

Contemporary Hurdles in the Application of the Indian Child Welfare Act  
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This article explores trends in state and tribal court treatments of the Indian Child Welfare Act. The ICWA is a federal law passed in 1978 that seeks to ensure Indian tribes manage their own affairs by giving tribal courts jurisdiction in certain adoption cases of Native American children, and, where jurisdiction is not granted to tribal courts, provides guidelines for state courts to follow so as to preserve tribal interests. The article begins by giving a brief legislative history of the ICWA and its intended purpose. The article examines how, since the act was declared constitutional by the Supreme Court in *Mississippi Band of Choctaw Indians v. Holyfield* in 1989, it has been interpreted by state courts in such a way that goes against the legislative history and purpose of the act as well as Supreme Court interpretation. The state courts have created the "existing Indian family exception" and the "good cause" exception contrary to the history and purpose of the act and the effect of these court created exceptions is to prevent tribal courts from acquiring jurisdiction over cases involving the adoption of their children. The article explores the judicial method of deciding these cases as well as the resultant situation and possible reasons for the disparate state court treatment. The article then looks at tribal court opinions interpreting the act, examining the way tribal courts approach the issues and what sources of law the courts use to reach their decision in a way that is consistent with tribal custom, state law, federal law, and the language of the ICWA. The article concludes that some state courts are lagging behind other state courts and tribal courts due to a mistrust and misunderstanding of tribal legal systems, and calls for greater understanding and respect to be given tribal legal systems.

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