



AMERICAN INDIAN/ALASKA NATIVE CHILDREN EXPOSED TO VIOLENCE IN THE COMMUNITY

PANEL #2

INDIAN CHILD WELFARE ACT: KEEPING OUR CHILDREN CONNECTED TO OUR COMMUNITY

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NICWA is a national American Indian and Alaska Native (AI/AN) nonprofit organization located in Portland, Oregon. NICWA has over 30 years of experience providing technical assistance and training to tribes, states, and federal agencies on issues pertaining to child maltreatment, Indian child welfare, children's mental health, and juvenile justice. NICWA provides leadership in the development of public policy that supports tribal self-determination in child welfare, children's mental health, and juvenile justice systems, as well as compliance with the Indian Child Welfare Act (ICWA). NICWA also engages in research that supports and informs improved services for AI/AN children and families. NICWA is the nation's most comprehensive source of information on AI/AN child maltreatment, child welfare, and children's mental health issues.

I would like to start by thanking the Attorney General's Task Force on Children Exposed to Violence. They were the ones to recommend that this Task Force on AI/AN Children Exposed to Violence be convened.

In the recommendations provided in the Report of the Attorney General's Task Force on Children Exposed to Violence titled in a section titled "Creating Safe and Nurturing Homes," the following important recommendation was made:

4.10 Ensure compliance with the letter and spirit of the Indian Child Welfare Act (ICWA). Thirty-five years after its passage, full implementation of the ICWA remains elusive. Because the ICWA is a federal statute, successful implementation will be best ensured through strong, coordinated support from the Department of the Interior, Bureau of Indian Affairs; Department of Health and Social Services, Administration for Children and Families; and the Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

It is in part due to this guidance that this panel on ICWA compliance has been convened. I appreciate having an opportunity to discuss with you the positive impact of the Indian Child Welfare Act (ICWA) on tribal children who have been exposed to violence in their homes, as well as their families and communities. I will also use this opportunity to explain the challenges that arise when ICWA is not followed by state agencies, state courts, and private adoption practitioners.

Before beginning, I would also like to thank this Task Force, the Attorney General's Task Force on AI/AN Children Exposed to Violence, and its chairs, Senator Byron Dorgan and Joanne Shenandoah. I appreciate their commitment to understanding the complex and multifaceted issues related to AI/AN children exposed to violence. Further, their commitment to provide recommendations to ensure the prevention of violence against AI/AN children and when necessary to ensure that the effects of this exposure are addressed and treated is of the utmost importance. ICWA plays a key role in responding to AI/AN children's exposure to violence in the home. It provides critical legal protections for AI/AN children when intervention and treatment become necessary. The most significant protections seek to keep AI/AN children safely in their homes. When that is not possible, ICWA keeps children connected to their extended families and communities in the aftermath of abuse and neglect. **It is essential to remember that**

because of the historic treatment of AI/AN peoples, removal of AI/AN children from their homes, families and communities is itself a form of violence—one form of trauma that far too many AI/AN children still face today. ICWA ensures that only when necessary for their safety are AI/AN children exposed to this additional layer of violence.

To address these issues, this testimony will cover

- research on the current well-being of AI/AN children and families;
- an analysis of ICWA compliance and implementation, including best practices nationwide that encourage ICWA compliance;
- the long-term effects of ICWA non-compliance on AI/AN children’s well-being;
- the extent to which states are effectively collaborating with tribes on child welfare issues, including best practices for effective tribal-state collaboration; and
- recommendations on how best to address the challenges noted throughout this testimony.

The Well-Being of AI/AN Children and Families

Indicators of child and family well-being must be understood within the context of a particular cultural worldview. AI/AN people understand their experience as one of tremendous loss, survival and eventual adaptation and re-growth as a population (Goodluck & Willetto [NICWA], 2000). This worldview incorporates the extreme loss of a tribally centered and child-focused people of land, values, religions, languages, traditions, and creation stories (Goodluck & Willetto [NICWA], 2000). Finally, this worldview acknowledges that centuries of historical events have impacted, and continue to impact, AI/AN children and families (Goodluck & Willetto [NICWA], 2000). It is through this worldview that the research data on AI/AN children and families must be interpreted (Goodluck & Willetto [NICWA], 2000).

The AI/AN worldview is also a perspective based on balance and harmony (Goodluck [NICWA], 2002). For this reason it is also necessary to interpret the research on AI/AN well-being by examining the numerous strengths AI/AN people find in their children, families, communities and culture (Goodluck [NICWA], 2002).

The section below relays a common set of indicators that highlight the continued effect of assimilative policies and systemic racism on the well-being of AI/AN children and families. The narrative concludes with a graphic that illustrates the “Three Domains of Native American Well-Being Model” created by Goodluck (2002) for strength-based well-beings assessments in AI/AN communities. This model shows the numerous strengths present in AI/AN children, families, communities, and culture that go undocumented in mainstream literature.

Children

The AI/AN population is young. The median age for the AI/AN population is 31.3 compared to the median age of 37.3 for the general population (U.S. Census Bureau, 2013). Further, nearly

one third (29.9%) of all AI/AN individuals are under the age of 18 (U.S. Census Bureau, 2012a) compared to about one fourth (23.4%) of the general population (Census, 2012b).

AI/AN infants do not fare as well as their non-Native counterparts on two of three major indicators. Pregnant AI/AN women are less likely to receive prenatal care throughout their entire pregnancy (Department of Health and Human Services [DHHS], 2010a). For example, only 68.13% of AI/AN women who give live birth receive prenatal care starting in the first trimester, compared to 82% of the total population (DHHS, 2010a). In addition, the infant mortality rate for the AI/AN population is higher than for the general population. AI/AN infants die at a rate of 8.28 per 1,000 live births compared to 6.68 infants per 1,000 live births in the general population (DHHS, 2010b). Fewer AI/AN babies, however, are born at a low birth weight than the national average. Of all AI/AN births, 1.3% of AI/AN babies are considered to be very low birth weight, and 7.4% are considered low birth weight, compared to 1.5% and 8.2% percent in the general population (DHHS, 2010c).

Despite improvements on well-being indicators, AI/AN youth continue to face more challenges than their non-Native counterparts. For example, AI/AN children and youth are served by the Individuals with Disabilities Education Act (IDEA) at a higher percentage than any other group of children. National statistics show that 14% of AI/AN children received IDEA services, compared to 9% of the general student population (Department of Education, 2008). Similarly, AI/AN youths have the highest prevalence of type 2 diabetes of any racial group. In the 15-19-year age group, the current prevalence is 4.5 per 1000 (DHHS, 2011). For an imperfect comparison the available data show that the prevalence in the general population ages 0-19 is 1.7 per 1000 (DHHS, 2011).

AI/AN youth have more serious problems with mental health disorders and substance abuse than the general population. Specifically, AI/AN youth have documented higher rates of anxiety and depression (Olson & Wahab, 2006). They are also more likely than youths in other racial groups to report an alcohol use disorder in the past year (DHHS, 2007). Furthermore, suicide is the second leading cause of death for AI/AN youth ages 10-24 (DHHS, 2010d). Scholars consider the high rate of mental health problems to be due in part to issues of racial discrimination, geographic isolation, and cultural identity conflicts (Olson & Wahab, 2006). Scholars also recognize that these high rates of mental health disorders are rooted in historic trauma, disenfranchisement, and the relocation of entire communities from traditional lands to reservations (Olson & Wahab, 2006).

Lastly, AI/AN teen girls are more likely to have a child than the average American teen girl. In 2008, the birth rate for AI/AN teen girls (ages 15-19) was 58.4 per 1,000, while the national birth rate for teen girls was 41.5 per 1,000 (DHHS, 2010c).

Families

To understand the well-being of children it is essential to understand their families. The average number of people in an AI/AN family is 3.52 persons (Census, 2012a). This is slightly bigger than

America's average family size, 3.25 persons (Census, 2012b). AI/AN homes are also slightly more likely to have children than the average American home. Of all AI/AN households, 31.6% are families with children (Census, 2012a). Families with children constitute only 29% of all households in the general population (Census, 2012b).

AI/AN homes that have children, like all American homes with children, are more likely to consist of married parents, although a slightly lower proportion of AI/AN children live in homes with married parents compared to the national proportion. Of AI/AN families, 16.4% are composed of two married parents with children (Census, 2012a) compared to 19.3% of all American families (Census, 2012b). Of all AI/AN families, 11.6% are female-headed with no husband present and children (Census, 2012a) compared to 7.3% of all American families (Census, 2012b). Studies show that AI/AN female-headed households are more likely to be headed by a grandmother or a woman with an unmarried partner—as opposed to a single woman/mother living alone with her children—than female-headed households in the general population (Snyder, McLaughlin, & Findeis, 2006). These data may reflect cultural norms concerning formal marriage in some tribal communities, as well as traditional child-rearing practices. Correspondingly, AI/AN families are also more likely to be grandfamilies and/or have grandparent support than the average American family. Of AI/AN adults over age 30, 56% live with their grandchildren and are responsible for their care as compared to 41% of all Americans over 30 (Census, 2009).

AI/AN families continue to struggle in the area of economic well-being. Of all AI/AN families with children, 29.9% live below the poverty line (Census, 2012a). Only 14.8% of AI/AN families with children composed of a married couple live below the poverty line (Census, 2012a). However, 48.3% of AI/AN families with children that are female-headed with no husband present live below the poverty line (Census, 2012a). Comparative data for all American families show that 18.8% of all American families with children are living in poverty (Census, 2012b); and only 8.7% of married couples with children and 41.5% of female-headed households with children are living in poverty (Census, 2012b).

The high rate of poverty among AI/AN families is due in part to high rates of unemployment in AI/AN communities. The national unemployment rate for all AI/AN individuals is 15.9%, and the unemployment rate for AI/AN individuals living on a reservation is 22.8% (Stegman & Ebarb, 2013). The crippling of Native economies before the self-determination era left tribal citizens overwhelmingly impoverished and with few economic opportunities. The barriers to employment vary region to region in Indian Country. They include geographic remoteness, a weak private sector, poor basic infrastructure, and a lack of basic law enforcement infrastructure. (A. Ebarb, personal communication, Nov. 1, 2013).

Because of these poverty and unemployment rates, many AI/AN families depend on government assistance to provide for their children and make ends meet. AI/AN people

comprise 10.53% of WIC participants (Department of Agriculture, 2012), 1.2% of TANF participants¹ (DHHS, 2012), and 3.2% of SNAP recipients (Department of Agriculture, 2014).

Family Violence

AI/AN children experience slightly higher rates of violence in their homes than the national average. AI/AN children are physically abused, sexually abused, and neglected at a rate of 12.4 per 1,000 AI/AN children compared to the national rate of 9.2 per 1,000 children (DHHS, 2013a).² Of note, however, is the fact that AI/AN children are far more likely to become a part of the child welfare system because of *substantiated* allegations of neglect. Of all AI/AN cases of maltreatment, 79.4% are neglect, 10.6% are physical abuse, and 5.2% are sexual abuse (these numbers do not total 100% because some children face multiple forms of abuse) (DHHS, 2010e). This finding is troubling because legal definitions and worker decisions to substantiate allegations of neglect are far more susceptible to cultural bias, racism, and a misunderstanding of poverty than other forms of maltreatment (Earl and Cross, 2001).³ AI/AN families, therefore, are prone to bias treatment in child welfare and children's mental health systems.

There are currently 8,344 AI/AN children in state foster care (DHHS, 2013b). AI/AN children live with the legacy of violence perpetrated by systems that historically promoted widespread removal of AI/AN children from their families and communities. Isolated from relatives and culture, they were subjected to assimilative educational and training experiences fraught with government-sanctioned abuse (Cross, 2004). This is additional violence to which AI/AN children are exposed.

Lastly, AI/AN children are more likely than children in the general population to witness violence perpetrated against their caregivers and parents in the home. AI/AN women are more likely than any other single racial group to experience intimate partner violence (IPV; also known as domestic violence). A high percentage (39%) of AI/AN women report having experienced IPV at some point in their lives (Black & Breiding, 2008). In the general population, we know that partners who engage in violence against each other are more likely to perpetrate violence against their children (DHHS, 2003; Carter, 2000). Also, children who witness IPV or live in a home where IPV is present face the long-term effects of trauma (Carter, 2000; DHHS, 2003).

¹ It is worth noting that AI/AN families make up 11.2% of the TANF Participants in Minnesota (where they are 1.4% of the general populations), 43.6% in Montana (where they are 9.3% of the general population), 52.7% in North Dakota (where they are 8.4% of the general population), and 62.4% in South Dakota (where they are 13.1% of the general population) (DHHS, 2012).

² These statistics are based on substantiated incidences of abuse and neglect. AI/AN children are often reported at a rate similar to the general population.

³ Problems with current state definitions of neglect that are particularly problematic in AI/AN communities are described by Earle and Cross (2001) as follows:

- The importance of the parental role in mainstream society, which is based on a mainstream American understanding of nuclear family and other class-based social preferences
- The importance of socioeconomic status, family circumstances, and race when determining whether or not abuse occurred; levels of reporting vary and are higher in lower socioeconomic and racially different homes, both commonalities with AI/AN communities.

The Domains of Native American Well-Being Indicator Models

The model below illustrates the many strengths identified by AI/AN scholars and authors as being present but often unmeasured in AI/AN communities. These strengths must be considered as part of the picture of well-being of AI/AN children and families (Goodluck [NICWA], 2000).



(Goodluck [NICWA], 2002)

Brief Background on the Indian Child Welfare Act

The Indian Child Welfare Act (ICWA) was enacted into law in 1978 in response to the troubling practices of public and private child welfare agencies. At the time of enactment, unnecessary removal of large numbers of AI/AN children from their homes was commonplace. This frequently resulted in the placement of these children in non-family, non-Indian homes far from their tribal communities.

A study conducted prior to the passage of ICWA sampled the states with the largest AI/AN populations. The study found that in the 1970's, 25-35% of AI/AN children nationwide were removed from their homes by the child welfare system (H.R. Rep. No. 95-1386). The same study found that 85% of these foster care placements were in non-Indian foster homes, and 90% of adoptions were to non-Indian parents (H.R. Rep. No. 95-1386). The disparity between the removal rates of AI/AN children and non-Indian children was even more striking. In South Dakota, the number of AI/AN children in foster care was 16 times the number for other children (H.R. Rep. No. 95-1386). In Washington, the number of AI/AN children who were adopted out was 19 times that for other children (H.R. Rep. No. 95-1386). The decision to remove children from their families was often based not on perceived threat or harm to the child but lack of understanding by state child welfare systems, private adoption systems, and courts of AI/AN child rearing practices and culture or bias (H.R. Rep. No. 95-1386).

The consequences of this high rate of removal and the bias toward AI/AN families were also cause for concern. Psychologists and other professionals testified before Congress that AI/AN children brought up in non-Indian homes suffered from a variety of adjustment and emotional disorders due to the removal and isolation from their families and the culture these placements created (Jones, Tilden, & Gaines-Stoner, 2008).

After years of congressional hearings and a substantial record documenting these practices, Congress intervened and passed the Indian Child Welfare Act. ICWA created procedures that must be followed by public and private agencies. The law was designed to ensure additional protections for tribal children and families and to curb bias. It does this by replacing state practices that place AI/AN children outside their communities with "minimum federal standards" that strive to keep AI/AN children in their homes, families, and communities (25 U.S.C. § 1902).

It is important to note that ICWA does not apply to all children who racially identify as AI/AN. ICWA applies only to those children who are members of, or whose parents are members and are themselves eligible for membership in, a federally recognized tribe (25 U.S.C. § 1903(4)). This is because "[t]he Supreme Court has recognized that Congress can treat [AI/AN people] differently from other racially distinct groups and not run afoul of traditional equal protection notions because of the unique relationship between tribes and the government" (Jones, Tilden, & Gaines-Stoner, 2008, p. 14). AI/AN tribal governments are acknowledged as distinct political entities in the U.S. Constitution, as well as hundreds of treaties, federal laws, and court cases. AI/AN children who are members of a federally recognized nation are therefore protected

under ICWA, and other similar laws, due to their political status, not their racial identification (Native American Rights Fund, 2011).

ICWA Compliance and Implementation

Where ICWA is followed, AI/AN child welfare goals are met. These successes include safety, permanency, child well-being, and family well-being (Limb, Chance, & Brown, 2004). The immediate impact of ICWA was to reduce the number of AI/AN children placed in foster care or adopted and to increase tribal control over these placements (MacEachron, Gustavsson, Cross, and Lewis, 1996). However, a decrease in ICWA compliance has resulted in an increase in the foster care and adoption rates for AI/AN children (Crofoot & Harris, 2012). This tells us that child welfare and adoption systems are straying from the requirements of the law. There is recent research documenting non-compliance with most of the key provisions of ICWA. These findings include

- 1) failure to identify Indian children and ensure they are receiving the protections of the law (Jones, Gillette, Painte, & Paulson, 2000 [NICWA]; Bellonger & Rubio, 2004);
- 2) inadequate or lack of notice to tribes and family members (Brown, Limb, Munoz, & Clifford [NICWA], 2002; Bellonger & Rubio, 2004; Waszak, 2010); and
- 3) placement of children outside the placement preferences without good cause or in a more restrictive setting than necessary (Jones, et al. [NICWA], 2000; Bellonger & Rubio, 2004; Carter, 2009).

Non-compliance is likely due to the fact that there is minimal oversight of ICWA implementation. ICWA was enacted without providing sanctions for non-compliance, incentives for effective compliance, a data collection requirement, or a mandate for an oversight committee or authority to monitor compliance. As noted by Silvey (2009), "You can write all the policies and procedures in the world, but without sanctions against performance, people do what they want." It is worth noting that ICWA is the *only* federal child welfare law that does not include legislatively mandated oversight or periodic review.

ICWA does not give any federal agency full responsibility for states' compliance with the law (Government Accountability Office (GAO), 2005). The DHHS's Administration for Children and Families (ACF) does review some limited information as part of their general efforts of oversight for the Title IV-B and Title IV-E funding programs. Through the Child and Family Service Plans (CFSP) mandated by ACF, states are required to develop in consultation with tribes the specific measures taken to comply with ICWA, and to report on three measures related to the key provisions of ICWA:

- 1) identification of Indian children;
- 2) notification of relevant tribes; and
- 3) adherence to the placement preferences.

Because these are the only data collected by states concerning ICWA compliance, and because the data are self-reported, these reviews have been deemed “insufficient for ACF to assess the states’ efforts to implement the law’s requirements” (GAO, 2005, p. 5; see also Brown et al. [NICWA], 2001).

GAO and NICWA studies have found that even the little information that is being collected is not used to ensure that ICWA concerns are addressed in a meaningful way. The 2005 GAO review of 51 Child Family Service Reports (CFSRs) from 2004 showed that 10 of the reports failed to provide the required discussion of ICWA. Furthermore, 32 of the reports expressed concerns with the law’s implementation, the identification of Indian children, and the training of caseworkers. For 12 of the 32 states that had noted concerns with ICWA compliance in their CFSRs, the ACF failed to report any corrective actions in their improvement plans (GAO, 2005). The GAO recommended that ACF consider using the existing ICWA compliance data they collected to provide better oversight and target guidance and assistance to states that were shown to be non-compliant. DHHS disagreed with this recommendation and subsequently has done nothing to implement it (GAO, 2005).

NICWA found that in 1999–2000, although 75% of states reported consulting with tribes, no specific information was solicited regarding the context or effectiveness of the consultation (Brown et al. [NICWA], 2001). Furthermore, NICWA found that nearly 80% of CFSRs did not respond to the three required measures for ICWA compliance. Instead, they indicated that they had in place, or would develop, specific policies or procedures for ICWA compliance (Brown et al. [NICWA], 2001). This information is consistent with the numerous reports provided by tribal governments across the United States that they are

- 1) not formally consulted regarding ICWA implementation in their state;
- 2) asked to sign on to state descriptions of ICWA compliance efforts they did not develop; or
- 3) never made aware of the requirement to consult with their state(s) on ICWA compliance.

Non-compliance is also likely due to a lack of education and understanding. There are many common misperceptions both of ICWA and of the status and unique relationship of Indian people under current law that affect practice in this area (Silvey, 2009). As Cross, Day, and Proctor (2009) note:

Although ICWA was passed thirty years ago, many social workers, and most social work students are unfamiliar with, and sometimes unwilling to comply with, this law. The lack of knowledge of the Act begins in the classroom with textbooks devoting only a short paragraph or two to the topic. The students are expected to read, understand, and digest information that is vital to the lives of American Indians, without classroom discussion or case analysis. (p. 3)

One study showed that only 45% of state social workers in a southwest state had ever read ICWA and only 55% were familiar with ICWA’s active efforts requirement (Limb, Chance, & Brown, 2004). This lack of education extends beyond social workers. As van Straaten and

Buchbinder (2012) note, attorneys and judges often simply “lack knowledge” of ICWA (p. 40). It is hardly surprising that there are problems with compliance if those responsible for implementing the law have never received any formal training on the law. It is more problematic when those responsible are unaware of ICWA altogether.

It is important to note that some instances of ICWA non-compliance occur when practitioners purposefully circumvent the law. NICWA receives thousands of phone calls a year from AI/AN parents, grandparents, tribal leaders, and tribal social workers seeking help and information on their ICWA cases. Each year NICWA is particularly troubled by the number of phone calls we receive that describe situations where social workers and attorneys appear to be willfully ignoring ICWA’s application to a case. Recently, NICWA has received a few phone calls from tribal attorneys and AI/AN private practitioners describing adoption trainings that not only questioned the importance of ICWA but also provided “tips and tricks” on how ICWA can be “avoided” in the adoption process. A review of the legal literature and case law shows that these phone calls are not isolated incidents but part of a larger pattern of problematic practice (*Adoptive Couple v. Baby Girl*, *amicus curiae* for Association of American Indian Affairs, National Congress of American Indians, NICWA, Indian tribes and other Indian Organizations, 2013 WL 1279462). Anecdotally, these unethical and illegal practices appear to be primarily focused on private adoptions and seem rare in child welfare proceedings.

Best Practices for Monitoring and Ensuring ICWA Compliance

ICWA and Cultural Competence Training for Social Workers, Court Personnel, and Attorneys

Training for state practitioners (social workers, attorneys, and judges) should always include details about ICWA, working with AI/AN families, and cultural competence. Furthermore, because ICWA is a complicated and unique part of child welfare practice and court procedure, ICWA-specific trainings are essential to ensure compliance. This training is most effective when it incorporates tribally developed training curriculum, or when the state curriculum has been developed with active tribal collaboration. To ensure tribal-state practitioner coordination that promotes ICWA compliance, these trainings should be opportunities for practitioners from the state and tribes to work and learn together, and from one another. The trainings should occur with regular frequency and include refresher courses, updates, and correspondence with trainees. They should not be one-time trainings.

The state of Washington has a model program that trains state workers with a Solution-Based ICWA Curriculum. This curriculum was created with input from the tribal communities in Washington. It integrates the state’s practice model with ICWA best practice. Training is provided for all levels of state workers. Workers are required to take refresher courses with regular frequency. Tribal workers are invited to join state workers at all trainings, and the training includes cultural competence requirements, tours of tribal child welfare programs, and cultural immersion activities. Programs like this one foster healthy relationships between the state and tribes, which improve ICWA compliance and outcomes for AI/AN children and families (Washington State Department of Social and Health Services, 2011a).

In addition there are national ICWA training resources available. This includes regular “ICWA Basics” courses presented by NICWA, and an online ICWA course that has been used by various state agencies and schools of social work to ensure that social workers receive ICWA training from a curriculum created by AI/AN people with tribal review and influence. More information is available here: <http://www.nicwa.org/training/>

ICWA Guides and Checklists

ICWA is a unique part of child welfare practice that many judges, attorneys, and social workers are not familiar with. In addition, although there are many jurisdictions where ICWA cases occur with regular frequency, there are others that only see a few ICWA cases a year. For this reason, it is imperative that practitioners have guides and/or checklists they can reference when working with a child who may be ICWA-eligible. These tools, typically created by the state, ensure compliance by providing accessible, distilled information including: ICWA’s requirements, state ICWA requirements, information on relevant tribal-state agreements, interpretations of ICWA that affect state practice, contact information for tribes within the state, and descriptions of how ICWA interacts with other laws such as the Adoption and Safe Families Act (ASFA; 105-89) and the Multi-Ethnic Placement Act (MEPA; 103-82). Practitioners who have access to these tools will be encouraged to meet each of the requirements of ICWA and double-check their own compliance with the law for each and every case involving AI/AN children. A few strong examples of ICWA guides and checklists include:

- California, Judicial Council of California, “Bench Handbook The Indian Child Welfare Act”: <http://www.courts.ca.gov/documents/ICWAHandbook.pdf>; California Indian Legal Services, “ICWA, Bench Guide” <http://www.calindian.org/icwa-benchguide>
- New York, Office of Children and Family Services, “A Guide to Compliance with the Indian Child Welfare Act”: <http://www.ocfs.state.ny.us/main/publications/pub4757guidecompliance.pdf>
- Washington, Department of Social and Health Services, “Indian Child Welfare Manual”: http://www.dshs.wa.gov/ca/pubs/mnl_icw/chapter1.asp
- Wisconsin, Department of Children and Families, “Indian Child Welfare Act Compliance List”: <http://info.dhhs.state.nc.us/olm/forms/dss/DSS-5291-ia.pdf>; Children’s Court Improvement Program, Midwest Child Welfare Implementation Center, Wisconsin Department of Children and Families, and the Ho-Chunk Nation Department of Justice, “ICWA Judicial Checklist”: <http://www.wicourts.gov/courts/programs/docs/ccipwicwa.pdf>
- National, National Council of Juvenile and Family Court Judges, “Indian Child Welfare Act Checklists for Juvenile and Family Court Judges”: <http://www.ncjfcj.org/resource-library/publications/indian-child-welfare-act-checklists-juvenile-and-family-court-judges>
- National, Native American Rights Fund, “A Practical Guide to the Indian Child Welfare Act”: <http://www.narf.org/icwa/index.htm>

Some states have also put together guides on an issue of particular importance to ICWA cases: “active efforts” to provide remedial service and rehabilitative programs before a child is removed and to reunify families. Because this crucial requirement of ICWA should drive the details of a case plan for AI/AN children in state child welfare systems, additional guidance is necessary for effective compliance. These guides help state social workers understand when active efforts are required and how active efforts are distinct from reasonable efforts. They also help practitioners understand the treatment, interventions, programs, and services needed to comply with this ICWA requirement. Guides also provide information as to where one can access these types of services. A few strong examples include:

- Wisconsin, A Child Welfare Practitioner’s Guide for Meeting the ICWA Active Efforts Requirement Department of Children and Families: <http://dcf.wisconsin.gov/publications/pdf/464.pdf>.
- Oregon, Oregon Judicial Department “Active Efforts Principles and Expectations”: <http://courts.oregon.gov/OJD/docs/OSCA/cpsd/citizenreview/ActiveEffortsPrinciplesandExpectations.pdf>.

ICWA Compliance Monitoring through Data Collection

Data collection can help state administrators and judges who might be reluctant to acknowledge a problem with ICWA compliance see in raw numbers that there *is* a problem and provide motivation to address it. Data collection also allows states to monitor ICWA compliance and engage in continuous quality control by using the data to improve policies and practice as needed. ICWA compliance can best be monitored via case reviews, court observation, and test group interviews (National Council of Juvenile and Family Court Judges [NCJFCJ], 2014). Each methodology monitors a different aspect of agency and court practice relevant to a state’s ICWA compliance. In spite of these facts, there is no federal agency tasked with oversight of ICWA compliance. Furthermore, there are few data collection requirements associated with the law. Nonetheless, researchers in a few states, including Washington and Iowa, have effectively collected data on ICWA compliance. These data have been used to inform and improve practices affecting AI/AN children in state child-welfare and court systems.

The most successful and widespread collection of ICWA compliance data is the QUICWA Compliance Collaborative of the Minneapolis American Indian Center. This program has been so successful that it has expanded to a national consortium of Indian tribes, urban organizations, and advocacy groups (MAIC, n.d.). QUICWA uses volunteers to randomly monitor court practice and record performance measures correlated to ICWA’s provisions. The data collected are then aggregated and analyzed to pinpoint challenges with ICWA compliance in a specific jurisdiction. This information is also used to advocate for improved ICWA compliance in the behaviors, practices, and policies of that jurisdiction. More information about the QUICWA program can be found here: <http://www.maicnet.org/programs/indian-child-welfare/quicwa/>.

The National Council on Juvenile and Family Court Judges recently released an ICWA compliance toolkit that helps state courts consider methods to help improve their data

collection to ensure ICWA compliance. This toolkit is available here:
http://www.ncjfcj.org/sites/default/files/ICWA_Combpliance_Toolkit_Final.pdf.

State ICWA Laws

There are a number of state laws, often referred to as “State ICWAs,” that create a complete statutory scheme for AI/AN children in state child-custody proceedings. These laws are created under the authority of ICWA, which states that any “State or Federal law that provides a higher standard of protection [than ICWA] to the rights of the parent or Indian custodian of an Indian child... shall apply” instead of ICWA (25 U.S.C. § 1921).

By codifying the federal ICWA in state law, states affirm their commitment to its application in the courtroom and administrative agencies. State ICWAs also reduce inconsistent practice and judicial interpretation of the law. In addition, the creation of a state ICWA provides the opportunity for states to work closely with tribes and within the state’s borders to gain a better understanding of the unique child welfare challenges faced by both entities. It allows them to collaborate to craft additional pertinent protections. These additional protections fill gaps in the federal legislation that are particularly troublesome for local AI/AN children, families, and tribes. For example, some states with codified ICWA laws require notice in voluntary proceedings, an omission in the federal law, and clarify “active efforts” entail.

A few examples of more comprehensive state ICWA laws include the following:

- California Indian Child Welfare Act, Senate Bill 678 of 2006;
- Iowa Indian Child Welfare Act, Iowa Code § 232B.1 et seq. (2005);
- Michigan Indian Family Preservation Act, 2012 Mich. Pub. Acts 565 (2012);
- Minnesota Indian Family Preservation Act, Minn. Stat. 260.751 et seq. (1999);
- Wisconsin Indian Child Welfare Act, Wis. Stat. § 48.028 et seq. (2013); and
- Washington Indian Child Welfare Act, 2011 Wash. Laws, S.B. 5656, 2001, Reg. Sess. Chap. 309 (Wash. 2011).

Additionally, a few state codes specifically reference ICWA and restate its general applicability without creating a full statutory scheme for AI/AN children. Although not as effective as creating a state ICWA, these provisions in state law remind practitioners that in child welfare proceedings with AI/AN children they must reference and comply with federal law—an anomaly in child welfare practice.

State Worker Job Descriptions that Include Duties Specific to Compliance with ICWA

ICWA typically applies to a small portion of a child welfare case worker’s caseload. People tend to perform better when they understand their job duties. Clear standards also help supervisors hold employees accountable. Creating job descriptions with ICWA-specific duties encourages the state to hire individuals with a working knowledge of ICWA. It also makes it clear that compliance with ICWA and effective relationships with tribes are expectations for state

workers. This ensures that the child welfare workforce is aware of and following ICWA, which increases compliance.

State ICWA-Specific Child Welfare Units

It is helpful for states to create ICWA-specific units. These units should consist of state social workers with special expertise in ICWA and AI/AN cultural competence. These units allow state workers to build expertise in ICWA practice and create strong, consistent relationships with tribes and tribal child welfare units. Currently, units like this exist in many large metropolitan areas with high AI/AN populations, such as Multnomah County (Portland, OR), Hennepin County (Minneapolis, MN), and Los Angeles, CA.

Volunteer Local Indian Child Welfare Advisory Committees

Local Indian Child Welfare Advisory Committees (LICWAC) are groups that meet to ensure cases involving AI/AN children whose tribes may be distant or lack the resources to intervene are still being monitored and reviewed by AI/AN peoples with child-welfare expertise. Washington has LICWACs that provide an example of these advisory groups. The Washington LICWACs describes themselves as follows:

LICWAC serves in an advisory capacity to [case managers] in determining case planning for Indian children when [the case manager] has not identified the children's Tribes or the children's Tribes have requested LICWAC participation in [sic] behalf of the Tribe. The LICWAC also serves as the Child Protection Team (CPT) for Indian children. LICWAC volunteers are active in every region in the state and provide a valuable service to CA and Indian families (Washington State Department of Social and Health Services, 2011b, para. 01.202).

More information about the Washington State LICWAC model is available here:

http://www.dshs.wa.gov/ca/pubs/mnl_icw/chapter10.asp

Performance-Based Contracting that Includes ICWA Related Outcomes

All states contract with and/or license private agencies to provide child welfare services. A few states require in these contracts or licensing requirements that the entity in question provide ICWA-specific training. Others require that these entities periodically evaluate their work to provide the state "assurance" that services and workers are complying with ICWA, that efforts to reduce disproportionality are being made, and that staff are working with AI/AN children and families in a culturally competent manner. These measures allow a state to ensure that the agency shares their commitment to ICWA compliance and the well-being of AI/AN children and families. Washington is an example of a state that includes this important measure.

The Effects of ICWA Non-Compliance

Immediate Effects of ICWA Non-Compliance

Bias Treatment and Overrepresentation

ICWA was designed to counterbalance the bias in the child welfare system that leads to disproportionate treatment⁴ and the disparate treatment⁵ of AI/AN children and families. The current data available on AI/AN children's experience in the child welfare system reflects systemic bias and the significant problems with ICWA compliance documented above.

Crofoot and Harris (2012) note that, because of the historic pattern of treatment of AI/AN families, institutional racism and institutional bias are the primary cause of modern day disparity and disproportionality in child welfare. The research available on AI/AN children's experience in child welfare shows that bias against AI/AN families is present (Harris & Hackett, 2008; Carter, 2009a) and that AI/AN status is a predictive factor for out-of-home placement (Mech, 1983; Donald et al., 2003; Fox, 2004).

Studies also show that at each decision point in the child welfare system, AI/AN children face disparate treatment which, counter to ICWA, makes it more likely they will be removed as opposed to receiving the services necessary to keep them in the home (Hill, 2008; Carter, 2009b; Carter, 2010). For example, Hill (2008) found that where child abuse has been reported, AI/AN families are two times more likely to be investigated, two times more likely to have allegations of abuse substantiated, and four times more likely to be placed in foster care than white children.

Nationwide AI/AN children are overrepresented in foster care at a rate 2.1 times greater than their rate in the general population. This means that although AI/AN children are just under 1.0% of all children in the United States they are 2.0% of all children who are placed outside their homes in foster care⁶ (Summers, Woods, & Donovan, 2013). These numbers become even more staggering when you look at states with high populations of AI/AN children.

⁴ This indicator reflects the rates of AI/AN children in the general population as compared to the child welfare population.

⁵ This indicator reflects the way AI/AN children are treated in the child welfare system as compared to the way non-AI/AN children are treated.

⁶ Compare this to Caucasian/White children who are underrepresented nationwide at a rate of 0.8 times lower than their rate in the general population. Caucasian/White children make up 52.0% of all children in the United States but only 41.0% of all children placed outside their homes in foster care. (Summers, Woods, & Donovan, 2013)

State	Disproportionality Rate	% of children who are AI/AN	% of children in foster care who are AI/AN
Minnesota	12.0	1.4%	16.3%
Nebraska	6.7	1.1%	7.5%
Washington	5.0	1.5%	7.5%
Iowa	4.8	0.4%	1.8%
Montana	4.1	9.3%	38.2%
South Dakota	4.0	13.1%	52.1%
Utah	3.6	1.0%	3.6%
North Dakota	3.5	8.4%	29.6%
Oregon	3.2	1.3%	3.9%
Alaska	2.9	17.3%	51.1%
Idaho	2.8	1.2%	3.3%
New Hampshire	2.6	0.2%	0.5%
California	2.0	0.4%	0.8%
Maine	1.8	0.8%	1.4%
Rhode Island	1.7	0.5%	0.9%
North Carolina	1.5	1.3%	1.9%
Michigan	1.4	0.6%	0.9%
Colorado	1.4	0.6%	0.9%

(Summers, Woods, & Donovan, 2013)

Provisions of ICWA that require active efforts, heightened standards of proof, and the testimony of a qualified expert witness familiar with the community and culture of the child before removal all directly address systemic bias, disparate treatment, and disproportionality. However, when ICWA is not applied or is applied inconsistently, the corrective action this law mandates is lost and children face disproportionate and disparate treatment at the hands of the child welfare system.

Case Disruption

Consequences of ICWA non-compliance go beyond overrepresentation in child welfare systems. Individual case consequences include delays in state court proceedings; disruption of foster care, guardianship, or adoptive placements; and malpractice actions (van Straaten & Buchbinder, 2011). To be clear, ICWA only causes delays in proceedings when it is *not* followed. ICWA compliance integrates directly into state agency and court practice without unnecessary or unique delay. If social workers and court officials actively follow the best practices of ICWA, there will be timely identification of AI/AN children in the system and immediate application of the law. When efforts to identify AI/AN children are not made or ICWA's application is not immediately identified, delays to proceedings are required to identify the child and backtrack to comply with this federal law. In addition, ICWA includes a "safety value" to incentivize compliance. This provision states:

[a]ny Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title (25 U.S.C. 1914).

This provision provides that when the state or private adoption agencies do not follow ICWA's provisions pertaining to jurisdiction, court procedure (excluding placement preferences), or voluntary termination of parental rights, children, parents, and the tribe may seek to invalidate the non-compliant determination. Although state laws interpret this provision differently, states and private adoption agencies must comply with ICWA to avoid further delays and disruptions and to ensure the best possible outcomes for AI/AN children.

ICWA is a federal law, and it is the ethical obligation of judges and attorneys to follow and comply with the law. Where attorneys willfully circumvent ICWA, hide or ignore the AI/AN status of a child, or fail to understand when and how ICWA applies to a given proceeding, they are open to malpractice lawsuits and ethics complaints with state bar associations. In addition, when ICWA is ignored there are serious implications including harm to birth parents, extended family members, foster care families, and prospective adoptive parents. These practices, unfortunately, are commonplace and well-known in Indian Country.

Long Term Effects of ICWA Non-Compliance

Loss of Culture and Rights

Connection to culture, family, and community is a right in and of itself. This right is recognized by ICWA and many international forums. However, it goes unprotected when ICWA is not followed.

In addition, recent literature has found connection to culture, community, and family to be important protective factors that ameliorate the effects of trauma and reduce various risky behaviors in which children exposed to violence are more likely to engage. A 2010 study concluded, "[T]he key source for increasing [both] risk and protection for delinquent behaviors among American Indian youth is the family," (Mmari, Blum & Teufel-Shone, 2010). This study identified (1) racism, (2) socioeconomic status, (3) loss of language and culture, and (4) gangs and weapons as risk factors at the community level. Protective factors were (1) tribal language, (2) ceremonies, and (3) powwows (Mmari, Blum & Teufel-Shone, 2010). One study showed that community identity and participation, expressed when teens visited older relatives and volunteered to help elders and others, was associated with lower rates of depression, alcohol use, antisocial behavior, and levels of internalizing dysfunctional behaviors (Whitesell, 2008). Other studies have reported the positive effects of cultural identity on negative outcomes such as suicide (Chandler & Lalonde, 2004), school dropout (Feliciano, 2001), and substance abuse (Moran, & Reaman, 2002).

The awareness of and loyalty to one's culture of origin is also linked to positive outcomes (LaFromboise, Coleman, & Gerton, 1993) such as school success (Whitbeck, Hoyt, Stubben, & LaFromboise, 2001), higher self-esteem (Kulis, Napoli, & Marsigliia, 2002), higher social functioning (Jones, & Galliher, 2007), increased resilience (LaFromboise, Hoyt, Oliver, & Whitbeck, 2006), and improved physical and psychological health (LaFromboise, Coleman, and Gerton, 1993).

Continued cultural connections and the ability to pass culture between generations has positive effects on communities as a whole. In 2007, a study of two AI/AN communities found lower rates of substance abuse and related trauma in the community that had maintained its cultural traditions (O'Connell et al., 2007). For AI/AN youth, individual and community strengths are linked. The removal of children from the community hurts not only the youth but the community as a whole.

Furthermore, the relationship AI/AN children have with their tribes—as citizens of sovereign governments—is critical not only for retaining a connection to their culture, but also for retaining their future rights and benefits as tribal members. The rights and benefits at risk include voting rights, the right to run for tribal elected office, the right to employment preferences, access to social service programs, access to educational opportunities (tribal schools, tribal college member tuition rates, tribal scholarship programs), and rights to other trust resources.

Disproportionate Numbers of AI/AN Youth Face the Outcomes Associated with "Aging Out"

AI/AN children disproportionately age out of state foster care. In 2006, more than 6,000 AI/AN children aged out of care without a family, which was 7% percent of all youth who aged out of foster care (Pew Charitable Trust, 2008). These youth enter adulthood without any familial or cultural connections and face some of the worst outcomes of any Americans. Statistics show that youth who age out of foster care have lower academic success, are less likely to keep and maintain employment, and face higher rates of poverty than youth who enter adulthood in permanent homes. They also are more likely to rely on government assistance, be homeless, enter the criminal justice system, become young parents, or struggle with mental health issues (Casey Family Programs, 2008).

Emotional and Psychological Distress

This past year an *amicus curiae* brief written by adult adoptees documenting their stories of placement outside their families and communities was filed with the United State Supreme Court in *Adoptive Couple v. Baby Girl* (570 U.S. ____). The adult adoptees state their interest in the case as follows: "Amici are thus personally familiar with the serious long-term social and psychological consequences of child placement practices that fail to appreciate how important recognition of an Indian child's tribal heritage and participation in his or her tribal community

can be to the child's sense of identity" (*Adoptive Couple v. Baby Girl*, *amicus curiae* for Adult Adoptees, 2013 WL 1279463 p. 1-2). Anecdotes capture the experience of adult adoptees who suffered and still suffer psychological distress after having been placed outside their community prior to ICWA or as a result of noncompliance with ICWA. Books such as the one edited by DeMeyer and Cotter-Busbee (2012) document the effects of removal, including identity issues and psychological struggles these adoptees face as adults. Unfortunately, there is minimal peer-reviewed research available on the psychological distress depicted in these accounts.

In one important study, Locust (1998; 2000) observes that "placing American Indian children in foster/adoptive non-Indian homes puts them at great risk for experiencing psychological trauma that leads to the development of long-term emotional and psychological problems in later life" (1998, para. 4). Locust finds that these long-term psychological liabilities create a cluster of symptoms that can be recognized as a syndrome (para. 5). Locust calls this the "Split Feather Syndrome."

Split Feather Syndrome is caused by the following shared experiences of children adopted out of their families and communities: 1) loss of Indian identity; 2) loss of family, culture, heritage, language, spiritual beliefs, tribal affiliation, and tribal ceremonial experiences; 3) the experience of growing up being different; 4) the experience of discrimination from the dominant culture; and 5) cognitive difference in the way Indian children receive, process, integrate and apply new information—in short, a difference in learning style. These experiences leave adult adoptees with identity confusion, a lack of belonging, and psychological distress (Locust, 1998; 2000). Interestingly, when individuals identified as experiencing this syndrome took active steps to reclaim their AI/AN identities and reconnect with their families and communities, they reported decreases in various indicators of psychological distress (Locust, 1998; 2000). A more recent study describes similar identity loss and psychological distress in Canadian First Nation peoples who were placed outside their homes (Carriere, 2007).

In addition to these studies, there is some older evidence documenting more immediate increased identity issues and psychological distress among AI/AN youth (Berlin, 1978; Berlin, 1987; McShane, 1988; Westermeyer, 1979).

Tribal-State Child Welfare Collaboration

Because of the direct relationship between the federal government and tribal governments, tribal-state interaction has been limited. The direct tribal relationship with the federal government led to the sense that there was little role for state involvement in tribal affairs. In the limited interactions between tribes and states, there were frequently conflicts over jurisdiction and resources. As Earle (2000) notes, "Historically, relationships between states and tribes have been poorly defined and frequently problematic," (p. 13). Many of these conflicts were resolved through protracted legal battles to establish jurisdiction (Hicks & Dossett, 2000; Johnson, Kaufman, Dossett, & Hicks, 2000).

These contentious and distant tribal-state relationships have led to reluctance on the part of tribes and states to communicate with one another and to coordinate on issues of mutual interest. Some tribal governments have also feared that forming working relationships with state governments would negatively affect their direct relationship with the federal government (Johnson et al., 2000).

The trend toward federal devolution—or passing authority and resources to lower levels of government—has increased in the past decade, especially in the areas of human service delivery and community development (Johnson et al., 2000; Johnson, Kaufman, Dossett, & Hicks, 2002). With increased responsibilities and resources at more local levels of government, there is a greater need for intergovernmental coordination and cooperation among local governments—specifically states, counties, and tribes. The mutual interests of neighboring governments are numerous.

State governments and tribal governments have far more in common than in conflict. Both types of government have a primary interest in protecting the health and welfare of their people. Therefore, as tribal and state governments gain resources and responsibilities, their capacity and incentive to cooperate increases.

Relationships with All Three Branches of Government

Before identifying specific federal legislation designed to promote and incentivize tribal-state collaboration and improve tribal-state relationships, it is useful to examine the role of each of the three branches of state government and to explore those types of general efforts that may facilitate intergovernmental relationships with each branch—legislative, executive, and judicial.

The legislative branch is clearly a critical component in tribal-state relationships. Tribes and states can develop and institutionalize legislative relationships by establishing committees of jurisdiction over AI/AN issues; hiring legislative staff (at the individual representative level and/or at the committee level); developing state legislation that affirms a government-to-government relationship with tribes; providing new legislator training about the governmental status, structure, and function of tribes; sponsoring briefings and/or hearings about issues of interest to tribes; and requiring “tribal impact statements” on any bills that are introduced (Johnson et al., 2002).

The executive branch is the form of state government with which tribes have generally had the most experience (Johnson et al., 2000). Tribes can develop strong relationships with state executives by using a number of mechanisms. These can include executive orders that establish government-to-government relationships with state agencies; development and implementation of state consultation policies; establishment of Governors’ Offices of AI/AN Affairs; training for state agency employees that addresses the governmental status, structure, and function of tribes; and quarterly meetings of state and tribal administrative staff.

The judicial branch can use a number of tools to enhance state/tribal collaboration. These include court rules; training for new judges on the governmental status, structure, and function of tribes; and issue-specific training on how to use key matters of tribal governance as vehicles for improving tribal-state relationships.

Regardless of the branch of government with which tribal relationships are being developed, a few key principles of intergovernmental relationships apply. These include a commitment to cooperation on issues that concern tribes and states; mutual understanding and respect; regular and early communication and consultation (before policies are developed and conflicts arise); an established process and accountability for addressing issues; and institutionalizing positive relationships (Johnson et al., 2002).

Federal Law Requiring Tribal-State Collaboration

ICWA offers unique opportunities for tribal-state relations. First, it provides states with the opportunity to create tribal-state ICWA agreements (25 U.S.C. § 1919). Under this provision in ICWA, over 70 tribal-state agreements have been crafted. They range from coordination and referral agreements to step-by-step plans that detail the progression of an AI/AN child through the state child welfare system. These plans may spell out how to assign jurisdiction, service responsibility, and resource provision for AI/AN children in the child welfare system. They may require collaborative steps at each decision point. Some agreements give tribes great flexibility in designing their own programs and services. Others—often those that include state resources—are very prescriptive.

ICWA also provides minimum federal standards for AI/AN children in the child welfare system as well as a provision that encourages states to create laws that provide greater protections for AI/AN families (25 U.S.C. § 1921). Many states with large AI/AN populations have worked closely with the tribes inside their borders to create state ICWAs or remedy identified ICWA issues via legislative advocacy and action.

In addition to ICWA, other generally applicable federal child welfare laws recognize the importance of tribal-state collaboration. They include the following requirements to encourage positive relationships between tribes and states:

- Title IV-B of the Social Security Act, which provides funding for child welfare services, requires states receiving funding to create a plan that: “contain[s] a description, developed after consultation with tribal organizations...in the state, of the specific measure taken by the State to comply with the Indian Child Welfare Act” (42 U.S.C. § 622 (b)(1)(9)). Although the intent of this provision is clear, its effect is minimal. As described above, there is little compliance with these provisions, and ACF rarely follows through with corrective action when these plans are inadequate or the information is not provided. Jack Trope, Executive Director of AAIA, will provide more detailed testimony on this topic, which NICWA supports in full and wishes to advocate here.

- Title IV-B of the Social Security Act contains a program that funds state Court Improvement Projects aimed at better integrating child welfare social work practice with court practice. Recipients of these funds must show “a demonstration of meaningful and ongoing collaboration among the courts in the State, the State agency or other agency under contract with the state who is responsible for administering the State program...and where applicable tribes” (42 U.S.C. § 627h (b)(1)(C)). These provisions attach funding to tribal collaboration, making the position of the federal government clear: If you are working on improving your child welfare and dependency court practice, tribes and ICWA should be included in the review. This requirement has resulted in some significant collaborations specifically around ICWA in many states. It has helped produce educational videos, tribal-state court judge dialogues and exchanges, and ICWA specific guides for judges.
- Title IV-E of the Social Security Act, which funds all federal foster care, adoption, and guardianship reimbursement payments as well as some administrative and training costs, contains an important provision pertaining to tribal-state Title IV-E agreements. It requires that states negotiate with tribes “in good faith” for tribal-state IV-E funding agreements (42 U.S. Code § 671). This requires states to negotiate with tribal governments in a manner that allows for true collaboration and cooperation. Title IV-E agreements have been very successful in allowing tribes to access the resources they need to provide services for their members and exercise sovereignty (Brown, Scheuler-Whitaker, Clifford, Limb, & Munoz [NICWA], 2000). This provision appears to have incentivized a few new Title IV-E agreements. However, there is little information available on its effects to date.
- Lastly, the Chaffee Foster Care Independence Program demands a great deal of tribal state collaboration. Its requirements include:

A certification by the chief executive officer of the State that each Indian tribe in the State has been consulted about the programs to be carried out under the plan; that there have been efforts to coordinate the programs with such tribes; that benefits and services under the programs will be made available to Indian children in the State...and that the State will negotiate in good faith with any Indian tribe... in the State that does not receive an allotment. (42 U.S.C.677(b)(3)(G))

Due to this provision many tribes have successfully accessed funding to help with their foster populations or successfully coordinated their child welfare services with state Chafee programs to ensure AI/AN access.

Best Practices in Tribal-State Collaboration

Truth and Reconciliation Work

NICWA staff, in partnership with the Child Welfare League of America, First Nations Repatriation Institute, and the First Nations Child and Family Caring Society of Canada, have recently developed a “Reconciliation in Child Welfare Initiative.” The goal of this initiative is to “stop harmful practices that are still being perpetuated in state child-welfare systems and to promote racial healing for Indian children, families, and communities who suffer from the historic trauma of losing their family relationships and identities as a consequence of past and present institutional racism within the child welfare system,” (NICWA, 2011, p.2). The work, which is grounded in traditional values, has four phases:

- Truth Telling—The process of open exchange regarding the past.
- Acknowledging—Affirming and learning from the past and embracing new possibilities.
- Restoring—Addressing the problems of the past and creating a better path for the future.
- Relating—Moving forward together in a respectful way along a new path.

This is a promising practice model that develops trust and builds community between tribes and states through cultural values rather than mainstream values and imperatives (NICWA, 2011). It is through this trust and community-building process that ICWA compliance and tribal-state relations improve (NICWA, 2011). This process has been utilized to improve tribal state collaboration in Alaska, Michigan, Minnesota, and Washington (NICWA, 2011). More information on this process is available in the curriculum written by the project partners: http://www.fncaringsociety.com/sites/default/files/docs/Touchstones_of_Hope.pdf.

Maine has also recently begun a child welfare reconciliation process. Maine has created a Truth and Reconciliation Commission that will listen, record, and process how the Maine child welfare system has treated AI/AN children and families since the passage of ICWA. The process will involve listening sessions and ceremonial gatherings at each of the five Wabanaki communities in Maine. The purpose of the process is to give AI/AN people in the state of Maine an opportunity to be heard, to start the healing process, and to seek suggestions on how the state child welfare system can work better with tribal children, families, and communities. At the end of the project the Commission will issue a final report. More information on this project is available at: <http://www.mainewabanakitrc.org/>.

Tribal-State ICWA Agreements

Tribal-state agreements are crafted collectively by the state and a tribe within its borders to clarify procedures for ICWA implementation and to coordinate responses to child welfare service inquiries for AI/AN children. To date about 20 states have such agreements with tribes. These agreements improve ICWA compliance and outcomes for AI/AN children because they clarify jurisdictional issues, delineate roles and responsibilities, ensure the coordinated

implementation of ICWA, and provide procedures for structured conversations between the state and tribes when challenges arise.

There are significant positive outcomes for tribal-state agreements. These include increased ability of states and tribes to provide culturally relevant services, more entitlement for tribes to administer their own programs and provide services to their citizens, and opportunities for tribes to exercise their sovereignty (Hicks, 2005). The Washington tribal-state agreement is widely regarded as one of the best tribal-state agreements because it does a thorough job of detailing both tribal and state responsibilities throughout the child welfare process. Copies of this agreement are available at: <http://www.dshs.wa.gov/ca/services/srvICWAgree.asp>.

Tribal-State Children's Services Advisory Groups

Tribal-state children's services advisory groups typically meet at least once quarterly and include tribal leaders, tribal social-service workers, and state child-welfare agency officials. These groups participate in and create trainings, address programmatic and policy challenges, design and implement new projects (such as service improvement projects), and discuss necessary ingredients for evaluating child welfare quality and data collection. These groups are a venue for formal ongoing collaboration and coordination activities that foster ICWA compliance and improve the well-being of AI/AN children and families.

The Alaska Tribal State Collaborative Group (TSCG) is one example of these groups. TSCG is a partnership that includes tribal members, tribal leaders, and representatives from different levels of the Alaska Office of Children's Services. This group meets multiple times a year. Their focus is to foster collaboration that ensures ICWA compliance, reduce disproportionality, promote healthy racial and ethnic identity, and develop strong working relationships. More information is available at: <http://dhss.alaska.gov/ocs/Pages/icwa/tscg/tscg.aspx>.

Tribal-State Dependency Court Advisory Groups

Tribal-state dependency court advisory groups regularly bring together tribal judges, tribal court staff, state judges and state court staff. During these meetings the collective group problem-solves, shares information, and collaborates on systems improvement that will lead to better outcomes for AI/AN children and families. These work groups improve outcomes for AI/AN children by streamlining jurisdictional transfers, pinpointing issues that stand in the way of best court practices, encouraging peer-to-peer collaboration, and building support for culturally competent practices. When tribal access to Court Improvement Program funding opened up in 2012, tribes and states gained access to the resources necessary to participate in these important collaborations.

Sharing Resources

Many states find tribes to be an essential part of the child welfare system because of the help and relief they offer. Tribal support includes providing culturally competent services and

necessary out-of-home placements for tribal children (GOA, 2005). Tribes know the needs of their children and families best. When tribes are involved in the care and treatment of their children and families, the outcomes are better. This efficacy makes for overall long-term cost savings. Unfortunately tribes often lack sufficient resources in the area of child welfare programming. Recognizing this need, many states share resources or distribute some of their federal funding to tribal child welfare programs. Resource allocation can come in the form of contracts, grants, or agreements. This may include general ICWA agreements or those specific to federal funding streams such as Title IV-E or Title XX of the Social Security Act. When this occurs, tribal capacity to care for children and families improves, and tribal-state collaboration improves.

The most common form of resource sharing between tribes and states is via Title IV-E agreements. These agreements allow tribes to access federal funds reserved for foster care, guardianship, and adoption assistance programs. The Association on American Indian Affairs recently completed a report titled “A Survey and Analysis of Select Title IV-E Tribal-State Agreements including Template of Promising Practices” which is available here: <http://www.indian-affairs.org/programs/documents/FullTitleIV-EReport.pdf>.

Recommendations

Training and Technical Assistance (T/TA)

- *Improve the availability and quality of ICWA training for social workers, attorneys, and state court judges.* There is a lack of ICWA training available on an ongoing basis for state practitioners. Filling this void is essential to achieving ICWA compliance.
- *ACF should contract with ICWA experts to perform a thorough review of the ICWA compliance measures states are currently using. The results of this review should be compiled into comprehensive best practice documents and a toolkit for states to use to increase nationwide ICWA compliance.* There is currently no national source of comprehensive information on the innovative ICWA compliance measure states are taking and the creative tribal-state collaborations occurring. Collecting and disseminating this information would help states think creatively about what they could do to ensure better ICWA compliance.
- *Hire AI/AN staff who have experience with ICWA implementation for Senior Advisor positions at key central and regional offices of affected federal agencies (DOJ, DHHS, DOI).*
- *Require descriptions of how ICWA and cultural competence will be a part of all T/TA contractor and resource center plans for ACF.* ICWA affects all aspects of child welfare practice, from intervention to permanent placement and data collection. It is imperative that the federal resources available to states for T/TA thoroughly incorporate the provisions of ICWA and its requirements when working with state child welfare agencies and state dependency courts. It is also important to ensure that ICWA and its unique requirements are woven into all state efforts to change the child welfare system .

Data Collection/Analysis

- *Require states to collect ICWA data, as part of an existing data collection measures (Adoption and Foster Care Analysis and Reporting System and National Child Abuse and Neglect Data System).* States are already required to report a variety of measures on the children in their care. Requirements pertaining to ICWA, including a determination of ICWA eligibility, tribal notification, active efforts provided, placement according to placement preference, and other concerns related to AI/AN child welfare, should be added to these requirements. Including ICWA information in state reporting requirements would provide the information necessary to improve federal oversight and evaluate national ICWA compliance. These data will ultimately help target resource allocation and areas needing further policy development.
- *Provide tribes with more information and support to enhance their participation in federal reviews.* Tribal participation in state Child and Family Service Reviews focuses on measures of tribal/state relations in child welfare, ICWA implementation, and improvement of outcomes and services affecting tribal children and families. In many cases, tribal involvement is shaped by the state's designation of what is tribally relevant even though tribal children and families are impacted by activities in almost every aspect of the reviews. Increased tribal input combined with more federal guidance and oversight in this area would be beneficial.

Federal Administrative Policy

- *Improve procedures for the collection and review of ICWA data.* ACF should work with tribes and states to improve program instructions and internal administrative procedures regarding collection of data that inform ICWA implementation and T/TA with states.
- *Provide follow-up in states where there is knowledge of ICWA non-compliance.* When ACF becomes aware of ICWA non-compliance via Child and Family Service Reviews or other sources, it should take action to assess the source and scope of non-compliance and provide assistance to states to improve ICWA compliance.
- *Conduct Department of Justice (DOJ) ICWA compliance investigation.* The levels of disproportionality, particularly in states with high AI/AN populations, and the studies that show bias treatment of AI/AN families in state child welfare and adoption systems allude to systemic civil rights violations of AI/AN children and families. DOJ's Civil Rights division must look into these troubling practices.
- *Provide funding for research, treatment, and healing activities for AI/AN adoptees placed outside of their homes and families.* ACF, IHS, and National Institutes of Health should partner on an initiative that seeks AI/AN researchers to better understand Split Feather Syndrome and traditional healing and treatment modalities.

Congressional Policy

- *Enact legislative reform to establish a federal review of state ICWA implementation.* ICWA is the only federal child welfare law without a regular and comprehensive federal review required. Federal reviews would allow states the opportunity to gain a better understanding of their services and outcomes and make improvements with federal assistance when necessary.
- *Create incentives for state ICWA compliance.* Congress and ACF have created incentives in the child welfare arena to improve practice and compliance with federal laws pertaining to adoptions and foster care. Incentives to encourage state compliance with ICWA would likewise be a powerful tool. Congress could promote ICWA compliance by rewarding states that show evidence of substantial compliance. Federal incentives could promote innovative and successful mechanisms for measuring and maintaining ICWA compliance.

Federal Budget

- *Include an annual request in the President's budget to fund the three grant programs allocated under the Indian Child Protection and Family Violence Prevention Act (P.L. 101-630, Title IV).* This law provides resources for tribes to address tribal capacity needs in dealing with child welfare and domestic violence. The funding is used to provide treatment for AI/AN victims of child abuse in tribal communities, support child-abuse and family-violence prevention efforts, and establish child and family resource centers. These are the only AI/AN-specific grant programs authorized to address child-abuse treatment and prevention. These grant programs have been authorized since 1991 but have only received one funding request and actual appropriation from Congress since they were created.
- *Increase tribal ICWA funding.* ICWA funding supports tribal efforts to improve ICWA compliance through case advocacy. Nonetheless, this funding has been stagnant since 1996. We recognize that the President has proposed a small increase of \$5 million in his FY 2015 budget proposal that would bring the amount of funding up to \$25 million total. At the time ICWA was passed, Congress estimated that \$26 million-\$62 million would be required to fully fund tribal child welfare programs on or near reservations during the first four years of the grant program (U.S. Senate Report 95-597) For this reason funding must be increased to ensure ICWA compliance.
- *Fund the Urban ICWA Program authorized in Title II of ICWA.* The protections of ICWA apply to children on-reservation and children who live in urban areas. For this reason, ICWA authorizes child welfare funding for urban programs. From 1979-1996, funding was allocated for ICWA grants to urban organizations serving Native peoples. The off-reservation program has not been funded since 1996 despite the fact that 67% of Americans who identify as exclusively AI/AN lived off-reservation according to the Census (2012c). Urban programs perform important functions such as recruitment of Native foster-care homes, case management, identification of at-risk families for

services, and in-home support that helps children stay in their homes or be reunified with their parents safely.

- *Give States Incentives to Share Resources with Tribes.* Tribes provide more efficient and effective services to AI/AN children and families than mainstream agencies but often lack resources to do this. Encouraging states to share their resources (federal and otherwise) would improve services to AI/AN families and foster better tribal-state collaboration.
- *Fund pilot data collection projects to test the practice models, tools, and software states use to monitor ICWA compliance.* It is important to know whether or not ICWA compliance efforts are effective. By providing the funding necessary to test these tools we can ensure that states are using evidence-based practices for ICWA compliance.

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