STATE AGREEMENTS

Disclaimer: *A Practical Guide to the Indian Child Welfare Act* is intended to facilitate compliance with the letter and spirit of ICWA and is intended for educational and informational purposes only. It is not legal advice. You should consult competent legal counsel for legal advice, rather than rely on the *Practical Guide*.

25 U.S.C. § 1919. Agreements between States and Indian tribes

(a) Subject coverage

States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected

Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

Disclaimer: The above provisions of the Indian Child Welfare Act are set forth to facilitate consideration of this particular topic. Additional federal, state or tribal law may be applicable. Independent research is necessary to make that determination.



Frequently Asked Questions

- 10.1 Can a state and tribe enter into an agreement with respect to Indian child welfare matters?
- 10.2 What type of ICWA issues can be addressed in tribal-state agreements?
- 10.3 Can a state or tribe revoke an agreement, and if so, how?
- 10.4 Does § 1919 require a tribe or state to enter into tribal-state agreements to address foster placement and foster care payments between the state and tribe?

10.1 Can a state and tribe enter into an agreement with respect to Indian child welfare matters?

Yes. The Indian Child Welfare Act (ICWA) § 1919 authorizes tribes and states to enter into mutual agreements or compacts with respect to Indian child welfare matters. In some instances tribes have also entered into agreements with local governmental entities to address these same issues.

Practice Tip:

Section 1919 is not the sole source of authority for tribes and states to enter into ICWA agreements. Under inherent tribal sovereign authority and states' general intergovernmental agreement statutes, both tribes and states routinely enter into Title IV-E agreements without implicating § 1919.

10.2 What type of ICWA issues can be addressed in tribal-state agreements?

Pursuant to § 1919, agreements can address several subject areas found within ICWA proceedings. Specifically, the Act provides tribes and states the ability to address care and custody issues, and resolve jurisdiction issues including how cases are transferred to tribes and the state cases are closed and the exercise of concurrent jurisdiction. Additionally,

agreements can fill in the gaps of ICWA by, for example, addressing how states notify tribes in emergency removal and initial state hearings, who pays for placements, identify preferred Indian child placements schemes, foster home recruitment and the like. In the state of Oregon, however, an agreement cannot expand the definition of an Indian child to include a biological child of an enrolled tribal member who is not eligible for membership. *In re Kirk*, 11 P.3d 701 (Or. Ct. App. 2000). Yet, in other jurisdictions, agreements at times extend ICWA-type protections to children of Canadian First Nations and for certain non-federally recognized tribes through the adoption of certain administrative procedure to be used when such children are encountered. For example, ICWA tribal-state agreements in the State of Washington define an Indian tribe to include First Nations and non-federally recognized tribes. Model Agreement Regarding Child Custody Services and Proceedings Between Indian Tribes and the State of Washington Department of Social and Health Services, http://www.dshs.wa.gov/pdf/ca/state_ConJuris.pdf.

10.3 Can a state or tribe revoke an agreement, and if so, how?

Yes. A tribe or a state can revoke an agreement. Under § 1919(b) either party can revoke the agreement upon providing one hundred and eighty days written notice to the other party. Revocations do not affect any action or proceeding where a court has already assumed jurisdiction, unless an ICWA agreement provides otherwise. 25 U.S.C. § 1919(b).

10.4 Does § 1919 require a tribe or state to enter into tribal-state agreements to address foster placement and foster care payments between the state and tribe?

No. A state is not required to enter into an ICWA agreement with a tribe. *Native Village of Stevens v. Smith*, 770 F.2d 1486 (9th Cir. 1985). Conversely, tribes are also not required to enter into ICWA agreements with states. Agreements, however, are entered into as a cooperative endeavor between sovereigns and can help structure limited available resources and services to best serve Indian children and families. A tribe may also want to enter into a Title IV-E agreement with a state to access much

needed federal funding and ensure states coordinate with tribes in Indian child foster placements and comply with tribal placement preferences. See also FAQ 19.5, 19.6, and 19.7, Application of Other Federal Laws.



**** Access to the full-text of opinions and additional materials is at www.narf.org/icwa ****

The following list is representative of cases that discuss the topic. The list is not exhaustive. The practitioner should conduct independent research.

FEDERAL CASES

District Courts of Appeal

Native Village of Stevens v. Smith, 770 F.2d 1486 (9th Cir. 1985)

STATE CASES

Minnesota

In re S.W., 727 N.W.2d 144 (Minn. Ct. App. 2007)

Sayers ex rel. Sayers v. Beltrami County, 481 N.W.2d 547 (Minn. 1992)

Oregon

In re Kirk, 11 P.3d 701 (Or. Ct. App. 2000)

