

# ICWA Also Applies: Delinquency

Hon. Keith E. Eddington  
Juvenile Court Judge, 8<sup>th</sup> District



Hon. William Reynolds  
Judge, Ute Indian Tribe (Uintah and Ouray Reservation)

Intro: Gabriella Archuleta

## Status Offenses:

\*Truancy

\*Underage drinking

\*Runaway

25 USC § 1903(1)(iv)

## Delinquency:

“...if any part of those proceedings results in the need for placement of the child in a foster care, preadoptive or adoptive placement, or termination of parental rights.”

*Updated Guidelines for State Courts and Agencies,*  
80 FR 10146 (2/25/15).

Joe Bluebird is a fifteen-year-old boy who resides in Roosevelt with his mom and her boyfriend. John's mother and boyfriend frequently travel to his reservation in Wendover, Nevada. On November 1, 2015 Joe and his cousin left a party and started walking to his grandmother's house a few blocks away. At 1:15 a.m. Joe and his cousin were stopped by Officer Griswold. Joe was cited and released to his eighty-year old grandmother for curfew violation and possession of alcohol by a person under the age of 21. Joe never appeared for court and a pick-up order was ultimately issued by Judge Judy Evershed.

# Fact Scenario #1

At approximately 11:00 p.m. on April 30th Joe drove to the local Chevron to purchase Tums for his grandmother. On his way home he was pulled over for a broken tail light by the same officer who cited Joe months earlier. Joe did not have a valid driver's license and was arrested on the State's pick-up order. Joe appeared alone in juvenile court on Tuesday, May 2, 2016 for a detention hearing. Joe was asked if he was a member of any tribe and he replied "no." No further questions were asked regarding enrollment. In fact, Joe is eligible for enrollment in his mother's tribe but was uncomfortable elaborating on his answer.

## Fact Scenario #1 cont.

The court was concerned at what appeared to be a clear lack of parental involvement. Judge Judy inquired as to the location of Joe's mother on the dates he was picked up by Officer Griswold. He honestly represented that his mother was in Wendover with her boyfriend. Joe was then asked if he was "on his own" while his mother was in Wendover. Fearing that he would get his grandmother in trouble he indicated that he could take care of himself. Based on the foregoing the court entered the following findings:

- 1.Custodian refuses to accept custody
- 2.Custodian has failed to appear w/minor
- 3.The Minor has failed to appear for hearings
- 4.The Child is considered for DCFS custody

# Fact Scenario #1 cont.

Upon making the foregoing findings, the court ordered that the minor be detained and that he remain in Split Mountain Detention Center awaiting an arraignment hearing on the charges of operating a vehicle without a valid driver's license.

*Is Judge Judy Evershed required to adhere to the provisions set forth in the Indian Child Welfare Act in regards to the delinquency proceedings?*

**Fact Scenario #1 cont.**

George is a 15 year old who lives in Roosevelt, and perpetrates a serious sexual offense against his younger sister. Mom finds out and calls the State DCFS hotline. The minor sister is interviewed and reports that it has happened multiple times before. George is taken into Split Mountain Youth Detention Center and charged with 3 counts of sexual abuse.

## Fact Scenario #2



At the DT hearing it is determined that George has no prior offenses on the State records database and that he may be eligible for enrollment but is not enrolled in his tribe. It is further determined that George is embarrassed and remorseful. Judge Judy is willing to allow George to be released until the hearing on the charge but his parents are unwilling to have him come home for the safety and emotional health of their minor daughter.

**Fact Scenario #2 cont.**



Does ICWA apply and if so, how quickly can it be handled by the tribe if they choose to accept the case and intervene in the matter?

What should be done with George immediately after the hearing?

Now assume that George is 100 percent Native but not eligible for enrollment in any of his ancestors tribes. Does that make a difference? Should it?

**Fact Scenario #2 cont.**

Rainbow is a 16 year old female who lives in Salt Lake City. She is becoming increasingly involved in minor truancy incidents. She is involved in a burglary with another young woman but she had a minor role in the crime.

## Fact Scenario #3

Rainbow has lived with her grandparents for 13 years, they are enrolled Alaskan Inuits as is Rainbow. The Probation Officer learns from Rainbow that the Grandparents are using illegal drugs. Rainbow's mother is in a halfway house and her father is in prison. Both grandparents report that she is increasingly becoming belligerent and has threatened them with physical harm but no violence has been reported.

**Fact Scenario #3 cont.**

At the Arraignment Rainbow admits the incident and requests a private visit with the Judge in chambers. In chambers with the PO and judge Rainbow says she will never succeed unless she is placed outside the home. When questioned about other family members she indicates that there are none who are interested or have cared about her in the 13 years she has lived with her grandparents. When questioned about her tribe she admits that she is Inuit but doesn't know anything about her tribe and has not been involved in her culture other than what she has gotten with her grandparents.

Does ICWA apply?

## Fact Scenario #3 cont.