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National Indian Child Welfare Association
Protecting Our Children • Preserving Our Culture

**Hearing on the Truth and Healing Commission on Indian Boarding School Policies Act in the
United States (H.R. 5444)**

House Natural Resources Subcommittee for Indigenous Peoples of the United States

**Testimony of the
National Indian Child Welfare Association**

May 26, 2022

The National Indian Child Welfare Association would like to thank Representative Davids and Representative Cole for introducing the *Truth and Healing Commission on Indian Boarding School Policies Act in the United States*. As we witness the international shock and outrage at the identification of mass burial sites and unmarked graves of First Nations children in Canada who were residents of residential schools, we see the parallels to the boarding school policies and experiences in the United States and the accounts from survivors of the horrific abuse and conditions they were subjected to. The legacy of those policies and practices is evident in Native communities all across the United States today. This legislation is critical to revealing the truth about the individual and collective trauma that was imposed upon Native communities and furthering the process of healing for all Native people.

NICWA's testimony will focus on:

- The impact of the boarding school experience upon American Indian/Alaska Native (AI/AN) children, families, and communities and its influence on the overrepresentation of AI/AN children in state foster care systems.
- The consequences of the boarding school experience and associated trauma that leaves AI/AN children and families more susceptible to public and private child welfare system involvement.
- The role of the Indian Child Welfare Act (ICWA) and kinship care in addressing systemic bias and historical trauma through recognizing tribal sovereignty and self-determination over child welfare.
- Tribal-defined and trauma-informed solutions that effectively address safety, healing, and connection to family, community, and culture.

NICWA is a national American Indian/Alaska Native nonprofit organization located in Portland, Oregon. NICWA has over 40 years of experience providing technical assistance and training to tribes, states, and federal agencies on issues that impact Indian child welfare and children's mental health. NICWA provides leadership in the development of public policy that supports tribal self-determination in child welfare and children's mental health systems as well as compliance with ICWA (P.L. 95-608). We are frequently engaged in work to assist tribal leaders in establishing and operating effective governance structures that support tribal sovereignty and effective oversight and decision-making in child welfare, emphasizing the important role that tribal governments play in fostering community-driven and culturally based solutions to child abuse and neglect. 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 and child welfare.

Boarding School Experience — An Avenue to Overrepresentation in the Child Welfare System

To fully comprehend the issue of child maltreatment among AI/AN children, it is essential to first understand that many of the risk factors for child maltreatment in AI/AN communities are linked to historic governmental policies and practices. From the 1860's through the 1970's, the federal government and private agencies established and operated Indian boarding schools in which Indian children were involuntarily taken from their families and often taken far away from their communities, often for years at a time (Crofoot, 2005; Cross et al., 2000), severing traditional child-rearing practices and belief systems and extended family networks that were relied upon to keep children safe from abuse and neglect. Harsh assimilationist policies not only took children away from their families and placed them in Indian boarding schools but aimed to further separate families from their culture. In the 1950's and 1960's, the federal government continued attempts to assimilate tribal communities by passing termination and relocation policies that ended the federal-tribal relationship for many tribes, provided states with expanded jurisdiction on tribal lands, and highly encouraged Indian people to leave their tribal communities and relocate to urban areas, continuing the erosion of protections and supports and disrupting tribal governments, cultural practices, and family structures. And while self-determination policies of the federal government began to replace more severe assimilationist federal policies in the 1960's, federal and state governments largely pushed against opportunities for enhanced self-governance, which can be seen in

the passage of Public Law 280 in the 1950's that encroached upon tribal exclusive jurisdiction and required concurrent criminal and civil jurisdiction with the state. This is important to acknowledge because continued institutional barriers to tribal sovereignty and self-determination only impeded the healing process for tribal communities.

Due to prolonged institutionalization and the harsh discipline tactics instilled by boarding schools, parents and grandparents were unable to experience positive, culturally based models of family life and family discipline (Crofoot, 2005), increasing the risk of Indian families reverting to punitive discipline and child maltreatment, similar to what was experienced and reinforced in Indian boarding schools. The time that AI/AN children spent in boarding schools led to the deterioration of traditional understandings of child-rearing practices and protection that were once the responsibility of entire communities, not just the child's birth parents. Without natural helping systems in place, children were left vulnerable to state and federal control. By the time the involuntary boarding school experience had faded in the 1970's, it had created conditions within AI/AN families that made these families vulnerable to involvement in public and private child welfare systems that often utilized bias and mainstream assimilationist practices to remove large numbers of AI/AN children from their families and place them in homes outside of their communities and culture.

Boarding School Trauma and Influence on Risk Factors for Involvement in Child Welfare Systems

Beginning in the 1960's, public and private agencies involuntarily removed hundreds of AI/AN children from their homes and placed them in non-Indian homes far away from their families and tribes (Cross et al., 2000). While this separation of children from their families occurred within a different system than that of boarding schools, it certainly took on similar patterns of forced separation and surfaced around the same time that involuntary boarding school placements began to decrease. In a 1970's study, the Association on American Indian Affairs found that between 25% and 35% of all Indian children had been separated from their families, and approximately 85% of the children removed were placed in non-Indian homes (Indian Child Welfare Program, 1974). Today, AI/AN children remain overrepresented in state foster care at a rate 2.66 times greater than their proportion of the general population; in particular, AI/AN children represent 1% of all children in the U.S. but account for 2.7% of all children placed outside of their homes in foster care (Puzzanchera et al., 2022). This disproportionality only increases as an AI/AN child moves deeper into the system, leading to further traumatic experiences among AI/AN children, families, and communities, and undermining efforts to improve child welfare outcomes among tribal families. A national study found that AI/AN children are two times more likely to be investigated, two times more likely to have allegations of abuse or neglect substantiated, and four times more likely to be placed in foster care than Caucasian/White children (Hill, 2007). This reveals persistent concerns around systemic bias, lack of training in cross-cultural care, policy-related barriers, and other structural inequities that place AI/AN children at higher risk of experiencing abuse or neglect.

While there is limited information available on the specific risk factors for child maltreatment among AI/AN families, national statistics show that AI/AN families are particularly vulnerable to child maltreatment, which may be understood by several interconnected factors, including but not limited to household poverty, joblessness, inadequate housing, social isolation, and high rates of victimization. These factors can be directly correlated to assimilationist policies that aimed to socially and economically isolate reservations and urban Indian communities. Similar to past efforts of involuntary removal and placement of children in boarding schools, AI/AN children continue to experience disparate treatment in public and private child welfare systems, a perpetual cycle of loss and isolation from family, community, and culture. Further, when the human brain is exposed to repeat traumatic events such as these, areas of the brain that play an important role in stress response become dysregulated and can alter a person's capacity to cope with the profound effects of trauma on memory, regulatory functioning, and stimuli response (van der Kolk, 2000). Therefore, a person's capacity to provide for their own safety becomes compromised as hypervigilance kicks in when the stress response system is unable to regulate itself back to a safe place that is absent of threat. When unable to self-regulate, a person can become emotionally withdrawn and participate in avoidance behaviors like substance abuse to prevent re-exposure to the existing unresolved

trauma. For children, without the presence of a supportive and responsive adult to act as a buffer, repeat exposure to prolonged adversity among children, known as toxic stress, can disrupt brain development and other organ systems, lead to cognitive impairment, and increase risk for disease into adulthood (“Toxic Stress,” n.d.). The presence of a supportive and responsive adult can act as a buffer to childhood adversity, however, the far-reaching effects of trauma both historically and present-day among AI/AN communities requires comprehensive, community-based solutions to addressing trauma.

Traumatic events like forced displacement and the boarding school experience, which subjected children to harsh discipline, child abuse, infectious disease, isolation, and extreme mental and emotional trauma, can be passed down through generations (Cross, 2005; Brave Heart & DeBruyn, 1998) and resurface in many ways, including but not limited to increased mental health disorders, stress, social isolation, and substance abuse; all of which are risk factors for child maltreatment and could result in interactions with the child welfare system. Without commitment to ensuring AI/AN children and families have access to culturally appropriate support services, children and families will have to find other coping mechanisms to manage the emotional, physical, cognitive, behavioral, social, and developmental impacts of compounding traumatic experiences. To break the cycle of trauma and create a path for healing among AI/AN children, families, and communities, the continued legacy of harm by public and private child welfare systems must be acknowledged and addressed.

Understanding How ICWA and Kinship Care Promote Healing

After two centuries of federal and state government efforts to disrupt tribal traditions, family structures, and systems of care for children, the federal government passed ICWA in 1978 to acknowledge the inherent sovereign right of tribal governments to protect their children and maintain their families. ICWA created opportunities to confront inequities by requiring that state public and private agencies provide active efforts to rehabilitate families and follow placement preferences as a means to keep AI/AN children connected to their families, communities, and culture. Active efforts requirements are intended to counteract potential systemic bias that may lead to unnecessary child removal and support family reunification whenever possible through the provision of services that aid families in keeping their children safely at home. This includes tribal-run community-based services that have largely been underutilized and underfunded, yet provide services that incorporate cultural components often left out of state models of how to provide child welfare services.

Despite ICWA codifying placement preferences for kinship care, evidence shows that AI/AN children are still less likely than non-AI/AN children to be placed in kinship care settings (Carter, 2009; Maher et al., 2015), impacting a child’s sense of attachment, cultural identity, and developmental outcomes in adolescence and young adulthood. Studies have shown that the experiences between AI/AN children and their kin caregivers exhibit strong attachment and bonding development (Henderson et al., 2015; Cross & Day, 2008; Cross et al., 2010; Mooradian et al., 2007; Kopera-Frye, 2009) that can generate long-lasting benefits to mental health as well as, economic, and educational well-being. The holistic benefits of restoring connections between AI/AN children and their extended family networks shows just how important it is that families know the truth about what happened to their children and communities, have a space and opportunity to heal that is appropriate to their tribal culture, and have support and resources to nurture their tribal and cultural identity.

The Value of Tribal-defined and Trauma-informed Solutions

When tribes are empowered and have adequate resources available, they can design and operate trauma-informed solutions that best meet the needs of their children and families that have faced historic and intergenerational trauma. For instance, several years ago the Confederated Tribes of the Umatilla Indian Reservation in Oregon faced the challenge of how to improve their child welfare system to better meet the needs of children and families. Over a period of a few years, tribal leadership, the tribal child welfare program, and community members realized something needed to change if they were going to improve outcomes for children and families in the community. Despite the best efforts of those involved

and the various state and federal funding sources they secured, the number of children placed in foster care had either risen or stayed very high. The tribe's largest child welfare funding source only provided reimbursement for services after a child was removed from the home, and the program was largely based on a state and federal model of how to provide child welfare services. With tribal child welfare staff overwhelmed and community members frustrated with the program's increased need to continually recruit more foster homes, the need for change was evident.

To turn their child welfare system around, tribal leadership, community members, and child welfare staff all came to the table to redesign and decolonize their child welfare system to be more proactive, family-centered, and culturally appropriate. This meant redesigning the structure of the child welfare system, incorporating more cultural practices, and restructuring the way the system was funded, ensuring that the values of Indigenous children, families, communities, and cultures were at the forefront of redesign efforts. A primary change was developing more robust services for families that needed extra support or were at risk of having their children removed. The enhanced services placed greater emphasis on having regular contact with families; active coordination with other service providers, both in and outside the community; more training for staff on family engagement and support; and restructuring staff positions to provide more expertise and focus on prevention services. Following the restructuring, the number of children in foster care and other out-of-home care decreased by over 70% and has remained stable ever since. Reducing the number of children in out-of-home care made available funds that had been previously employed for foster care to be used for family support services, and tribal leadership reprioritized their revenue contribution to provide greater support for family support services. An additional, unanticipated benefit of the restructuring was the improvement in the community's relationship with the tribal child welfare program. Further, staff reported that parents were more likely to voluntarily seek help before a crisis occurred, and there was great relief in the community when recruitment for foster homes became less constant.

Although this kind of child welfare system redesign needs a lot of community investment to get off the ground, in the long run it has proven to be much less expensive because of the improved outcomes for children and families, higher staff satisfaction and lower turnover, and reduced need for more expensive and more intensive interventions like foster care and other out-of-home services. This illustrates that when tribes are at the forefront of the development process, positive outcomes are much more likely to occur, including enhanced support resources that promote safety and stability, allow for opportunities to restore and maintain relationships, and reduce the likelihood a child will experience trauma from unnecessary removal or separation that could be prevented with active coordination of culturally appropriate services.

For too long AI/AN children have been at the center of harmful state and federal policies and practices, including lack of understanding and bias among public and private child welfare systems that continuously fell short of recognizing that the solution was within AI/AN communities themselves – that tribes know best the needs of their children and families and are best positioned to address those needs when given the capacity to self-determine. Therefore, prioritizing tribally driven and trauma-informed solutions is critical to embarking on the journey to healing and preventing continued suffering among future generations of AI/AN children, families, and communities.

Legislative Comments

We appreciate the inclusion of the critical historical information and current-day impacts described in Section 2 Findings. While some people may be generally aware of the Indian boarding school policies and actions, Section 2 provides additional information that illustrates the intersection between the historical and intergenerational trauma that has occurred because of the Indian boarding school experience and more recent policies and actions regarding the continuing trauma that has occurred because of the bias and harmful practices in public and private child welfare systems.

Section 3 provides information on the purposes of the Truth and Healing Commission on Indian Boarding Schools in the United States (Commission). We greatly appreciate the coordination with the Department of Interior's investigation into Indian boarding schools; development of recommendations to address healing for affected Native communities, families and individuals; and the focus on the modern-day assimilationist practices of public and private social services systems that have led to continued trauma for Native families.

Section 5 provides information on the establishment and membership of the Commission, Truth and Healing Advisory Commission, and Survivors Subcommittee. We appreciate the scope of work that has been laid out for the Commission in the legislation and the requirements to include a diverse group of people with lived experience related to the Indian boarding school experience. We note again the importance of the provisions that address modern day assimilationist practices in public and private child welfare systems.

We also greatly appreciate extending the time for the work of the Commission to five years. In previous drafts, the timeline was much shorter and would have been a significant barrier to completing a comprehensive investigation, analysis, and development of recommendations. As we have witnessed in Canada, the timeline for a similar investigative process took six years and there were less than half as many residential schools identified there. While we appreciate extending the timeline of the Commission's work, we would caution members of Congress to not be surprised if the work takes longer given the much larger scope in the United States compared with similar work in Canada on a much smaller scale.

Another point of appreciation are the provisions that require consultation with tribal nations by the Commission and provisions that address the issuance of subpoenas to secure testimony and evidence related to the Commission's work. Because of the incredible sensitivity and complexity of these issues and the sovereign governmental status of tribal nations, it will be critical that the Commission approach their work with a humility and respect for the tribal nations and individuals affected. The subpoena authority is critical because Indian boarding school policies and actions were implemented over a hundred years of time and involved numerous institutions and individuals that carried out the policies. Not all may cooperate with simple requests from the Commission to appear or provide evidence, so the issuance of subpoenas may become an important tool in piecing together important information that the Commission will need to complete their charge.

Final Statement

This legislation is vital to documenting the truth about the atrocities of the boarding school experience and the individual and collective trauma that has remained largely unrecognized and unresolved in Native communities. The passage of this legislation will not only further the process of healing for Native communities, but it also opens doors to acknowledging and addressing other ways in which government policies and practices have evolved over time and continue to perpetuate harm, including the current state of disproportionate treatment of AI/AN children in the child welfare system. Additionally, it is a path toward ensuring tribal nations receive the support and resources needed to continue healing, nurturing, and protecting their children, families, and cultural identity.

In closing, we greatly appreciate all the work that you have done to move this legislative forward and support tribal nations in this critical effort towards the truth and healing of children and families. If there is anything we can do to further support the passage of this legislation, please contact NICWA Government Affairs and Advocacy Director David Simmons at desimmons@nicwa.org. We look forward to continued partnership opportunities to pursue healing for AI/AN children and families impacted by historic and intergenerational trauma through community-based and culturally appropriate services in tribal communities.

References

- Brave Heart, M. Y. H, & DeBruyn, L. M. (1998). The American Indian holocaust: Healing historical unresolved grief. *American Indian and Alaska Native Mental Health Research*, 8(2), 60–82.
- Carter, V. (2009). Comparison of American Indian/Alaska Natives to non-Indians in out-of-home-care. *Families in Society: The Journal of Contemporary Social Services*, 90(3), 301-308.
- Center on the Developing Child at Harvard University. (n.d.) Toxic Stress. <https://developingchild.harvard.edu/science/key-concepts/toxic-stress>
- Crofoot, T. (2005). Effects of abuse and neglect on American Indian/Alaska Native children. In D. S. Bigfoot, T. Crofoot, T. L. Cross, K. Fox, S. Hicks, L. Jones, & J. Trope (Eds.), *Impacts of child maltreatment in Indian Country: Preserving the seventh generation through policies, programs, and funding streams*. National Indian Child Welfare Association.
- Cross, S., & Day, A. (2008). American Indian grand families: Eight adolescent and grandparent dyads share perceptions on various aspects of the kinship care relationship. *Journal of Ethnic & Cultural Diversity in Social Work*, 17(1), 82-100.
- Cross, S., Day, A., & Byers, L. (2010). American Indian grand families: a qualitative study conducted with grandmothers and grandfathers who provide sole care for their grandchildren. *Journal of Cross Cultural Gerontology*, 25, 371-383.
- Cross, T. L. (2005). Child abuse prevention in Indian Country. In D. S. Bigfoot, T. Crofoot, T. L. Cross, K. Fox, S. Hicks, L. Jones, & J. Trope (Eds.), *Impacts of child maltreatment in Indian Country: Preserving the seventh generation through policies, programs, and funding streams*. National Indian Child Welfare Association.
- Cross, T. L., Earle, K. A., & Simmons, D. (2000). Child abuse and neglect in Indian Country: Policy issues. *Families in Society*, 81(1), 49.
- Henderson, T., Dinh, M., Morgan, K., & Lewis, J. (2015). Alaska Native grandparents rearing grandchildren: a rural community story. *Journal of Family Issues*, 38(4), 547-572.
- Hill, R. B. (2007). An analysis of racial/ethnic disproportionality and disparity at the national, state, and county levels. Casey-CSSP Alliance for Racial Equity in Child Welfare. <https://assets.aecf.org/m/resourcedoc/aecf-AnalysisofRacialEthnicDisproportionality-2007.pdf>
- Indian Child Welfare Program: Hearings before the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs, 93d Cong. (1974). <https://narf.org/nill/documents/icwa/federal/lh/hear040874/hear040874.pdf>
- Kopera-Frye, K. (2009). Needs and issues of Latino and Native American nonparental relative caregivers: Strengths and challenges within a cultural context. *Family and Consumer Sciences Research Journal*, 37(3), 394-410.
- Maher, E., Clyde, M., Darnell, A., Landsverk, J., & Zhang, J. (2015). Placement patterns of American Indian children involved with child welfare: Findings from the second National Survey of Child and Adolescent Well-Being. Casey Family Programs. <http://www.casey.org/media/NSCAW-Placement-Patterns-Brief.pdf>
- Mooradian, J., Cross, S., & Stutzky, G. (2007). Across generations: Culture, history, and policy in the social ecology of American Indian grandparents parenting their grandchildren. *Journal of Family Social Work*, 10(4), 81-101.

Puzzanchera, C., Taylor, M., Kang, W., & Smith, J. (2022). *Disproportionality rates for children of color in foster care dashboard*. National Council of Juvenile and Family Court Judges. http://ncjj.org/AFCARS/Disproportionality_Dashboard.asp

van der Kolk, B. (2000). Posttraumatic stress disorder and the nature of trauma. *Dialogues in Clinical Neuroscience*, 2(1), 7–22. <https://doi.org/10.31887/DCNS.2000.2.1/bvdkolk>