

I. Scope and Use of Benchguide

This benchguide provides an overview of the procedures for handling Indian child custody cases subject to the requirements of the Indian Child Welfare Act, 25 U.S.C. §1901 et seq..

Under its definition of "child custody proceeding", the Act specifies the types of custody cases to which it applies and the types of custody cases to which it does not apply. The focus is not on what a proceeding is called, or whether it is a private action or an action brought by a public agency, but on whether the proceeding meets a definition set forth in the Act. (25 U.S.C. §1903(1).) The Act covers *any* temporary placement where the child need not be returned upon demand, and includes placement in a foster home or institution or the home of a guardian or conservator. The Act also covers *any* proceeding resulting in adoption or termination of parental rights. This would generally include juvenile, family court and probate guardianship actions. However, by its terms, the Act does NOT apply to all custody cases. The Act expressly excepts custody disputes between parents in divorce (dissolution) proceedings, and placements based on criminal acts (most Welf. & Inst. Code §602 proceedings.) (See Benchguide, §IV.B.3.)

The benchguide includes frequently asked questions, procedural checklists, a summary of the law, a section on practical solutions to Indian Child Welfare Act issues, resource information, and forms. Some information is provided which is specific to application of the Act in the context of particular types of California proceedings. However, a discussion of California custody proceedings is beyond the scope of this benchguide.

The text of the Act, regulations, guidelines for state courts, rules of court and State Department of Social Services All-County information are included as Appendices. Also included as an appendix is an Indian Child Welfare Act Outline addressing the minimum federal standards for state court proceedings. This is provided as a quick reference to authority.