



AMERICAN INDIAN
GOVERNANCE AND POLICY INSTITUTE
— UNIVERSITY OF MONTANA —

ICWA in MONTANA

**A practical guide to the
Indian Child
Welfare Act**

OCTOBER 2026

Who We Are

The American Indian Governance and Policy Institute (AIGPI) is an Indigenous-founded and Indigenous-led research institute and think tank certified under the Montana Board of Regents. Founded in 2020 by Heather Cahoon (*Upper Kalispel/Confederated Salish and Kootenai Tribes*), AIGPI was envisioned as a resource providing Tribal leaders with the same level of policy research, analysis, and legal expertise provided to state and federal policymakers. Now led by Kristina Lucero (*Tseycum band of the WSÁNEĆ First nation*), AIGPI builds relationships with Tribal communities to ensure research is Indigenous-led with culturally-tailored responses that support Tribal governments, economies, and communities.



Our Mission

Federal Indian policy has shaped and continues to shape every dimension of life in Indigenous communities. The disparities American Indians experience in health, education, incarceration, child welfare, food systems, and economic development are not accidental. They are measurable outcomes of federal policies whose impacts have compounded throughout generations. Our research works to name these connections clearly, centers Indigenous methodologies, and is guided by Tribal leadership to build strong foundations in creating pathways toward healing and repair. Our research also educates local, state, and federal actors to support Tribal consultation and relationship-building.

Guidebook Contributors

American Indian Governance & Policy Institute

An Indigenous-led initiative at the University of Montana, the AIGPI supports ICWA-related research, education, and resource development in Montana. Through community-engaged work, the Institute advances Indigenous self-determination and helps strengthen Tribal economies, governments, and communities.

Holly Hutchinson

Silver Little Eagle (2025 Baucus Leaders MT Intern)

Kristina Lucero, Esq., Tseycum band of the WSÁNEĆ Nation (Co-Founder & Co-Director, AIGPI)

Ashley Trautman, Esq., JD/LCSW University of Montana



Margery Hunter Brown Indian Law Clinic,

Alexander Blewett III School of Law

Established in 1980, the Margery Hunter Brown Indian Law Clinic provides students with practical experience regarding Indian law issues. Indian Law Clinic projects commonly focus on issues and problems affecting Tribal governments, justice systems, and Indian people. Students work on a variety of projects promoting tribal sovereignty, cultural preservation, access to justice, and economic development within Indian Country. Students may work on matters in Tribal, state, or federal courts.

Rayna Cozzens (2026 JD/MSW Candidate & Student Clinician, MHBILC)



Montana Office of the State Public Defender

Providing legal advocacy, representation, and support to eligible individuals across Montana, including parents and other parties involved in child welfare proceedings.

Kelly Driscoll, Esq.

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Montana Voices on ICWA



Generations of child-removal policies, including boarding schools and foster-care and adoption practices, separated Native children from family, Tribe, and culture. ICWA was enacted in response to that history. ICWA creates a path toward repair by restoring Tribal voices in decisions about Native children and protecting family, community, and cultural ties disrupted by historical assimilation policies and practices.

“

“I was always willing to be a mom again, but I was just in a hard place ... [The court staff] definitely showed me that they’re not just there to give up on people. They’re there until you succeed. ... It really rebuilt me from being completely broken, completely lost, to just loving myself and being able to love my kids ... I’ve never thought I would be where I am today.”

Elizabeth Harris

Northern Cheyenne Tribe | ICWA Family Recovery Court Graduate

“

“The harm that ensued after I became a dependency of the court was unspeakable.”

“The Indian Child Welfare Act is important because it keeps people like myself connected to our cultural roots, our family lineage, and our birthright.”

Marshal Galvan Jr.

Little Shell Tribe of Chippewa Indians of Montana | Foster Care Survivor & ICWA Advocate



“

“When you look at being an Indian, our historical legacy is children being taken from us. ... Are there jobs here? Is there housing here? Those are two of the main things that you need to get your kids back, ... housing and a job.”

Paula Bighorn

Fort Peck Assiniboine and Sioux Tribes | Health Promotion & Disease Prevention

“

“ICWA is a reparative law ... [ICWA courts] are capturing the spirit of connectedness of children to their families, relatives, communities, and cultures.”

“As a social worker, attorney, or judge, if I don’t have a culturally humble and ‘listen first’ orientation, my efforts will miss the mark.”

Sheldon Spotted Elk

Northern Cheyenne Tribe | Senior Director, Judicial and National Engagement, Casey Family Programs

What is the Indian Child Welfare Act?

The Indian Child Welfare Act (ICWA) was passed by Congress in 1978 in response to America's history of unwarranted placements of American Indian children. This policy supports Indian children staying with Indian families by requiring State departments and courts to follow specific guidelines when placing American Indian children in adoption, foster care, and involuntary proceedings. Despite being considered the "gold standard," disparities continue to exist for American Indian children.

The Indian Child Welfare Act in Montana

Present-day disparities in the foster care system are also a result of the federal government's chronic and ongoing underinvestment in Tribal communities. While the federal funding structure today is more inclusive of Tribal communities, the amount of funds and compliance monitoring tied to funding are still not enough to meet the needs of American Indian children and their families.

The State of Montana is no exception. American Indian children are in foster care at a rate nearly four times higher than their rate in the general population. The state's ongoing inconsistent application of ICWA's best practices contributes to this issue.

It is essential for Montana policymakers, legal practitioners, and department advocates to prioritize effective, unambiguous implementation mechanisms when making ICWA decisions. More funding is needed to support preventive services, build capacity, and improve data collection measures. Such funding would increase access to support services families need before a child is removed from their home, build infrastructure to ensure employees are supported, and build systems of measurements that are tailored to the historical and intergenerational traumas created by federal Indian policies. By understanding and upholding the principles of ICWA, practitioners and policymakers can work to promote stability and security for Indian Tribes and families, while ensuring that all children are placed in safe and nurturing homes.

MICWA Definitions

Active Efforts: affirmative, active, thorough, and timely efforts meeting the requirements of MCA § 41-3-1319 that are intended primarily to maintain or reunite an Indian child with the child's family and that are tailored to the facts and circumstances of the case.

Adoptive Placement: the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Child Custody Proceeding: any state or private proceeding, other than an emergency proceeding, that may culminate in a foster care placement, termination of parental rights, pre-adoptive placement, or adoptive placement.

(b) The term does not include a placement based on:

- (i) an act that, if committed by an adult, would be considered a crime; or
- (ii) an award, in a dissolution proceeding, of custody to one of the child's parents.

Court of Competent Jurisdiction: a court that has jurisdiction over the relevant subject matter under federal, state, or Tribal law.

Department: the Department of Public Health and Human Services provided for in MCA § 2-15-2201.

Foster Care Placement: an action removing an Indian child from the child's parent or Indian custodian for temporary placement in a foster home or institution or with a relative, guardian, conservator, or suitable other person under which the parent or Indian custodian may not have the child returned on demand, but parental rights have not been terminated.

Indian: a person who is a member of an Indian tribe or who is an Alaska Native and member of a regional corporation as established in 43 U.S.C. 1606.

Indian Child: an unmarried Indian person who is under 18 years of age and 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.

MICWA Definitions

Indian Child's Family or Extended Family Member: an individual defined by the law or custom of the Indian child's Tribe as a relative of the Indian child.

(a) If the Indian child's Tribe does not identify family members by law or custom, the term means an adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, cousin, stepparent, or step-grandparent. A stepparent or step-grandparent may be considered a family member even following termination of the marriage.

Indian Child's Tribe: a Tribe or Tribes in which an Indian child is a member or is determined eligible for membership.

Indian Custodian: an Indian person who under Tribal law, Tribal custom, or state law has legal or temporary physical custody of an Indian child or to whom the parent has transferred temporary care, physical custody, and control of the Indian child.

Indian Tribe or Tribe: any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior because of their status as Indians.

(a) The term includes an Alaska Native village as defined in 43 U.S.C. 1602.

Member or Membership: a determination by an Indian Tribe that an individual is a member of or eligible for membership in that Indian Tribe.

Parent: a biological parent of an Indian child or an individual who has lawfully adopted an Indian child, including adoptions made as tribal customary adoptions.

(a) The term does not include an unwed father whose paternity has not been acknowledged or established under Title 40, chapter 6, part 1, or the applicable laws of another state.

Pre-adoptive Placement: the temporary placement of an Indian child in a foster home or institution after the termination of parental rights but before or in lieu of adoptive placement.

Termination of Parental Rights: any action resulting in the termination of the parent-child relationship.

Tribal Court: a court or body vested by an Indian Tribe with jurisdiction over child custody proceedings. The term includes but is not limited to a federal court of Indian offenses, a court established and operated under the code or custom of an Indian Tribe, and an administrative body of an Indian Tribe vested with authority over child custody proceedings.

ICWA CASE FLOW CHART

SIMPLE PROCESS OVERVIEW



Notice, Participation Rights, and Right to Counsel

Ensuring tribes, families, and children can be heard

ICWA requires timely and complete notice, meaningful participation, and important rights to legal representation. These protections ensure that Tribes can protect their interests, that families have legal support, and that the proceedings respect tribal sovereignty.

1

Notice to Parents and Tribe

Timely and Complete Notice is Required

- Notice must be provided to the parent or Indian custodian and the child's Tribe(s). Tribal notice is sent by certified mail, return receipt requested; parent or custodian notice is by personal service or another permitted method if personal service cannot be completed. MCA § 41-3-1311; 25 U.S.C. § 1912(a); 25 C.F.R. § 23.111.
- Notice must include the required identifying information and a copy of the petition or initiating document. MCA § 41-3-1311(4); 25 C.F.R. § 23.111(d).
- The proceeding generally may not continue until at least 10 days after receipt of notice; up to 20 additional days may be requested to prepare. MCA § 41-3-1311(3); 25 U.S.C. § 1912(a); 25 C.F.R. § 23.112.

KEY TAKEAWAYS

- ✓ Notice must be timely, complete, and properly served.
- ✓ Tribes and Indian custodians have the right to participate at every stage.
- ✓ Indigent parents and Indian custodians have the right to court-appointed counsel.
- ✓ The court may also appoint counsel for the Indian child.



WHY IT MATTERS

Notice, participation, and counsel are foundational to ICWA. They ensure that tribes can protect their sovereign interests, that families have the support they need, and that decisions about Indian children are made with full and fair information.



COMMON CHALLENGES

- ! Incomplete identifying information in notices
- ! Late notice does not allow meaningful participation
- ! Failure to inform families of the right to counsel or appoint counsel when needed
- ! Unnecessary delays or denial of tribal intervention

2

Right to Participate

Tribes and Families Must Have a Meaningful Opportunity

- The Indian child's Tribe and Indian custodian may intervene at any point in a state foster-care or termination proceeding involving an Indian child. 25 U.S.C. § 1911(c).
- Each party has the right to examine reports and documents filed with the court that may be relied on in deciding the case. MCA § 41-3-1317; 25 U.S.C. § 1912(c).
- Notice and preparation time are intended to allow meaningful participation before the court proceeds. MCA § 41-3-1311; 25 U.S.C. § 1912(a).

3

Right to Counsel

Legal Representation is Required

- An indigent parent or Indian custodian has the right to court-appointed counsel in an ICWA child custody proceeding. MCA § 41-3-1316; 25 U.S.C. § 1912(b).
- The court may also appoint counsel for the Indian child. MCA § 41-3-1316; 25 U.S.C. § 1912(b).

4

Right to Intervene

Tribes and Indian Custodians May Intervene

- The Indian child's Tribe and Indian custodian have the right to intervene at any point in a state foster-care or termination-of-parental-rights proceeding. 25 U.S.C. § 1911(c).
- Notice must inform the Tribe and Indian custodian of the right to intervene. 25 U.S.C. § 1912(a); MCA § 41-3-1311.

Transfer to Tribal Court

Respecting Tribal Sovereignty and the Right to Decide

ICWA gives an Indian child's Tribe the right to have a child custody proceeding transferred from state court to Tribal court. Transfer helps ensure that decisions about Indian children are made by the child's Tribe, consistent with tribal law and culture.

TRANSFER PROCESS At a Glance

1

Request Transfer

Either parent, the Indian custodian, or the Indian child's Tribe may request transfer to Tribal court. MCA § 41-3-1310(3); 25 C.F.R. § 23.115.

2

Make the Request

A transfer request may be made orally on the record or in writing, and may be made at any stage of a foster-care or termination-of-parental-rights proceeding. 25 C.F.R. § 23.115.

3

State Court Review

The state court must transfer the proceeding unless a parent objects, the Tribal court declines transfer, or good cause exists to deny transfer. MCA § 41-3-1310(3), (5)–(6); 25 C.F.R. § 23.117.

4

Transfer the Case

Once the Tribal court accepts jurisdiction, the state court must dismiss the proceeding with prejudice, promptly transmit the case record, and coordinate with the Tribal court to minimize disruption. MCA § 41-3-1310(7)(b).

5

If Transfer Is Denied

If the court denies transfer, it must state the reasons orally on the record or in a written order, and the parties must have an opportunity to address whether good cause exists. MCA § 41-3-1310(6); 25 C.F.R. § 23.118.



Key Requirements

- Either parent, the Indian custodian, or the Indian child's Tribe may request transfer. MCA § 41-3-1310(3); 25 C.F.R. § 23.115.
- If the Tribe has not formally intervened, the moving party must serve the transfer motion and supporting documents on the Tribal court. MCA § 41-3-1310(4).
- A parent may object to transfer; if either parent objects, the state court may not transfer the case. MCA § 41-3-1310(5); 25 U.S.C. § 1911(b).
- If good cause to deny transfer is asserted, the reasons must be placed on the record and the parties must have an opportunity to respond. MCA § 41-3-1310(6); 25 C.F.R. § 23.118.



What is “Good Cause”?

Good cause to deny transfer must be stated on the record, and the parties must have an opportunity to respond. MCA § 41-3-1310(6); 25 C.F.R. § 23.118.

In deciding whether good cause exists, the court may NOT consider:

- the advanced stage of the case;
- prior proceedings where no transfer was requested;
- whether transfer could affect the child's placement;
- the child's cultural connections with the Tribe or reservation; or
- socioeconomic conditions or negative perceptions of Tribal or BIA services or courts. MCA § 41-3-1310(6)(b); 25 C.F.R. § 23.118(c).



Important Considerations

- ▶ The burden is on the party opposing transfer to establish good cause. 25 C.F.R. § 23.118(d).
- ▶ While transfer is pending, the state court may continue necessary proceedings and enter interim orders, but generally should not enter a final child-custody order before the Tribal court accepts or declines jurisdiction. MCA § 41-3-1310(7)(a).
- ▶ A transfer request may be made at any stage of the foster-care or termination proceeding. 25 C.F.R. § 23.115.



WHY IT MATTERS

Transfer recognizes Tribal sovereignty and allows the child's Tribe to make child-custody decisions within its own legal, cultural, and community framework.



Who Can Request Transfer?

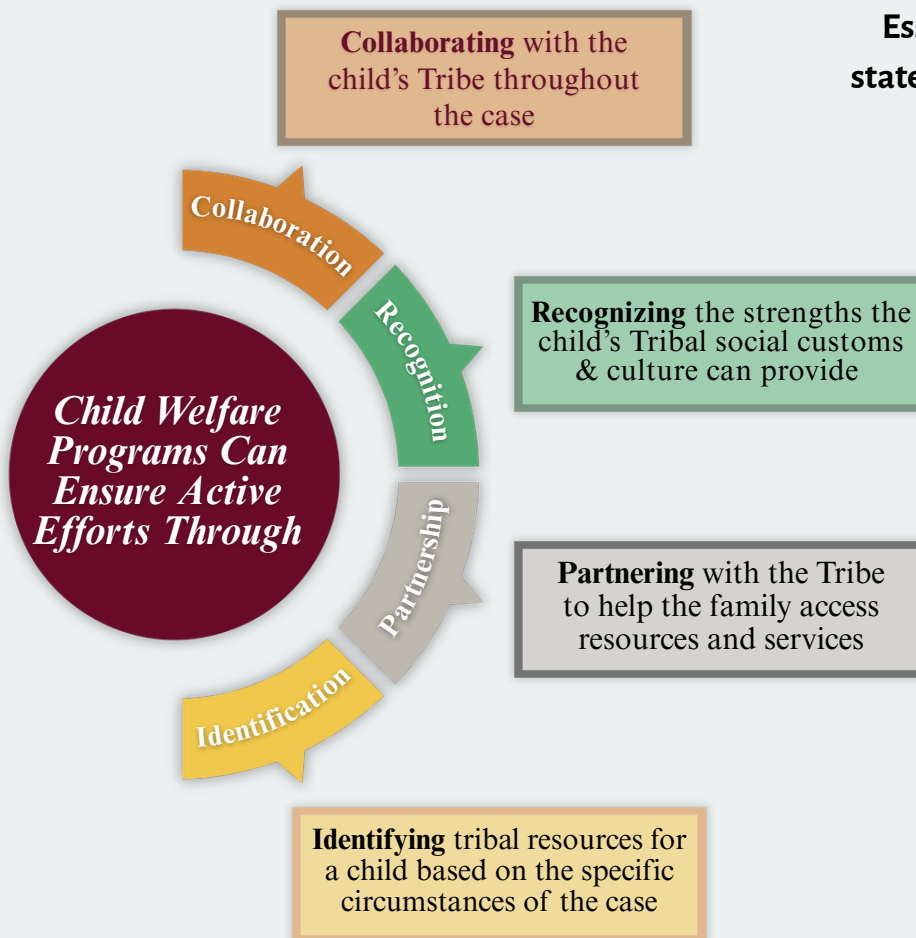
- Either parent
- The Indian custodian
- The Indian child's Tribe

DEFINITIONS BREAKDOWN

Active Efforts

The ICWA term “active efforts” implies a heightened responsibility compared to “reasonable efforts”. The term is included when discussing remedial services and rehabilitative programs, as well as preventive measures: “Any party seeking to effect a foster care placement of, or termination of parental rights to an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.” (25 U.S.C. § 1912(d))

Essentially, this means that the state has an obligation to provide services and other types of interventions to prevent the necessity of removing a child from parental care and if the child is removed, the state has a duty to assist in the reunification of the child and maintain or reunify the Indian child with their family.



"Active efforts" = Engaging the family
"reasonable efforts" = Offering referrals to the family, and leaving it to them to seek out assistance. (Native American Rights Fund, n.d.)



Qualified Expert Witness (QEW) and Heightened Standard of Proof

Protecting Indian children through informed and rigorous decision-making

ICWA and MICWA require qualified expert witness testimony in involuntary foster-care and termination-of-parental-rights proceedings involving an Indian child. Foster-care placement requires clear and convincing evidence; termination of parental rights requires evidence beyond a reasonable doubt. MCA §§ 41-3-1318, 41-3-1320; 25 U.S.C. § 1912(e)–(f).



Qualified Expert Witness (QEW)

- A QEW must be qualified to testify about whether continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. MCA § 41-3-1318; 25 C.F.R. § 23.122.
- The QEW must also be qualified regarding the prevailing social and cultural standards of the child's Tribe. MCA § 41-3-1318; 25 C.F.R. § 23.122.
- The child protection specialist assigned to the case, and that specialist's supervisor, may not serve as the QEW. MCA § 41-3-1318.



Heightened Standard Of Proof

- **Foster-care placement:** clear and convincing evidence, including QEW testimony, that continued custody is likely to result in serious emotional or physical damage to the child. MCA § 41-3-1320; 25 U.S.C. § 1912(e).
- **Termination of parental rights:** evidence beyond a reasonable doubt, including QEW testimony, that continued custody is likely to result in serious emotional or physical damage to the child. MCA § 41-3-1320; 25 U.S.C. § 1912(f).

Informed
Experts
=
Stronger
Protections



Practice Pointers

- Identify and confirm the QEW's qualifications early.
- Consult the child's Tribe regarding QEW selection and Tribal social and cultural standards.
- Make a clear record of the QEW's qualifications, testimony, and how the testimony supports the required finding.
- Remember: QEW testimony and the applicable heightened burden of proof are separate requirements.



Why It Matters

QEW testimony and heightened proof standards help ensure that decisions separating Indian children from their families are supported by strong evidence and informed by the child's Tribal and cultural context.

BEST PRACTICES

Placement Preferences

To ensure that Indian children maintain connections to their Tribe, culture, and extended family, ICWA established placement preferences for Indian children in foster care, pre-adoptive, and adoptive placements (25 U.S.C. § 1915).

Order of Preference for Foster Care and Pre-Adoptive Placements (25 U.S.C. § 1915(b))

- 1 EXTENDED FAMILY: A MEMBER OF THE CHILD'S EXTENDED FAMILY
- 2 FOSTER HOME: LICENSED, APPROVED, OR SPECIFIED BY THE CHILD'S TRIBE
- 3 INDIAN FOSTER HOME: LICENSED OR APPROVED BY AN AUTHORIZED NON-INDIAN LICENSING AUTHORITY
- 4 TRIBALLY APPROVED INSTITUTION: APPROVED BY AN INDIAN TRIBE/OPERATED BY AN INDIAN ORGANIZATION WITH A PROGRAM SUITABLE TO MEET THE CHILD'S NEEDS

Order of Preference for Adoptive Placements (25 U.S.C. § 1915(a))

- 1 EXTENDED FAMILY: A MEMBER OF THE CHILD'S EXTENDED FAMILY
- 2 TRIBAL MEMBERS: OTHER MEMBERS OF THE CHILD'S TRIBE
- 3 OTHER INDIAN FAMILIES: INDIAN FAMILIES BEYOND THE CHILD'S TRIBE

ICWA placement preference applies **regardless** of whether the child's Tribe intervenes in the case or whether the child's tribe can identify a preferred placement home.

Deviating from Placement Preference

In order to ensure that Indian children maintain connections to their Tribe, culture, and extended family, ICWA established placement preferences for Indian children in foster care, pre-adoptive, and adoptive placements (25 U.S.C. § 1915).

Good Cause Exceptions

Courts may depart from ICWA's placement preferences only upon a showing of "good cause." In *Holyfield*, the Supreme Court described § 1915(a) as a substantive mandate and emphasized ICWA's federal policy favoring, where possible, placement of Indian children within the Indian community.

(Mississippi Band of *Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989)).

Current federal regulations identify considerations including parental or child request, sibling attachment, extraordinary needs, or the unavailability of a suitable preferred placement after a diligent search. 25 C.F.R. § 23.132(c).

Roles & Responsibilities

ICWA Specialists, Child Protection Specialists, Attorneys, Advocates

Indian Child Welfare Specialists' Roles & Responsibilities

- Develop Indian foster homes and other Indian placement resources
- Provide technical advice to Tribal, State, and County agencies and District courts on matters pertaining to Indian child welfare
- Assist in negotiating cooperative agreements to provide foster care services to Indian children
- Conduct training seminars on implementing the federal Indian Child Welfare Act of 1978;
- Apply for and accept grants and other funds for Indian child welfare activities
- Develop and maintain a list of attorneys to represent indigent parents and Indian custodians in Indian child welfare proceedings
- Make recommendations to the department on legislation and rules concerning Indian child welfare matters
- Perform other duties regarding Indian child welfare matters as determined by the director

Child Protection Specialists' Roles & Responsibilities

- Investigate allegations of child abuse, neglect, and endangerment
- Perform safety and risk assessments after a report has been made
- (Temporary) Emergency Protective Services – if the Indian child is in immediate or apparent danger.

Tips for Attorneys and Advocates



Develop strong relationships with Tribal representatives and cultural experts to better understand the unique cultural, social, and historical context of each case.



Consult with Tribes as early as possible. Tribes possess cultural resources and expertise essential for making informed decisions and planning.



Ensure that you are well-versed in both state and federal ICWA laws, as well as any relevant Tribal codes or ordinances.



Prepare your witnesses, especially Qualified Expert Witnesses (QEWs), to provide clear, concise, and culturally relevant testimony.



Utilize culturally relevant resources, such as Tribal-specific parenting programs, in your case plans and service recommendations.



Collaborate closely with Tribal ICWA workers to ensure effective communication, coordination, and compliance with ICWA requirements



Actively advocate for the preservation of cultural identity in all aspects of the case, including visitation, case planning, and placement decisions.

Roles & Responsibilities

State Courts

Determine if ICWA Applies

The court must verify that the child is an Indian child and evidence needs to be provided. Whether or not the child is an enrolled member or is eligible for membership is determined by the Tribe.

Yes, ICWA Applies

In any involuntary child custody proceeding, the court must provide the opportunity for Tribes to determine which Tribe should be designated as the Indian child's Tribe. If the Indian child is not residing or domiciled within the reservation of their Tribe, the court may transfer jurisdiction to the Tribe absent objection by either parent.

Transfer of Jurisdiction Pending

While the transfer to Tribal jurisdiction is pending, the court is allowed to conduct additional hearings and enter Orders that are in the best interest of the child. These Hearings and Orders must comply with the requirements of the federal ICWA.

Tribe Declines Jurisdiction

If the Indian child's Tribe declines jurisdiction, then the state court may proceed with the child custody proceeding in compliance with ICWA.

Tribe Accepts Jurisdiction

If the Indian child's Tribe accepts jurisdiction, then the Court must dismiss the child custody proceeding with prejudice and provide all the records related to the case to the Tribal court.

Right to Counsel

If the Tribe declines jurisdiction, the state court may proceed with the case in compliance with ICWA. An indigent parent or Indian custodian has the right to court-appointed counsel, and the court may also appoint counsel for the Indian child. Each party has access to evidence filed with the court.

Active Efforts

The court shall make written findings that the petitioning party has provided active efforts (page 11) and the efforts must be documented in detail in the record. In the case of removal, the standard is "clear and convincing;" in the case of termination, the standard is "beyond a reasonable doubt;" and in both cases, the State bears the burden.

Evidence Required to Order for Foster Care or Terminating Parental Rights

A court may order foster care placement if the petitioning party has provided clear and convincing evidence that active efforts were made to provide remedial services and rehabilitative programs to prevent the breakup of an Indian family and that the efforts were unsuccessful. Clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, to demonstrate that continued custody by the child's parent, Indian custodian, is likely to result in serious emotional or physical damage to the child.

A court may terminate parental rights of the child if active efforts were made to prevent the breakup of the Indian family and the efforts were unsuccessful, and continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The evidence must include testimony of one or more qualified expert witnesses.

Roles & Responsibilities

State Courts

Emergency Removal or Placement of the Indian Child

In the event of an emergency removal or placement of an Indian child, the court must share their findings on the record as to why emergency removal or placement is necessary, hold a hearing to determine if the emergency removal or placement is still necessary, and terminate the emergency removal or placement if the court finds it no longer necessary.

An emergency proceeding may not last more than 30 days unless the court decides that the Indian child's safety is at risk if they are reunited with their parent/Indian custodian, the court hasn't been able to transfer jurisdiction to the Indian child's Tribe, and if it hasn't been possible to initiate a child custody proceeding.

Involuntary versus Voluntary Foster Care Placement

In an involuntary foster care placement hearing, the court needs to certify on the record that the terms and consequences of the stipulation or consent were fully explained in detail and were fully understood by the parent or Indian custodian.

In a voluntary foster care placement hearing, the consent provided by the parent or Indian custodian will not be valid unless it is executed in writing and recorded before a judge of a court of competent jurisdiction, and accompanied by the judge's written certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian.

If an Indian child has been improperly removed or retained, the court must decline jurisdiction and immediately return the child to the parent or Indian custodian unless return would subject the child to substantial and immediate danger or threat of danger.

Placement Preferences

There is a list of placement preferences the court must follow that can be found on page 13 of this guidebook. It is the court's duty to follow this list unless the Indian child's Tribe has a different order of placement preferences.

Termination of the Parent-Child Legal Relationship

A district court may order a termination of the parent-child legal relationship on the factual grounds that the parent is convicted of a felony in which sexual intercourse occurred or the parent has committed an act of sexual intercourse without consent, sexual assault, or incest that caused the child to be conceived.

Temporary Emergency Protective Services

If temporary emergency protective services occur, a district court should hold a hearing within 5 business days of the child's removal. The hearing will determine whether the removal should continue beyond the 5 days.

Court Finds Temporary Emergency Protective Services Necessary

If the out-of-home placement is deemed necessary, then the court shall establish guidelines for visitation by the parents, parent, guardian, or the person having physical or legal custody of the child as well as review the availability of options for a kinship placement and make recommendations if appropriate.

Court Finds Temporary Emergency Protective Services Unnecessary

If the out-of-home placement is deemed unnecessary, then the child must be immediately returned to the person(s) who has(have) legal custody.

Roles & Responsibilities

State Courts

Alternative Dispute Resolution Proceeding

At any stage of the proceedings, the court may order an alternative dispute resolution proceeding that could include: a family engagement meeting, mediation, or a settlement conference.

A party who does not wish to participate in this proceeding may file a motion to object to the Order.

Permanency Hearing

A permanency hearing determines the permanent placement of a child no later than 12 months after a judge determines that child has been abused or neglected or 12 months after the first 60 days that the child has been removed from their home.

Cases of Abandonment

If an Indian child is abandoned, the court may give priority to a member of the abandoned child's extended family. If more than one extended family member requests custody, the court needs to determine which placement is in the best interest of the child.

Granting a Petition to Adopt

In determining whether to grant a petition to adopt, the court must consider all relevant factors in determining the best interests of the child. Factors that will weigh in the court's decision are the parent's parenting ability, the future security for a child, and familial stability.

Contested Adoption Proceeding

In a contested adoption proceeding, the court shall consider the nature and length of any relationship already established between a child and any person seeking to adopt the child, the nature of any family relationship between the child and any person seeking to adopt the child and whether that person has established a positive emotional relationship with the child, the harm that could result to the child from a change in placement, whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child, and which, if any, of the persons seeking to adopt the child were selected by the placing parent or the department or agency whose consent to the adoption is required.

Indian Child Placement

The court shall determine if the requirements of the federal ICWA have been met.

ICWA Confidentiality Provisions

Adoption Records

State courts entering a final adoption decree or order involving an Indian child must provide the Bureau of Indian Affairs (BIA) with a copy of the decree or order and specified information concerning the child, biological parents, adoptive parents, Tribal affiliation, and agencies holding adoption records. The information must be transmitted as confidential information.

25 U.S.C. § 1951(a); 25 C.F.R. § 23.140.

Confidentiality & Parent Anonymity

When a biological parent submits an affidavit requesting that the parent's identity remain confidential, the affidavit must be included with the adoption information sent to BIA. The Secretary must maintain the confidentiality of that information, and the information is exempt from disclosure under the Freedom of Information Act. 25 U.S.C. § 1951(a).

In a voluntary proceeding, if a consenting parent requests anonymity, documents used to determine the child's Indian status must be kept confidential and under seal. A Tribe receiving the information must also maintain its confidentiality. 25 C.F.R. § 23.107(d).

Enrollment & Membership Information

Upon request by an adopted Indian child who is at least 18 years old, the child's adoptive or foster parents, or an Indian Tribe, the Secretary must disclose information necessary to determine Tribal enrollment or rights and benefits associated with Tribal membership. If a biological parent requested anonymity, the Secretary may certify the child's eligibility for enrollment without disclosing the parent's identity.

25 U.S.C. § 1951(b).

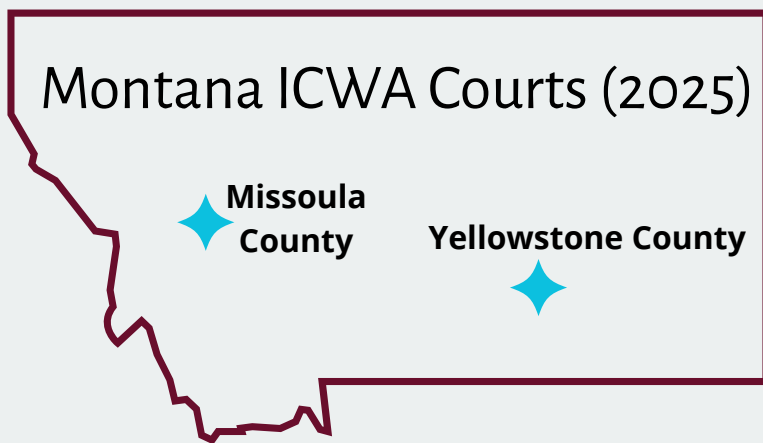
State Recordkeeping & Tribal Access

States must maintain records of every voluntary or involuntary foster-care, pre-adoptive, and adoptive placement of an Indian child. Upon request, the record must be made available to the Indian child's Tribe or the Secretary within 14 days.

The record must include the petition or complaint, substantive court orders, the placement determination, and documentation of efforts to comply with ICWA's placement preferences when applicable. 25 C.F.R. § 23.141.

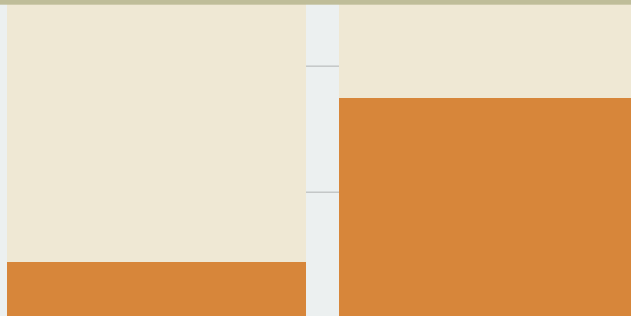
The Indian Child Welfare Act in Montana

ICWA in the Montana Legislature



● American Indian Youth ● All Other Youth

“Native American children in 2020 made up about 9 percent of Montana’s child population; they accounted for 35 percent of the state’s foster care population” (Montana Judicial Branch, n.d.)



Total Montana Youth Population

Montana Youth Population in Foster Care

One out of every two representatives who addressed HB317 in the Senate demonstrated awareness of political classification



"MONTANA IS THE CHILD REMOVAL CAPITAL OF AMERICA...MONTANA IS THE WORST STATE IN THE COUNTRY FOR REMOVING CHILDREN, THREE TIMES HIGHER THAN THE NATIONAL AVERAGE."

Sharen Kickingwoman
January 27, 2025



"49% of American Indian children in the state will be subject to a CPS investigation compared to 37% of them are subject to CPS investigations for white children."

Kelly Driscoll
Public Health, Welfare, and Safety
Montana Senate Committee Hearing
on Montana House Bill 317 (2023)
March 22, 2023

LEGISLATIVE HISTORY 1978 - 2025

Federal ICWA Background

*and the legal challenges behind introducing the
Montana Indian Child Welfare Act*

Montana House Bill 317 (2023)

Montana Senate Bill 147 (2025)

The Federal Indian Child Welfare Act, enacted in 1978, preserves the connection between Native American children and their families, Tribes and cultural heritage. The Act requires states to follow a specific line of succession when placing Indian children

who are removed from their homes.

The ICWA ensures that states prioritize placing Indian children with family members, families of the same Tribe living on the same reservation, or a Native American family before considering a non-Native home.

Prior to the enactment of ICWA, about 75 to 80 percent of Native American families living on reservations nationwide “lost at least one child to the foster care system,”

(Montana DPHHS, n.d.)

25 to 35 percent of all Indian children had been separated from their families and placed in foster care, adoptive homes, or in institutions

- 90 percent of these placements were with nonrelative, non-Indian families

(Gaines-Stoner et al., 2018)

1978: ICWA BECOMES FEDERAL LAW



Key Definitions in Federal ICWA

Indian Child: An “Indian child” is defined under the ICWA as an unmarried person who is under the age of 18 and is either a member of an Indian Tribe, or is eligible for membership in an Indian Tribe and is the biological child of a member of an Indian Tribe (25 U.S.C. § 1903(4)). The determination of whether a child is an Indian child depends on the membership criteria of the particular Tribe involved.

Indian Tribe: An “Indian Tribe” under ICWA is any federally recognized Indian tribe, band, nation, or other organized group or community that is recognized as eligible for the services as provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village (25 U.S.C. § 1903(8)). There are currently more than 570 federally recognized Tribes in the United States.

Foster Care Placement: A “foster care placement” refers to any action that removes an Indian child from their parent or Indian custodian for temporary placement in a foster home or institution, or with a guardian or conservator, where the parent or Indian custodian cannot have the child returned upon demand, but where the parental rights have not been terminated (25 U.S.C. § 1903(1)(i)). It is important for professionals to understand that ICWA applies to these placements to ensure the protection of the rights of the Indian child, parents, and Tribes in these situations.

Termination of Parental Rights: “Termination of parental rights” refers to any action that results in the termination of the parent-child relationship (25 U.S.C. § 1903(1)(ii)). ICWA sets forth specific procedural and substantive requirements to protect the rights of Indian parents and Tribes before parental rights can be terminated in child custody proceedings involving Indian children.

Adoptive Placement: An “adoptive placement” is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption (25 U.S.C. § 1903(1)(iv)). ICWA establishes placement preferences and other safeguards to protect the rights of Indian children, parents, and Tribes in adoptive placements.

Extended Family Member: An “extended family member” is defined by the law or custom of the Indian child’s Tribe or, in the absence of such law or custom, by the definition found in the federal law as a person who has reached the age of eighteen and who 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 stepparent (25 U.S.C. § 1903(2)). Extended family members play a crucial role in ICWA as they may serve as preferred placements for Indian children in child custody proceedings.

EVOLVING LEGAL LANDSCAPE OF ICWA 1978 - 2025

Haaland v. Brackeen

Constitutional Challenges to ICWA

In 2018, a federal district court in Texas held ICWA unconstitutional under the anti-commandeering and nondelegation doctrines and the Equal Protection Clause. The plaintiffs included foster and adoptive parents and the State of Texas. Judge Reed O'Connor concluded that ICWA was unconstitutional, creating significant uncertainty about the future of the federal law and its protections for Tribal interests. *Brackeen v. Zinke*, 338 F. Supp. 3d 514 (N.D. Tex. 2018).

The Fifth Circuit panel reversed substantial portions of the district court's decision. Sitting en banc, the Fifth Circuit later issued a fractured decision that upheld some provisions and invalidated or divided evenly on others. The U.S. Supreme Court granted certiorari to review the constitutional challenges.

In a 7-2 decision, the Supreme Court rejected the anti-commandeering challenges and declined to disturb the Fifth Circuit's conclusion that ICWA is consistent with Congress's Article I authority. The Court did not reach the merits of the equal-protection or nondelegation claims because the plaintiffs lacked standing to pursue them. *Haaland v. Brackeen*, 599 U.S. 255 (2023).

Writing for the majority, Justice Barrett explained that the Supremacy Clause requires state courts to apply valid federal law even when the underlying proceeding arises under state law. When Congress validly legislates pursuant to its Article I powers, conflicting state law is preempted. *Id.* at 287.

Brackeen reaffirmed the breadth of Congress's authority to legislate with respect to Indian affairs while recognizing that the authority is not unlimited. The decision preserved ICWA's federal framework, while leaving the equal-protection challenge to ICWA's placement preferences unresolved.

**2018: TEXAS FEDERAL DISTRICT COURT
JUDGE RULES ICWA UNCONSTITUTIONAL**

2013: INITIAL MICWA INTRODUCED

The Montana Indian Child Welfare Act

HB 317 (2023)

As anticipation grew around the country following *Brackeen*, state lawmakers, Tribal leaders, Tribal attorneys, and child welfare advocates began considering the introduction of state ICWA laws – including Montana. In 2022, Tribal legal advocates began consulting with Montana Tribal leaders and other state stakeholders to introduce a Montana state ICWA bill that addressed unique challenges in Montana county courts.



HB317 KEY PROVISION

The Montana Indian Child Welfare Act emphasizes the importance of Tribal involvement in placement options for Indian children within the state.

In light of the pending Supreme Court case concerning the Indian Child Welfare Act, Rep. Jonathan Windy Boy, D-Box Elder, sponsored House Bill 317 in 2023, which was heard by the House Human Services Committee. The legislation drew substantial support from Indigenous advocacy groups, Native adoptees, child-welfare professionals, and other supporters. More than 30 individuals testified in favor of the bill, sharing personal experiences, professional expertise, and perspectives on the importance of the legislation.

**2022: HAALAND V. BRACKEEN
ORAL ARGUMENTS HEARD**

2022: DRAFTING THE MICWA

**JANUARY 2023 - THE MICWA
INTRODUCED ON THE HOUSE FLOOR**

The Montana Indian Child Welfare Act

HB 317 (2023)

HB317 Key Supporters

- American Civil Liberties Union
- Montana American Indian Caucus
- Forward Montana
- Blackfeet Tribe
- Confederated Salish and Kootenai Tribes
- Northern Cheyenne Tribe
- Crow Tribe
- Little Shell Chippewa Tribe
- Fort Peck Assiniboine & Sioux Tribes
- Chippewa Cree Tribe
- Rocky Mountain Tribal Leaders Council
- Montana Coalition Against Domestic and Sexual Violence
- Child Welfare Workers
- Montana Human Rights Network
- former Casey Foundation director (in personal capacity)
- Western Native Voice
- Montana Indian Law Section
- Montana Budget & Policy Center

House Bill 317, the MICWA, was amended in a conference committee after two separate versions of the bill cleared both chambers. The committee accepted parts of the amendment unanimously, while other portions were removed due to 3-3 tie votes. The sunset date of June 30, 2025 remained in the bill. Additionally, the section that would void the entire Act if the U.S. Supreme Court rules the Federal ICWA unconstitutional or unenforceable was reinstated.

A new section was added back to the bill in conference committee that outlined ***requirements for qualified expert witnesses*** in child custody proceedings. Those requirements remained in the final bill.

***MAY 3, 2023 THE MICWA PASSES
THE HOUSE & SENATE FLOORS***

Before & After the MICWA

HB 317 (2023) Major Provisions

Federal “Active Efforts”

- 25 U.S.C § 1912(d):
 - applies to involuntary proceedings
 - affirmative, active, thorough, and timely efforts
 - intention: to maintain or reunite an Indian child with his or her family"

Following the conference committee amendments, On May 3, 2023 the conference committee report was adopted by both chambers, following House votes (64-32) and Senate votes (37-13) for passage. On May 22, 2023, Gov. Greg Gianforte signed HB317 into law.

MICWA “Active Efforts”

- More detailed definition: "affirmative, active, thorough, and timely efforts meeting the requirements of [section 12] that are intended primarily to maintain or reunite an Indian child with the child's family and that are *tailored to the facts and circumstances of the case*"
- Provides detailed examples of "active efforts":
 - Comprehensive assessment of the circumstances of the Indian child's family with safe reunification as the desirable goal
 - Identifying services and assisting parents in overcoming barriers, including obtaining services
 - Involving tribal representatives in supporting family and in family team meetings, permanency planning, and resolution of placement issues
 - Conducting a diligent search of the Indian child's extended family members
 - Offering and employing all available and culturally appropriate family preservation strategies and facilitating the usage of remedial and rehabilitative services provided by the tribe
 - Taking steps to keep siblings together whenever possible
 - Supporting regular visits with parents or Indian custodians in the most natural setting possible, as well as trial home visits of the Indian child during any period of removal
 - Identifying community resources (e.g., housing, financial, transportation, mental health, substance abuse, peer support) and assisting the child's parents and family in accessing and utilizing the resources
 - Monitoring progress and participation in services
 - Considering alternative ways to address the needs of the Indian child's parents and family if the optimum services do not exist or are not available
 - Providing post-reunification services and monitoring
- Explicitly states that "referral to a service or program does not constitute an active effort if the referral was the *sole* action taken"

**MAY 22ND GOVERNOR
GIANFORTE SIGNS HB317(2023)
INTO LAW**

LEGISLATIVE HISTORY 1978 - 2025

Before & After the MICWA

HB 317 (2023) Provisions

Federal Jurisdiction Transfer

- Transfer to tribal court required "in the absence of good cause to the contrary"

MICWA Jurisdiction Transfer

- Explicitly states what cannot be considered as "good cause"
 - Whether there have been prior proceedings involving the child for which no petition to transfer was filed
 - Whether the child custody proceeding is at an advanced stage
 - Whether the transfer could affect the placement of the child
 - The child's cultural connections with the tribe or its reservation
 - Socioeconomic conditions or any negative perception of the tribal or Bureau of Indian Affairs social services or judicial systems
- Detailed procedures for post-transfer coordination between state and tribal courts

Federal Emergency Removal

- Brief provision allowing emergency removal to prevent "imminent physical damage or harm"

MICWA Emergency Removal

- Detailed emergency procedures
- Specific petition requirements
- 30-day time limit on emergency proceedings
- Detailed findings requirements for courts

Federal Qualified Expert Witness

- Requires "testimony of qualified expert witnesses" in parental rights termination cases
- QEW is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

MICWA Qualified Expert Witness

- Provides detailed definition of "qualified expert witness"
- Requires consultation with the tribe on expert witness selection
- **Prohibits** department child protection specialists from serving as qualified expert witnesses in their own cases
- Requires expert to be qualified regarding both likelihood of harm **AND "prevailing social and cultural standards of the Indian child's tribe"**

LEGISLATIVE HISTORY 1978 - 2025

Before & After the MICWA

HB 317 (2023) Provisions

Federal Consent & Voluntary Proceedings

- Consent invalid if given within 10 days of birth

MICWA Consent & Voluntary Proceedings

- More detailed certification requirements for voluntary consent
- Specific language requirements for court certification

Federal Training Requirements

- No specific training mandates

MICWA Training Requirements

- Requires ICWA training for child protection specialists

Federal Placement Preferences

- Lists placement preferences but limited detail on "good cause" exceptions

MICWA Placement Preferences

- More detailed placement preference requirements
- Specific criteria for determining "good cause" to depart from preferences
- Prohibits departure based solely on socioeconomic status
- More detailed standards for determining placement availability

Federal Full Faith & Credit

- Requires full faith and credit for Tribal public acts, records, and judicial proceedings applicable to Indian child custody proceedings. 25 U.S.C. § 1911(d)

MICWA Full Faith & Credit

- **State Codification:** The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe that are applicable to Indian child custody proceedings. MCA § 41-3-1312



"Where State or Federal law applicable to a child custody proceeding . . . provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this [federal ICWA], that standard shall be applied."
(Native American Rights Fund, n.d.)

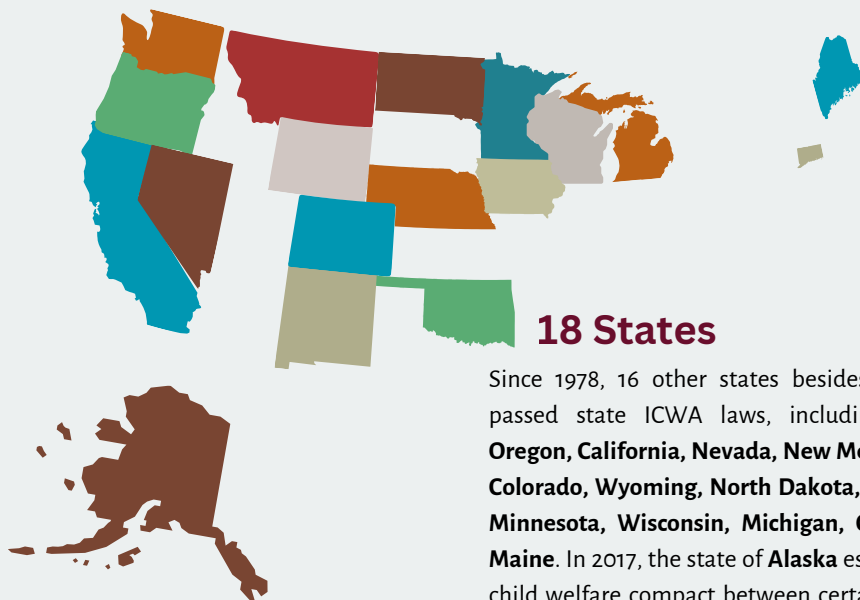
LEGISLATIVE HISTORY 1978 - 2025

Haaland v. Brackeen Outcome and implications for MICWA

On June 15, 2023, the Supreme Court issued its 7-2 decision in *Haaland v. Brackeen*. The Court rejected the anti-commandeering challenges and held that the plaintiffs lacked standing to pursue the equal-protection and nondelegation claims.

Haaland v. Brackeen Implications: State ICWA Laws

The U.S. Supreme Court's decision of *Haaland v. Brackeen* that upheld the ICWA confirmed the validity of strengthening implementation of the federal ICWA laws and building on its foundations by passing State ICWA laws, an approach taken by Montana and other states. States are encouraged to consult and collaborate with tribal nations when passing State ICWA laws and revisions to best address issues within State jurisdiction and support tribal child welfare systems (Pardue, 2023).



18 States

Since 1978, 16 other states besides **Montana** have passed state ICWA laws, including **Washington, Oregon, California, Nevada, New Mexico, Oklahoma, Colorado, Wyoming, North Dakota, Nebraska, Iowa, Minnesota, Wisconsin, Michigan, Connecticut, and Maine**. In 2017, the state of **Alaska** established a tribal child welfare compact between certain Alaska Native tribes and tribal organizations and the state of Alaska.

SB147(2025) INITIAL BILL DRAFTING BEGINS

***JUNE 15TH 2023: THE SUPREME
COURT UPHELD THE ICWA***

LEGISLATIVE HISTORY 1978 - 2025

Extension of MICWA - SB147(2025) *and Implications for MICWA*

In Montana's 69th legislative session, Sen. Jonathan Windy Boy, D-Box Elder (formerly Rep. J. Windy Boy) introduced SB147(2025) to remove the June 30, 2025, sunset date and strengthen the Spirit of ICWA by enhancing Tribal-state cooperation principles:

- More comprehensive
- Adds procedural safeguards
- Enhance Tribal consultation requirements
- Strengthens cultural preservation mandates
- Increases documentation and reporting requirements

Haaland v. Brackeen (2023) Implications: State ICWA Laws

SB147 included language of implementing an avenue by which adoptive parents could access resources that apply to Indian children/citizens by requiring a Cultural Compact. The bill also clarified the standard for Emergency Removals, provided additional requirements for Guardianships, required consultation with an Indian child's Tribe on a Permanency plan, provided additional grounds that a Court may have reason to know a child is an Indian child, requiring denial of a transfer of jurisdiction to be in writing, revising requirements for QEWs, Active Efforts, Evidence, and Placement preferences, along with amendments to sections of the statute.

After SB 147 was tabled in the Senate Public Health, Welfare and Safety Committee, Sen. Windy Boy moved to return the bill to the floor. The Senate approved the blast motion 29-21, and the bill subsequently passed the Senate.

The original twenty-seven-page bill which included language of the Cultural Compact and other comprehensive strengthening measures passed the Senate, however in the House Human Services Committee, SB147 was amended to a two-page document, primarily repealing section 55 of HB317(2023), which contained the termination date of June 30, 2025. The chambers concurred on the amended bill and on May 12, 2025, Gov. Greg Gianforte signed SB147 into law (Montana Legislative Services, n.d.).



**MAY 12TH 2025 GOV. GREG GIANFORTE SIGNS
SB147 INTO LAW. MICWA IS PERMANENT!**

SB147's Initial Text

To fully appreciate the evolution of the MICWA, we must examine the legislative road not taken. The following core elements and regulatory measures were present in the proposed bill before being deleted during the executive action phase, reflecting the legislation's broader original aims. By studying the stripped language and areas where the final legal framework diverges from the proposed scope, we created a detailed policy record that will be essential for crafting and advocating for the reintroduction of these critical provisions in future legislation.

SB147 Cultural Compact Requirement

- Requires cultural compacts between prospective adoptive parents/guardians and the child's Tribe when the household does not include a Tribal member.
- Must be specific to each Indian child and evolve as the child matures.
- Becomes part of the court record and is enforceable.

SB147 Qualified Expert Witness Requirements

Additional QEW Testimony Specifications

- Courts may accept declarations/affidavits from a QEW in lieu of testimony only with specific stipulations: the parties have stipulated on the record and the court is satisfied that stipulation is made knowingly, intelligently, and voluntarily.
- Requires petitioner to file declaration with the court describing efforts to identify qualified expert witnesses
- QEWs shall testify as to whether continued custody of an Indian child by, or return of the Indian child to, the parent or Indian custodian is **likely to result in serious emotional or physical damage to the Indian child at the show cause hearing, adjudication hearing, dispositional hearing, guardianship hearing, and termination hearing.**

SB147 Placement Preference Provisions

- A placement may not depart from the preferences based solely on the ordinary bonding or attachment that developed from time spent in a nonpreferred placement
- Ongoing obligation for diligent search for preferred placement throughout the case, which must be documented and in the record
- The court shall inquire into the efforts to secure a preferred placement at each hearing
- Regular status hearings (no less than every 30 days) for non-preferred placements to review the department's efforts in preferred placement search
- **Enhanced Notice Requirements for Placement Changes:** Excluding emergency removals, if the department intends to change the placement of the child, the department is required to, at least 2 days prior to the change in placement:
 - Provide a written notice of the change to the child's tribe, parents, Indian custodian, guardian ad litem, and counsel for the child, parents, Indian custodian, and tribe.
 - Notice must provide the date the placement change is to occur and the reason for the placement change.
 - If a child's tribe or a party objects, the child's tribe or counsel for the party shall notify the court and other parties

LEGISLATIVE HISTORY 1978 - 2025

SB147's Initial Text

SB147 Expanded Guardianship Requirements

SB147 adds extensive new requirements for guardianships involving Indian children:

- Clear and convincing evidence language added to the guardianship appointment in that the department has made active efforts to reunite the parent and child
- Consultation with the child's tribe on potential guardians and whether the Indian child's tribe is in agreement
- The court must review cultural compacts entered into between the child's tribe and the child's guardian
- Annual guardianship reporting requirements, including the condition of the ward, the ward's estate, cultural participation, and contact with extended family
- The guardianship report must include the date the guardian serves the report on the Indian child's tribe
 - Must be mailed by first-class to the person identified in the most current Federal Register as the designated tribal agent for ICWA notice purposes
 - On failure, the court shall order the guardian to file the report and give good cause for the guardian's failure to file a timely report

SB147 Emergency Removal Standards

- Requires "**clear and convincing evidence**" for emergency removal of Indian children

SB147 Transfer Requirement

- SB 147 requires denials of jurisdiction transfers to be in **writing**

SB147 Termination Requirements

Additional Enhanced Requirements

- SB147 adds that the court may not terminate parental rights unless evidence beyond a reasonable doubt is presented that:
 - Consultation with the child's tribe occurred before filing parental rights termination petitions
 - "In cases where the child's tribe does not support termination, the department consulted with the child's tribe regarding alternatives to termination, and there is good cause not to follow the tribe's alternate permanency plan."
- Bonding between the Indian child and the Indian child's foster parent may not be considered as a factor in terminating parental rights

SB147 Removal from Adoptive or Foster Care Placement Provision

- If a final decree of adoption of an Indian child has been vacated or set aside, or the adoptive parents voluntarily consent to the termination of their parental rights to the child, the department shall make diligent efforts to contact the child's Tribe

SB147 Active Efforts Requirements

***see next page*

SB147(2025) PROPOSED

Active Efforts

ACTIVE EFFORTS ****Specified by SB147(2025)**

Tailored to the facts and circumstances of the case

Examples:

- Conducting a comprehensive assessment of the circumstances of the Indian child's family with a focus on safe reunification as the most desirable goal
- Asking the parent, child, and Indian custodian who their support system is and utilizing this support system whenever possible, including but not limited to the following
 - Meetings
 - Transportation
 - Parenting supervision
 - Assistance in locating parents not yet engaged with the department or whose whereabouts are unknown
 - Facilitating contact between the child and the child's extended family whenever possible
 - Connecting or providing opportunities to connect the child with cultural activities, cultural resources, and tribal contacts
 - In cooperation with the Indian child's tribe of affiliation, unless a parent objects, take steps to enroll the child in the tribe to finalize enrollment before permanency
 - Assisting kin with practical supports through the licensing process and actively supporting relatives in overcoming barriers to licensure
- Referral to a service or program does not constitute an active effort if the referral was the sole action taken. Assistance with referrals may include, but is not limited to:
 - Seeking input and consultation from the parent and the child's tribe when determining which providers to refer the parent to
 - Offering to assist the parent in contacting a provider to access a service and providing this assistance if requested by the parent
 - Offering to assist the parent in completing application paperwork related to accessing the service, and providing this assistance if requested by the parent
 - Offering transportation assistance to access a provider; and
 - Following up with the parent and the provider to determine whether service has been successfully coordinated and addressing any barriers

SB147 Active Efforts

Requirements

Additional Enhanced

Requirements

- "The party seeking to affect a foster care placement shall demonstrate by **clear and convincing evidence** that it has engaged in active efforts to prevent the breakup of the Indian family. The party seeking to terminate parental rights shall demonstrate by **proof beyond a reasonable doubt** that it has engaged in active efforts to prevent the breakup of the Indian family."



AMERICAN INDIAN
GOVERNANCE AND POLICY INSTITUTE
UNIVERSITY OF MONTANA

Additional Resources

When collaborating with judges or other court personnel who may need more information on implementing ICWA in court situations, consider directing them to the Indian Child Welfare Act Judicial Benchbook. This valuable resource, created by the National Council of Juvenile and Family Court Judges, offers comprehensive guidance on applying ICWA in judicial settings.



National Indian Child Welfare Association (NICWA): NICWA is a national organization that works to support the well-being of American Indian and Alaska Native children and families. They provide training, technical assistance, and policy resources on ICWA implementation.

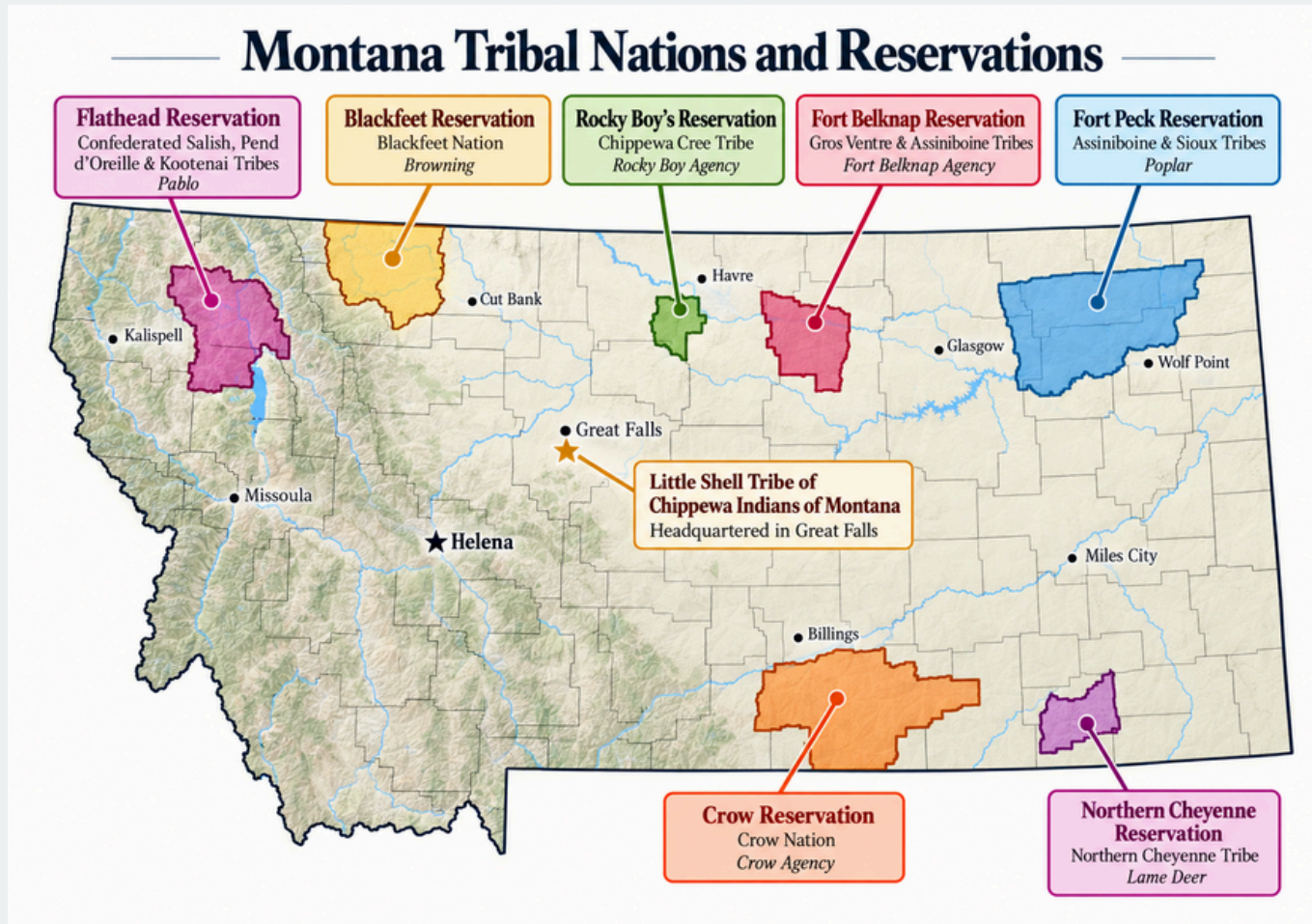
(<https://www.nicwa.org/>)



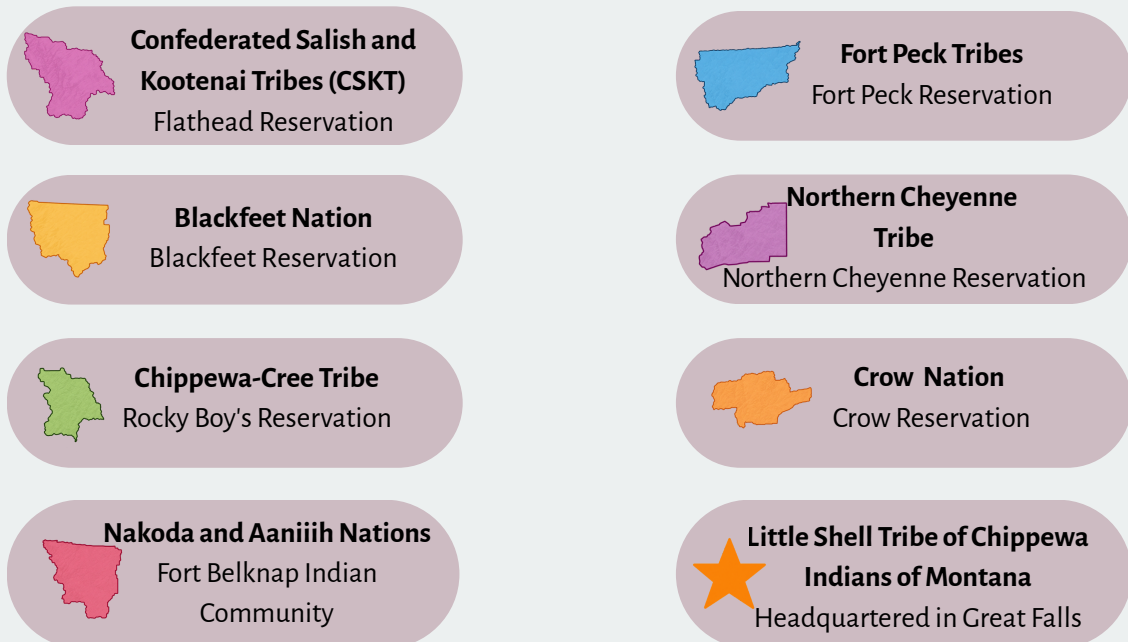
Tribal Nations are distinct Indigenous communities with their own identity, history, culture, and traditions. Federally recognized Tribal Nations possess inherent sovereignty, meaning they have the authority to govern their own people and exercise governmental powers.

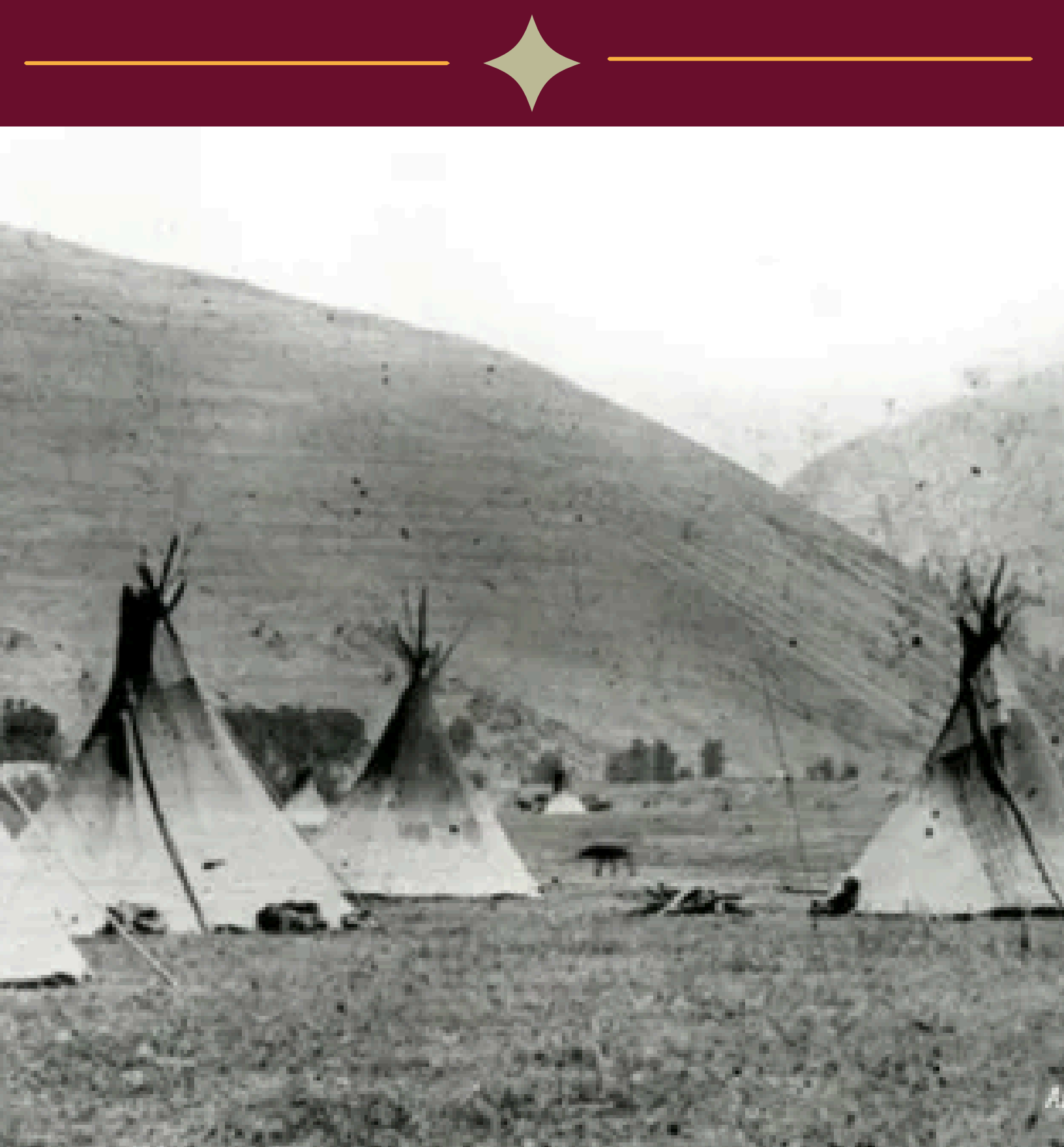
A **reservation** is a designated area of land associated with a Tribal Nation or tribal government. Some reservations are home to more than one Tribal Nation, while some federally recognized Tribes do not have reservations.

Montana is home to **eight federally recognized tribal governments** representing **12 distinct tribes across seven reservations**. The Little Shell Tribe of Chippewa Indians of Montana is headquartered in Great Falls and does not currently have a designated reservation.



Montana's Tribal Nations at a Glance





ICWA IN MONTANA

A practical guide to the Indian Child Welfare Act



October 2026