

Bringing Our Children Home

The Summit
Georgia's Child Welfare Conference 2017

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Poll

1. On a scale of 1 to 5, with 5 being highest, how harmful is removal for a child?
2. On a scale of 1 to 5, how important is kinship placement?
3. What do you think of when you hear Indian Child Welfare Act?

Historical Trauma



Law Created to Right Wrongs

- Higher burdens of proof
- Stronger efforts to promote reunification
- More efforts to promote kinship placement
- Best chance to minimize trauma

Why the Push Back?

- Lack of understanding the law
- Misunderstanding race/ethnicity
- Tired, feels burdensome
- No one likes the Feds interfering in state business
- Think it doesn't apply

Federal Law and Regulations

- Federal Law 1978
- Original Guidelines 1979
- Updated Guidelines 2015
- Regulations 2016
- Revised Guidelines 2016

In ICWA, Congress determined that retaining an Indian child in his or her culture or placing an Indian child in a culturally appropriate placement best serves the needs of that Indian child.

25 U.S.C. 1902

Indian Child Definition

An unmarried person under 18 who is either:

A member of a federally recognized Indian tribe; OR

Eligible for membership in a federally recognized Indian tribe AND is the biological child of a member of a federally recognized Indian tribe.

Inquiry

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved . . .

Jurisdiction

- Exclusive
- Concurrent
- Domicile



Notice

The agency or court shall notify:

- The parent or Indian Custodian AND
- The Indian child's tribe

About:

- The pending proceedings AND
- The right to intervene

Timeline

The tribe and parents/custodians must receive notice 10 days prior to a hearing and may request an additional 20 days.

Emergency Removal

ICWA allows emergency removal of an Indian child who is off the reservation in order to prevent imminent physical damage or harm.

The time period for temporary custody without a hearing has been shortened from 90 days to 30 days except in extraordinary circumstances.



HIGHER BURDENS OF PROOF HELP REDUCE REMOVALS AND TERMINATIONS

Heightened Burden of Proof

- No foster care placement in the absence of clear and convincing evidence (including the testimony of at least one qualified expert witness) that continued custody is likely to result in serious emotional or physical damage to the child
- No TPR in the absence of evidence beyond a reasonable doubt (including the testimony of at least one qualified expert witness) that continued custody is likely to result in serious emotional or physical damage to the child

MORE VIGOROUS EFFORTS PROMOTE REUNIFICATION



Active Efforts

Have been made to provide remedial services and rehabilitative programs designed to prevent the break up of the Indian family and these active efforts have been unsuccessful.

- Begin at inquiry if there is reason to know
- Be tailored to the facts and circumstances of individual cases
- Be affirmative, thorough, and timely
- Reunite child with his or her family

STRONGER EFFORTS TO PROMOTE REUNIFICATION



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Placement Preferences: Foster Care

- Extended family
- Foster home licensed by Tribe
- Indian foster home licensed by State
- Institution approved by Tribe
- Other foster homes licensed by State

Placement Preferences: Adoptions

- Member of child's extended family
- Other members of the child's Tribe
- Other Indian families
- Other placements



BEST CHANCE TO MINIMIZE TRAUMA

Data

AI/AN children experience child abuse and neglect at a rate of 16.5 per 1000 children (U.S. Health and Human Services, 2007).

Native disproportionality rates for foster care placement have increased in the last 10 years from 1.5 to 2.5.

50 to 80% of all identified human trafficking victims are or have been involved with child welfare services at some point in their lives.

Download for Free

<http://www.ncjfcj.org/ICWABenchbook>

**QUESTIONS?
FEEL FREE TO CONTACT ME:
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