

Federal Child Welfare Laws that Support Implementation of the Indian Child Welfare Act



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Background

Since the passage of the Indian Child Welfare Act in 1978 (25 U.S.C. 1901 et seq.), federal child welfare law has undergone numerous changes. In many cases, these changes have brought federal statutory requirements for all children and families in the child welfare system closer to the requirements of the Indian Child Welfare Act (ICWA) and associated best practices. This includes notifying Tribal Nations and birth parents of court proceedings, establishing out-of-home placement preferences with relatives, encouraging state-Tribal collaboration, and promoting active efforts to prevent removal of a child from home and support reunification when appropriate. Each of these ICWA requirements are supplemented by other federal laws that seek to improve services and outcomes in a similar manner for all children and families. This document will provide examples of federal child welfare laws that support the different elements of ICWA implementation and how they can be used to support ICWA and the best interests of Native families.

The Indian Child Welfare Act (ICWA) uses the term “Indian Child” to refer to an American Indian or Alaska Native child that is eligible for ICWA’s protections (25 U.S.C 1903(4)). In this document, we are using the term “Indian child” when citing the application of ICWA and “Native” when referring to American Indian or Alaska Native children or their family more generally.

Laws That Support Engagement of Relatives

Notice to Relatives

ICWA requires notification of the child’s Tribal Nation, birth parents and/or Indian custodian when an Indian child is involved in a state child custody proceeding. An Indian custodian is defined as “any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.” (25 U.S.C. 1903(6)). An Indian custodian can often be a relative of the Indian child.

Title IV-E of the Social Security Act requires state and Tribal IV-E agencies within 30 days after the removal of a child, to exercise due diligence to identify and provide notice to all grandparents and other adult relatives of the child (42 U.S.C. 671(a)(29)). The notice must include (1) that the child is or has been removed from their home, (2) explain the options the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice, (3) describe the requirements to become a foster family home and the additional services and supports that are available for children placed in such home, and (4) if the state or Tribe has elected to make kinship guardianship assistance payments

under Title IV-E, describe how the relative guardian may access these payments. These Title IV-E requirements expand the reach of ICWA notice provisions to help identify relatives who may be available to provide a temporary or permanent home and/or relatives that can provide emotional or other kinds of support to the child and family.

Placement with Relatives

Title IV-E of the Social Security Act requires state and Tribal Title IV-E agencies to consider giving preference to any relative care provider over any non-relative care provider (42 USC 671(a)(19)). This placement requirement is similar to ICWA's placement preferences that require placement with a relative (Indian or non-Indian) as the first preference. As questions arise about placement options for Native children, in foster care, guardianship, adoption, or institutional care, understanding both the specific requirements of ICWA and more universal requirement for relative placement under Title IV-E reminds us of the need to focus attention on the effective engagement of relative care providers early in the case.

Placement with Siblings

Making reasonable efforts to keep siblings together when placed in out-of-home care is a requirement under Title IV-E of the Social Security Act (42 USC 671(a)(31)). Title IV-E also provides that when siblings are not placed in the same home, there should be efforts to provide frequent visitation.

ICWA defines extended family to include brothers and sisters and provides relative placement as the first placement preference for Native children placed in out-of-home care (25 USC 1903 and 1915(b)). The 2016 federal ICWA regulations provide examples of what constitutes active efforts to keep Indian families together, which includes keeping siblings together (25 CFR 23.2.) and stipulates that Indian children should be placed in the least restrictive placement that most approximates a family, which includes placement with siblings or in a reasonable proximity to siblings if siblings cannot be placed together (25 CFR 23.131).

Laws that Support Recruitment and Licensing or Approval of Foster Family Homes

Recruitment of Foster Care and Adoptive Families

Title IV-B of the Social Security Act requires states to provide for the diligent recruitment of potential foster and adoptive families that reflects the ethnic and racial diversity of children in their child welfare system (42 USC 622(7)). This includes the recruitment of Native foster and adoptive families. While ICWA does not have a similar requirement, it has placement preferences for foster care and adoption that include Indian families and could benefit from these recruitment efforts (25 USC 1915(a) and (b)).

Waiver of Non-Safety Standards in Licensing

Title IV-E of the Social Security Act allows states and Tribes on a case-by-case basis to waive any foster family home non-safety standard for relative foster family homes (42 USC 671(a)(10)). This requirement can be helpful in licensing relative homes where non-safety issues, such as the size of bedrooms in a relative caregiver home, could be a barrier to licensing.

Tribal Home Studies

Title IV-E also includes a provision that states shall treat any home study report that is received from another state or Tribe as meeting any requirements imposed by the state for the completion of a home study before placing a child in the home (42 USC 671(a)(26)(B)). Many Tribal Nations conduct home studies of foster, guardianship, or adoptive homes on or near their lands, but

in the past have encountered challenges where their home studies were not accepted by state child welfare agencies. This Title IV-E provision can help state child welfare agencies understand that they should give home studies performed by Tribal agencies the same consideration they would give their own home studies.

+ Utilizing Tribally Licensed or Approved Homes

Title IV-E contains a requirement that states must not delay or deny approved foster or adoptive homes outside their jurisdiction when available (42 USC 671(a)(23)) and Title IV-B requires that states shall make effective use of cross-jurisdictional resources and shall eliminate legal barriers, to facilitate timely adoptive or permanent placements for waiting children (42 USC 622(b)(10)). Cross-jurisdictional resources would include placements licensed or approved by Tribal Nations or resources provided by Tribal Nations. In many cases, Tribal foster care or adoptive homes are the only homes available that meet ICWA's placement preferences, and working through Tribal Nations is the surest way to secure placements for Indian children that are in compliance with ICWA's placement preferences. Helping state courts and state child welfare agencies understand that utilizing Tribal resources and placement homes is not only in the Indian child's best interest, but also helps the state stay in compliance with Title IV-E, Title IV-B, and ICWA requirements.



Laws that Improve Tribal-State Collaboration



+ State Development of ICWA Compliance Measures

Title IV-B of the Social Security Act requires states to develop a description, in consultation with Tribal Nations and Tribal organizations within their state, of the specific measures taken to comply with ICWA (42 USC 622(9)). This includes how the state will ensure timely notice to Indian Tribes of state child custody proceedings involving Indian children, foster care or adoptive placements of Indian children, and case recordkeeping as such matters relate to transfers of jurisdiction, termination of parental rights, and active efforts. This requirement encourages states to engage Tribal Nations in discussions of implementation and compliance with ICWA in their state and develop a plan for improving compliance. Several states have established Tribal-state forums that meet regularly where these discussions and planning occur. Inquire with your state child welfare agency about what they are doing to meet this requirement and how it can be used to improve ICWA implementation.

ICWA authorizes states and Tribal Nations to develop agreements addressing care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between states and Tribes (25 USC 1919(a)). These agreements and other forms of policy have increased significantly since ICWA's passage to the point where almost every state that has federally recognized Tribes within their boundaries has some form of agreement or state law or policy addressing ICWA's implementation.

+ State Court and Tribal Nation Collaboration

Title IV-B requires state court improvement programs to include demonstrations of meaningful and ongoing collaboration with Tribes in their applications (42 USC 638 (b)(1)(C)). State court improvement programs address a variety of efforts to improve state juvenile court processes, including training, court rules, and data collection. While ICWA does not specifically address state court improvement programs, the majority of ICWA's requirements require state courts to make judicial determinations in ICWA cases. As such, ICWA requirements related to transfer of jurisdiction from state to Tribal court (25 USC 1911(b)), sharing of state reports or other documents in ICWA cases by Tribal Nations (25 USC 1912(c)), and providing full faith and credit to public acts, records, and judicial proceedings of Tribes (25 USC 1911(d)) all contribute to the need for state and Tribal courts and agencies to collaborate effectively.

+ State and Tribal Title IV-E Agreements

Title IV-E of the Social Security Act requires states to negotiate in good faith with any Indian Tribe, Tribal organization, or Tribal consortium in the state that requests to develop a Title IV-E agreement with the state (42 USC 671(a)(32)). Tribal Nations have the option to operate Title IV-E foster care, relative guardianship, adoption assistance, or prevention services programs through an agreement with a state. These intergovernmental agreements allow Tribal Nations to operate the Title IV-E program within their jurisdiction and exercise their sovereignty in program and court-related proceedings. Currently, there are over 270 Tribes that have entered into Title IV-E agreements with states, and these agreements have provided Tribal Nations with resources that have improved Tribal capacity to intervene in state ICWA cases, provide resources that support the Native children and families involved, and transfer jurisdiction to Tribal court when appropriate (Trope, J. F. and O'Loughlin, S. K., 2014)*.

** Since the publication of this 2014 survey, Title IV-E agreements between Tribes and states have increased, although there is no official census of the number of these agreements as of July 2026.*

+ Improving Coordination of Chafee Independent Living Services

Title IV-E of the Social Security Act requires states to certify that each Tribe in the state has been consulted with about the Chafee

Independent Living program and there have been efforts to coordinate the programs with Tribes and that benefits and services will be made available to Indian children in the state on the same basis as to other children in the state (42 USC 677(b)(3)(G)). Prior to the establishment of this requirement, Native children who were aging out of foster care were often underrepresented in state systems that provided services to this population despite being overrepresented in state foster care systems (Crofoot Graham, T. L. Cellarius, K., Clothier, P., Moore, L. A., Hawkins, J., 2001). This Title IV-E requirement encourages states and Tribes to develop arrangements, either through the provision of state services or through an agreement between Tribes and states, to ensure that Native youth have access to needed services. While ICWA does not contain a similar provision, ICWA regulations provide for continued application of ICWA's requirements for Indian youth beyond the age of 18 if ICWA applies at the commencement of a proceeding prior to the youth turning 18 years of age (23 CFR 23.103).



Conclusion

As federal law and regulations move closer to ICWA's requirements, the opportunities to support successful implementation of ICWA improve federal requirements contained under Title IV-B and Title IV-E of the Social Security Act that support ICWA compliance have been developed with the understanding that Tribal and state collaboration is necessary for effective implementation of ICWA, and Tribal knowledge and resources are an important support for state child welfare agencies, state courts, and Native children and families. Creating informational materials, training resources, and guides on how to utilize these supportive laws in performance of casework and judicial hearings is necessary to improve practice and stimulate new policies that will increase capacity to implement ICWA effectively.



Resources

- Trope, J. F. and O'Loughlin, S. K. (2014). *A Survey and Analysis of Select Title IV-E Tribal-State Agreements*. Association on American Indian Affairs.
- Crofoot Graham, T. L. Cellarius, K., Clothier, P., Moore, L. A., Hawkins, J. (2001). *Transition Programs in Indian Country*. Casey Family Programs and the National Indian Child Welfare Association.

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NICWA'S MISSION

The National Indian Child Welfare Association (NICWA) protects the safety, health, and cultural identity of all Native children and families—today and for future generations—by upholding culturally based services, community strength, and Tribal sovereignty.

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