



NICWA

National Indian Child Welfare Association

Child and Family Policy Update

March 2024

An electronic copy of this update can be found on the National Indian Child Welfare Association's (NICWA) website at <https://www.nicwa.org/policy-update/>.

Hot Topics

ACF Seeks Comments on Proposed Regulations to Collect Data on Native Children in State Child Welfare Systems

On February 23, 2024 the Administration for Children and Families (ACF) released a [Notice of Proposed Rulemaking](#) (NPRM) to establish data elements that measure the status of American Indian and Alaska Native children (AI/AN) in state child welfare systems. The data measures, most of which track Indian Child Welfare Act (ICWA) requirements, are key to understanding the status of AI/AN children in state child welfare systems and how to most effectively target resources to improve outcomes for AI/AN children and families. **NPRM comments are due to ACF by April 23, 2024.** You can file comments online [here](#) and access a copy of sample comments [here](#) to help you develop comments. ACF has also scheduled a tribal consultation on April 3, 2024. You can register [here](#).

Previously, Adoption and Foster Care Analysis and Reporting System (AFCARS) only tracked AI/AN children in state systems by their race instead of their political status as members of sovereign tribal nations. Accurately tracking ICWA implementation in AFCARS has always been very challenging because ICWA applies to AI/AN children who are members of a federally recognized tribe, not by their race. In 2016, the Obama Administration issued a Final Rule that established these data measures for AI/AN children and families, which was later replaced by a new Final Rule in 2020 that eliminated over 85% of the data measures established in 2016. ACF's current NPRM seeks to restore the AI/AN data elements that were eliminated in 2020 and ensure that accurate and necessary data is collected to better understand the challenges that impact AI/AN children and develop effective solutions to improve ICWA's implementation and improve outcomes for this population.

The National Indian Child Welfare Association (NICWA) strongly encourages tribes, states, and other allies of AI/AN children to support the addition of these data elements for AI/AN children contained in the NPRM. At NICWA listening sessions in Indian Country, tribal leaders and tribal child welfare advocates have expressed how important it is to improve data collection on ICWA implementation. Your comments are critical to making this decades long effort successful, so please submit your comments soon. If you have any questions, please contact David Simmons desimmons@nicwa.org or Mariah Meyerholz mariah@nicwa.org for further assistance.

Senate Finance Committee and House Ways and Means Committee Work on Child Welfare Law Reauthorization with Potential Impacts to Tribal Funding

The Senate Finance Committee and House Ways and Means Committee held a roundtable discussion with child welfare advocates on December 13, 2023, to hear the priorities of child welfare advocacy groups and tribes as the committees prepare to reauthorize Title IV-B programs in 2024. Title IV-B of the Social Security Act provides funding to tribes and states for prevention services, reunification services, permanent placements, and court improvement activities. The Senate Finance Committee and the House Ways and Means Committee have jurisdiction over Title IV-B of the Social Security Act and will be working together to explore opportunities to improve the programs during the reauthorization process.

An electronic copy of this update can be found on the National Indian Child Welfare Association's (NICWA) website under Latest News at www.nicwa.org. 1

Title IV-B Subpart One and Subpart Two contain some of the most flexible funding for child welfare activities and between 300-400 tribes access the funds each year. NICWA was invited to provide comments at the roundtable and submit written comments that you can find [here](#). The focus of NICWA's comments were to streamline the administrative requirements of the Title IV-B programs to make them more reasonable for tribes to administer, increase the funding levels for both the tribal child welfare services and court improvement programs, and support legislation that would require the Department of Health and Human Services to collect data on ICWA implementation by states and provide technical assistance to states and tribes working together to improve ICWA implementation. As the Senate Finance Committee and House Ways and Means Committee develop their schedule and process for reauthorization, NICWA will be alerting tribes to opportunities to work with their Senators and House of Representative's members to support positive changes to Title IV-B for tribal nations.

Strengthening Tribal Families Act Seeks to Enhance HHS Role With ICWA

The [Strengthening Tribal Families Act](#) (H.R. 3461) was introduced at the request of tribal intervenors in the *Haaland v. Brackeen* case, the National Indian Child Welfare Association, and the National Congress of American Indians in 2022 and then again in 2023 during this current session of Congress (118th Congress 2023-2024). The legislation is bipartisan and amends Title IV-B of the Social Security Act to direct the Department of Health and Human Services (HHS) to work with states to improve implementation of the Indian Child Welfare Act (ICWA) and collect data from states on their efforts to implement the law. Previous attempts to improve ICWA implementation, going back to a 1994 Title IV-B requirement for states to consult with tribes on measures to improve ICWA compliance, have largely failed. H.R. 3461 is an attempt to clarify that the Department of Health and Human Services (HHS) has a role in helping states improve their implementation of the law and work with states and tribes to collect data and provide technical assistance. The legislation also encourages collaboration with the Bureau of Indian Affairs to improve data collection and technical assistance efforts. NICWA strongly encourages tribes and ICWA advocates to contact their House of Representative members to sponsor the Strengthening Tribal Families Act. You can find contact information for your congressional representatives [here](#).

Legislation

House Introduces Indian Boarding Schools Legislation (H.R. 7227)

On February 5, 2024 Representative Sharice Davids and Representative Tom Cole introduced a House companion bill ([H.R. 7227](#)) to the Senate introduced Truth and Healing Commission on Indian Boarding School Policies Act ([S. 1723](#)). S. 1723 was introduced on May 18, 2023 by Senator Elizabeth Warren and has 29 co-sponsors. This is a reintroduction of legislation that was introduced in the House and Senate in the 117th Congress. NICWA submitted [written testimony](#) for a May 2022 hearing on the legislation that focused on the intersection of the Indian boarding schools and the experience of Native children and families in state and private child welfare systems. NICWA is supporting the legislation and the [National Native American Boarding School Healing Coalition](#), who is leading advocacy efforts on this legislation.

The Senate Committee on Indian Affairs held a markup of the legislation on June 7, 2023, where the committee reported out the legislation favorably with amendments. The amendments approved in committee were generally clarifying amendments without making substantive changes to the key purposes of the legislation. Now, the legislation is being scheduled for full consideration by the Senate. No companion bill has been introduced in the House of Representatives.

The legislation establishes a commission to formally document and investigate Indian boarding school policies and practices in the United States. The commission members are appointed by Senate and House of Representatives leadership and the President. The legislation also establishes an advisory committee to provide advice and recommendations to the commission comprised of representatives that include, but are not limited to:

- National Indian organizations with expertise in child welfare, education, and boarding school issues
- Federal agencies, such as Bureau of Indian Education, Office of Indian Education in the Department of Education, and commissioner of the Administration for Native Americans
- Members of federally recognized tribes and Native Hawaiian organizations
- Mental health, healthcare, or Native healing practitioners that have experience working with descendants of board school students
- Family members of students that attended boarding schools, current teachers, and students that have attended a boarding school in the past or currently are attending one

The commission will be holding public hearings to gather evidence and will be making recommendations on how to address and heal the historical and intergenerational trauma caused by the Indian boarding school policies and practices. The commission will also collaborate and exchange information with the Department of Interior during its investigation.

Tribes and advocates for Native children and families are encouraged to contact your Congressional representatives and urge them to sign on as co-sponsors to the legislation and support its passage. You can find contact information for your congressional representatives [here](#).

Native American Child Protection Act Passes House and Senate Committees

The Native American Child Protection Act, [H.R. 663](#), was reintroduced by original co-sponsor Representative Ruben Gallego (D-AZ) on January 31, 2023, and Senator Lujan introduced a companion bill in the Senate, [S. 2273](#). The legislation reauthorizes the two grant programs and the national resource center for tribes, clarifies that cultural programs and services may be used in the grant programs, and increases the funding authority Congress has to appropriate funding for the tribal grants authorized in the legislation. This is some of the only dedicated tribal funding regarding access for child abuse prevention and child abuse victim treatment. The legislation was introduced in the last Congress and was approved by the House of Representatives and the Senate Committee on Indian Affairs.

The House Natural Resources Committee reported out H.R.663 on May 17, 2023, with amendments that removed the amount of funding authorized for the two grant programs, the resource center, and the years the funding was authorized. This language is crucial to reauthorizing the Indian Child Protection and Family Violence Prevention Act grant programs for tribes. The language that remained in the bill reported out of committee contained amendments that clarified eligible activities that could be carried out under the grant program but stops short of reauthorizing the grant programs. The Senate Committee on Indian Affairs reported out a companion bill that is identical to the one reported out by House Natural Resources on July 19, 2023.

The impact of deleting the funding authorization levels and years authorized continues over two decades of not having a current authorization for these critical grant programs. While Congress will sometimes appropriate funding for federal grant programs that are not authorized, it sends a message that these grant programs are not a priority and creates barriers to getting sufficient appropriations funding in the future.

NICWA is working with tribes and Indian organizations to contact their House and Senate members to support S. 2273. This legislation is one of NICWA's top policy priorities and we need your help to get the legislation authorized this year. You can find contact information for your congressional representatives [here](#).

Tribal Family Fairness Act Legislation in 118th Congress

Congresswoman Sidney Kamlager-Dove (D-CA) with co-sponsors Don Bacon (R-NE) and Sharice Davids (D-KS) introduced the Tribal Family Fairness Act ([H.R. 2762](#)) in the House of Representatives on April 20, 2023. The bill would provide additional funding for tribes under the Promoting Safe and Stable Families Program (Title IV-B, Subpart Two under the Social Security Act) that funds flexible family preservation

and support services. The legislation also seeks to streamline the reporting and application requirements for tribes and increase funding for tribal court improvement grants for tribal family courts. The legislation is an important step forward in helping tribes secure more flexible child welfare funding that can help children avoid removal from their homes and strengthen families so children can be returned home safely. The legislation was introduced first in the 117th Congress in 2021 but needed to be reintroduced to be considered in the current 118th Congress. Senate members are considering introducing a version of this legislation in the Senate as well.

NICWA has been a supporter of this legislation and urges tribal advocates to contact their senators and urge them to sign on to the legislation as a co-sponsor. Please ask your House of Representative members to sign on to the legislation as a co-sponsor and support the legislation.

Budget

The House and Senate passed two final appropriations bills for FY 2024 in March, 2024. The first bill provided funding for programs under Justice, Veterans Affairs, Agriculture, Interior, and Transportation departments. The second bill, which includes the remaining federal departments such as Health and Human Services where most federal human service programs reside, was also approved by Congress. These two appropriation bills follow three previous continuing resolutions that kept the government funded while House and Senate leaders could finish work on FY 2024 appropriations. For the most part, FY 2024 funding for human service programs that tribes operate are continued at or near the same levels as previous years. The lateness in Congress finishing its appropriations work causes challenges for tribes as they have to wait months past the time when last year's funding ran out, September 30, 2023, to receive the new fiscal year's funding. In addition, when Congress is late in getting its appropriations work finished, it often results in little to no increase in funding for programs that tribes depend upon to meet the needs of their communities.

President Biden released his FY 2025 budget recommendations for Congress on March 11, 2024 with a number of increases in his recommendations for child and family service programs that tribal nations utilize. In addition, the President's budget also contains recommended legislative changes to improve access to and operation of federal programs. The President's budget request articulates his priorities in the budget process that Congress undertakes each year. Some of the President's key FY 2025 recommendations include:¹

Budget Recommendations

- Increase HHS Promoting Safe and Stable Families (Title IV-B, Subpart 2) mandatory funding \$180 million over FY 2024 levels and increase funding for the tribal court improvement program.²
- Increase BIA Tiwahe Initiative funding \$26.8 million over FY 2024 levels.³
- Increase BIA Indian Child Welfare Act funding \$7.9 million over FY 2024 levels.⁴
- Increase BIA Social Services by \$24.3 million over FY 2024 levels.⁵

¹ The President's budget request includes funding increases that would be shared by states and tribes in some programs. Specific data on how much of the proposed increase would accrue to tribal nations is not always specified.

² Tribes receive a 3% set-aside from the overall mandatory funding levels. The President's request, if approved by Congress, would raise the amount of funding allocated to tribes from \$9.75 million to \$15.15 million and increase the overall number of tribes eligible to apply for the funding under the statutory formula. The tribal court improvement program is currently funded at \$1 million per year and the President's budget includes a legislative change to raise the amount of funding for tribal court improvement programs (level of increase is not specified).

³ The Tiwahe Initiative uses an integrated model of service delivery for child and family programs under the BIA, which supports integration of existing programs to improve well-being and promote development of culturally-specific program and service systems. The FY 2025 funding increase is spread across several different programs that contribute program support to tribal Tiwahe grantees.

⁴ Includes funding for both tribal and off-reservation programs (specific amounts not specified for each).

⁵ The increase would also be used to expand implementation of the Indian Child Protection and Family Violence Prevention Act programs (P.L. 101-630) that funds child abuse and neglect and family violence prevention and treatment of victims (specific amount not specified).

Legislative Recommendations

- Increase the set-aside for tribal and migrant populations under the Child Abuse and Prevention Treatment Act, Community Based Child Abuse Prevention grants to \$5 million from the current 1% set-aside from the overall funding under this program (typically produces less than \$1 million per year to be shared by tribal and migrant population grantees).
- Provide a consolidated grant opportunity for tribes under the Title IV-B, Subparts 1 and 2, and the Chafee and discretionary Education and Training Voucher programs so tribes can use these program funds more flexibly to meet a variety of child welfare needs.⁶
- Allow tribes that participate in the Title IV-B, Subpart 1 Child Welfare Services program, but do not currently participate in the Title IV-E Foster Care and Adoption Assistance programs to submit a plan to operate the Title IV-E Prevention Services program.⁷

For more information relating to this update, please contact NICWA Government Affairs Director David Simmons at desimmons@nicwa.org.

⁶ The specifics regarding how consolidation of these programs would work, some which not all tribes are eligible to administer, are not available in the President's request.

⁷ Currently, tribal nations must operate all of the mandatory sections of the Title IV-E program to be eligible to operate the Prevention Services Program under Title IV-E. The Prevention Services program provides reimbursement for a portion of eligible prevention services costs to help children who are at risk of being placed in foster care or other out of home placement.