



**State of Nevada  
Division of Child & Family Services**

NEVADA CHILDREN'S  
JUSTICE ACT TASK FORCE:

**INDIAN CHILD WELFARE  
RESOURCE GUIDE**



*Children's needs are best met when children  
can safely remain with their families.  
Families preserve a rich cultural heritage.*

Revised 2006  
Family Programs Office  
Child Protective Services

**BRIAN SANDOVAL, GOVERNOR**

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# 1. Why Learn About Indian Child Welfare?

*“Mankind did not weave the web of life.  
We are but one strand in it. Whatever we  
do to the web, we do to ourselves ...  
All things are bound together.”  
– Chief Seattle*

## *What's so special about Indians and why do they have their own law?*

This is a question often heard in the halls of public child welfare agencies. Many child welfare practitioners and policy makers believe that since all children are entitled to permanency and safety, a universal approach to providing these should suffice. If American Indians have their own child welfare law and standards, why are there not laws specific to other cultural groups?

A reasonable argument could be made that good practice should include knowledge of each family's ethnic heritage, culture and nationality. What makes American Indians different from other minority groups is a unique political status. The relationship between Indian tribes and the federal government is political, not racial. Treaties made with Indian nations “exchanged” indigenous land and resources for certain protections and provisions for social welfare of tribes. By entering into treaties, the U.S. federal government recognized tribes as sovereign nations and assumed “trust responsibility” to the Indian nations. The Indian Child Welfare Act of 1978 is an expression of tribal authority over its members.

For some, the nation-within-a-nation concept may be difficult to comprehend. Learning how this relationship came into being means doing intensive study into both history and tribal law. As a beginning point of understanding, following is an outline of key eras in Native American history:

### **1789 to 1871 Pre-Reservation era**

Policies whose effects on Indian tribes were the **extermination** of the “Indian problem” were enacted during this time; by the time most Indians were **forced onto reservations**, many were **sick and in ill health**, and the education or condition of Indian children was of no consequence to the government; Christian missionaries and churches started policies of assimilation; approximately 317 treaties were signed during this era

### **1871 to 1928 Early Reservation era**

The policy toward Indians was changing from one of extermination to **assimilation** and dependency; **treaty-making was abolished** in 1871 as a method of dealing with Indians and Indians were deprived of the right to free choice of counsel for the redress of injuries; in 1885, the Major Crimes Act gave the **federal courts jurisdiction over Indians** on reservations; in 1887, **Indian land base was further diminished** through the General Allotment Act which gave tribal lands in designated quantities to individual Indians or families and surplus land went to the government; in 1921 the Snyder Act established the **Bureau of Indian Affairs (BIA) and Indian Health Service (IHS)** as agencies having permanent financial authorization of funds Congressionally appropriated to be used for

the benefit, care and assistance of Indians; in 1924, **Indians became citizens** of the United States under the Citizenship Act; in 1928, the Meriam Report found that **most Indians were poor**, ill-housed, in bad health, backward, discontented and apathetic with the major cause being the Allotment Act; policy implications included **destruction of Indian families** and lifestyles, poor health, **removal of children** causing further breakdown of Indian families, no bonding between parents and very young children since parents could not learn parenting without children in the home

### **1934 to 1953 Indian Reorganization era**

The Indian Reorganization Act (IRA) made promises of funds and policies that basically did not materialize; projects started were never completed; tribes were forced to operate by an imposed organizational “structure” that was not natural. **Traditional spiritual leadership was replaced** with elected business councils which had loyalty to the BIA

### **1880s to 1950s Boarding School era**<sup>1</sup>

The goal was to solve the “Indian problem” by removing the children and placing them in government boarding schools and Christian mission schools where **children were educated and assimilated** to the dominant Anglo Saxon philosophies and civilities; removing children from the homes was extended beyond the academic year; some Indian children were placed in non-Indian homes on holidays and summer “vacations” in an “outing system”; the purpose was to lead the Indian from a life of poverty, dirt and ignorance when, in actuality, the boarding school era was immoral, inferior education

### **1950s to 1970s Indian Adoption era**<sup>2</sup>

The national Indian Adoption Project was a collaborative between the BIA and the Child Welfare League of America (CWLA); a formal contract between the BIA and the CWLA established a “clearinghouse for the interstate placement of Indian children with non-Indian families”; the CWLA philosophy “was that the ‘forgotten child, left unloved and uncared for on the reservation, without a home or parents he can call his own’ could be adopted ‘where there was less prejudice against Indians’ and “Non-western states were believed to be less prejudiced against Indians (p. 169).” The Indian Adoption Project was considered a “success” by CWLA standards since **25% to 35% of all Indian children were separated from their families.**

### **1953 to 1968 Termination era**

Policies enacted during this era aimed at **terminating federal responsibility** toward Indian tribes and assimilating Indian people; policy implications included further breakup of Indian families through an **urban relocation** program; no services for Indians living off-reservations; no training nor education to prepare adult Indians for jobs in urban areas; more stress, **no support groups**, such as extended families and relatives; **children were placed with more affluent white families**, and poverty was used as a reason for removing Indian children from their homes

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<sup>1</sup> George, L.J. (1997). “Why the need for the Indian child welfare act?” Journal of multicultural social work, 5(3/4). The Haworth Press: Binghamton, NY. Excerpted from pp. 165-175.

<sup>2</sup> Ibid.

### **1968 to 1980 Self-Determination era**

Policies during this era are characterized by the **reaffirmation of the rights of Indians to remain Indian** while exercising their rights as Americans (see Chapter 2 for further information); most importantly, the **Indian Child Welfare Act** of 1978 gave Indian people's the right to decide what was best for their own children and **affirmed cultural needs of children**

### **1980 to 2000 Growth era**

Policies in the past two decades have significantly impacted the growth and strength of Indian tribes; **traditionalism has become a voice heard nationally**; standards of living are improving; tribes are becoming examples of self-determination rather than victims of political rhetoric; alternative strategies for working *with* the People versus imposing programs *onto* the People has resulted in stronger communities; the National Indian Child Welfare Association (NICWA) continues to lead the advocacy trail; unfortunately, Indian children are still being placed in non-Indian homes and assessing for ancestry is still a problem

Hopefully, this resource guide in the hands of a competent worker will help change the final statement in the previous paragraph. Becoming aware of the need and the reasoning for the law may become the key that unlocks the door to what is right, just, and fair in the foster placement of Indian children.

## *Ethical Social Work Practice*

The practice of Indian child welfare is dependent on several principles which are rooted in both the Indian culture and the child welfare profession. They are applied through all aspects of the helping process and are listed below:<sup>3</sup>

### **Holistic World View: Social Ecology**

A holistic world view in Indian child welfare reflects the recognition and understanding that each client lives in relationship to their environment. All things are interrelated, and the individual and the environment are interdependent. Conditions of the individual or family are the results of both physical (external) and psychological (internal) causes. A holistic world view assures clients the right to be assessed in the context of their family, culture, and community.

### **Individual Worth and Dignity**

This principle reflects respect for the unique qualities and identity of each client. Each individual has the right to have personal differences in values and behaviors regardless of culture and should be viewed as an individual in a larger context. The worker accepts and deals with the client and their strengths and weaknesses, positive and negative emotions, and constructive or destructive coping mechanisms. Recognition of the

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<sup>3</sup> Northwest Indian Child Welfare Institute. (1984) Heritage and helping: A model curriculum for Indian child welfare practice. Author: Portland, OR. Adapted from pp. 9-14. [Out of print; available from the National Indian Child Welfare Association as part of the "ICWA Background" packet.]

intrinsic value of the individual is manifest through a non-judgmental attitude and confidentiality, and is the basis for the helping relationship. Respect for the individual diminishes the likelihood that the helping process will bring any shame upon the family.

### **Self-Determination**

The principle of self-determination is the recognition of the client's right to direct the course of their own lives and to make their own choices. The right of clients not to have the values of helpers imposed on them is a priority limited by the framework of law. Workers have a responsibility to mobilize the internal strengths and environmental resources which enable the clients to help themselves. Respect for individual autonomy extends to children as well as adults. Casework methods should reflect a value for rights of clients to be free from intrusive interventions. Such a value enhances the chances for change.

### **Groupness**

Groupness is the recognition and understanding that Indian people generally place a high value on the well-being of the tribal group and/or extended family. This concept of extended family has great implications for the Indian child welfare worker, and awareness of it must underlie casework interventions. Decision making, change, resources, and behavior of the individual are greatly influenced by the client's concept of the family. Recognition of the concept of groupness allows the worker to function within the natural helping network and draw on its strengths.

### **Self-Awareness**

The principle of self-awareness enables the Indian child welfare worker to make constructive use of self in the helping process. Through self-awareness the worker's ability to establish rapport with the client is increased. Workers are judged by the client less on credentials and position than on the sincerity of their interest in the client. Understanding the motives, values, identity problems, and prejudices enable workers to present themselves openly and sincerely to the client. This promotes the constructive use of the relationship, and allows workers to control their own level of emotional involvement in the client's problem.

### **NASW Standards**

The National Association of Social Workers (NASW), Inc., sets the professional standards for social workers. We cite section 1.05 of the NASW Code of Ethics<sup>4</sup> as a reminder of the professional obligation social workers have to clients:

#### **1.05 Cultural Competence and Social Diversity**

- (a) Social workers should understand culture and its function in human behavior and society, recognizing the strengths that exist in all cultures.
- (b) Social workers should have a knowledge base of their clients' cultures and be able to demonstrate competence in the provision of services that are sensitive to clients' cultures and to differences among people and cultural groups.

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<sup>4</sup> National Association of Social Workers, Inc. (1999). Code of ethics of the National Association of Social Workers. Washington, DC: Author.



(c) Social workers should obtain education about and seek to understand the nature of social diversity and oppression with respect to race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, and mental or physical disability.

NASW has set the standards for social workers. However, anyone working in child welfare should strive to become culturally competent and aware of the unique issues of American Indian families. The following sections will help workers achieve a certain level of competency but is by no means the only answer to all of the questions.

*“Let us put our minds together  
to see what we can build for our children.”  
– Sitting Bull*

## 2. The Indian Child Welfare Act (ICWA)

*“There is no resource more valuable than our children.”*

– National Indian Child Welfare Association

### *U.S. Federal Indian Policies and Their Impact on Tribal Families and Communities*

The immigration of European people to this continent was based largely on a quest for indigenous land and resources. Formal U.S. Indian policies resulted in physical or cultural extermination or assimilation of native peoples.

Found most flagrantly offensive was the wholesale public and private removal of Indian children from their homes, undermining Indian families, and threatening tribal survival and Indian culture. Congressional hearings<sup>5</sup> in the mid-1970s brought to light national atrocities:

- Indian children were placed in foster care or for adoption at **three times** the rate of non-Indian children.
- Approximately **25-35 percent** of all Indian children were removed from their homes and placed in foster homes, adoptive homes, or institutions.

Individual states made reports of higher degrees of Indian child removal. In 1978, for example, California<sup>6</sup> reported that:

- Public agencies placed over **eight times** as many Indian children than non-Indian children in adoptive homes.
- **Over 90 percent** of California Indian children subject to adoption were placed in non-Indian homes.
- **One of every 124 Indian** children in California was in a foster home, compared to a rate of **one in 337 for non-Indian** children.

These acts were justified by the assumption that Indians lacked moral standards and would be better off “civilized.” Tribal communities learned that children who were removed to boarding schools often never returned, due to death from torturous conditions or suicide and those who were fostered or adopted by non-tribal people often no longer “fit” in their families and communities. Families were devastated by generations who lacked a natural bonding

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<sup>5</sup> United States 93<sup>rd</sup> Congress, 2<sup>nd</sup> Session. (1974). Hearings before the subcommittees on Indian Affairs of the Senate Committee on Interior and Insular Affairs, Indian Child Welfare Program. Statement of William Byler.

<sup>6</sup> California Indian Legal Services. (1998). California judges benchguide: The Indian child welfare act. Author: Eureka, CA. pp. 42-43. Available: [http://calindian.org/web\\_temp/icwa.htm](http://calindian.org/web_temp/icwa.htm)

experience, and communities were devastated by grief and symptoms of grief such as increasing rates of alcohol and drug abuse.

### *A Shift in Federal Indian Policy*

The civil rights movements of the 50s and 60s opened many doors in Indian Country in the form of organizations and legal reform.<sup>7</sup> For instance:

<i>Year</i>	<i>Events</i>
1962	Institute of American Indian Arts (IAIA) opened in Santa Fe, NM
1963	“Americans Before Columbus” became a bimonthly publication by the National Indian Youth Council of Albuquerque, NM
1964	American Indian Historical Society was organized in San Francisco, CA
1965	42,500 People of sovereign nations/tribes served in the armed forces in Vietnam
1966	Alaska Federation of Natives was founded in Anchorage, AK
1967	American Indian Law Center was founded in Albuquerque, NM
1968	Indian Civil Rights Act (IRCA) became Public Law 90-284
1969	American Indian Scholarships, Inc., was founded in Albuquerque, NM  Navajo Community College was established at Tsaile, AZ  The final report by the U.S. Senate Subcommittee on Indian Education, titled, “Indian Education: A National Tragedy – A National Challenge,” was issued. It is often referred to as the “Kennedy Report” after Senator Edward Kennedy, who completed the work of his brother, Senator Robert Kennedy, after his death.
1970	American Indian Education Policy Center was founded at University Park, PA  American Indian Law Students Association was founded at Albuquerque, NM  American Indian Tribal Court Judges Association was founded  National Indian Education Association (NIEA) was founded in Minneapolis, MN  Native American Rights Fund was founded in Boulder, CO

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<sup>7</sup> Francis, Lee. (1996). Native time: A historical time line of Native America. St. Martin’s Press: New York. Excerpted from pp. 300-310.

<i>Year</i>	<i>Events</i>
1971	Alaska Native Claims Settlement Act passed awarding \$1 billion and forty-four million acres to Native Alaska – the largest single land settlement award in two centuries  Association of American Indian Physicians was founded in Oklahoma City
1972	The Indian Education Act was signed into law establishing the Office of Indian Education (OIE) and the National Advisory Council on Indian Education (NACIE)  National Indian Health Board was founded in Denver, CO
1973	The Menominee Restoration Act, which reestablished the trust relationship between the sovereign Menominee Nation and the U.S. government was signed into law
1974	International Indian Treaty Council was founded in New York City  Hiring preference of People of the sovereign Native nations and tribes was affirmed in a decision by the U.S. Supreme Court in the case Morton v. Mancari
1975	Indian Self-Determination and Education Assistance Act was passed  Council of Energy Resource Tribes (CERT) was organized to manage energy resources on reservation lands

In some instances, the legislative reform opened doors and in other cases it opened a Pandora’s Box of problems. The human element being involved in all aspects of the law means that mistakes will be made even with the best intentions. What this overview offers is a minuscule look at how virtually every aspect of an Indian’s life – land, housing, education, health, and welfare – is legislated and regulated. This regulation did not cease in the 1970s, and it still exists in the 21<sup>st</sup> Century because Native sovereign nations and tribes still exist within the boundaries of the United States of America – 558 federally recognized sovereign nations.

*Would we still be Indian without our parents?*

The plight of Indian children placed in foster homes or adopted into non-Indian homes is reflected in a question posed by the Native American Child and Family Services Training Institute:<sup>8</sup> “Would we still be Indian without our parents?” The question may take some thought and we encourage the reader to do so ... would the child still be Indian? We think so and the law supports the premise that the Indian child continues to be Indian with or without the parents.

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<sup>8</sup> Paulson, Susan. (1999). “Would we still be Indian without our parents?” [training brochure]. Native American Child and Family Services Training Institute: Bismark, ND.

In 1978, Congress<sup>9</sup> concluded “that the Indian child welfare crisis is of massive proportions and that Indian families face vastly greater risks of involuntary separation than are typical for our society as whole.” This resulted from states failing to recognize the essential tribal relations of Indian people and the different cultural standards regarding extended family which prevail in Indian communities. As a result of the hearings and public outcry from Indian nations and tribes, Congress passed the ICWA to remedy the “abusive child welfare practices.” The Indian Child Welfare Act is an example of U.S. policy in what has been termed the “self-determination era.”

Current child welfare statistics show that Indian children are not faring much better than during the years before ICWA. Indian children are still being removed at a disproportionate rate of ***three times greater than the general population***. Because public agencies fail to recruit native foster and adoptive homes, Indian children continue to be placed with non-Indian families. When Indian ancestry is not appropriately assessed, ICWA standards are not being applied. Cultural loss and its devastation continues.

### *Overview of the ICWA*

The previous section was written to help the reader understand the historical relationship between Indian people and the U.S. Government. Being aware of the historical relationship between Indian people and the federal government is important. Knowing why the ICWA became law is also a key element for helping Indian children and families (refer to **Appendix A**, Indian Child Welfare Act, Public Law 95-608).

The ICWA is said to have “revolutionized” the “best interest” test in the context of Indian children. Most states used the “best interests of the child” standard in child custody proceedings by defining “interest” as being stable placement with an adult who would become the psychological parent. However, the federal standard states that the best interests of Indian children are served by protecting “the rights of the Indian child as an Indian and the rights of the Indian community and tribe in retaining the children in its society.”<sup>10</sup> Overall, the federal policy is meant to protect the best interest of Indian children by preserving Indian families and the connection between tribes and their children.

In the ICWA, this policy is carried out by four important objectives of the Act:

1. Jurisdictional provisions and intervention rights designed to enhance tribal control and involvement in Indian child custody cases.
2. The adoption of minimum federal standards for the removal of Indian children from their families.
3. The placement of Indian children in Indian homes.
4. The support of tribal child and family service programs.

It is important to remember that the ICWA was written and enacted as a law to regulate the

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<sup>9</sup> United States 95<sup>th</sup> Congress, 2<sup>nd</sup> Session. (1978). H.R. Report No. 1386.

<sup>10</sup> Ibid.

**states**, not Indian tribes or nations. This important point is sometimes overlooked or confusing for caseworkers. In other words, compliance with the ICWA is a state responsibility. Tribes may, and do, make agreements with states on how ICWA cases should be handled when their children are involved; however, it is the state's responsibility to ensure notification and follow-through with the tribe.

Congressional findings within the ICWA include that “the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.”<sup>11</sup> Cultural considerations, concern for tribal heritage, and recognition of the unique political status of American Indians are imperative in order to properly utilize the ICWA.

The ICWA acknowledges a special relationship between tribes and the federal government and seeks to protect essential tribal relations. The nature of these relationships, both between tribes and the federal government and between tribes and their members, are premised on more than mere cultural considerations. Indians as members of tribes are not simply separate racial or cultural groups, but also separate political groups. The ICWA is very much concerned with both cultural considerations and with the legal/political relationships.

It can be said that the ICWA is one of the more complex pieces of federal legislation ever passed since it significantly impacts child custody litigation and procedures involving Indian children – and is a federal law requiring states to comply rather than Indian nations/tribes. Where so many laws had oppressed American Indians/Alaska Natives for centuries, the enactment of the ICWA is viewed as being a law that has helped. Using the dreamcatcher analogy, consider the ICWA as being the very center of the web ... the place where good dreams can pass through for the child to dream.

*“Let us put our minds together  
to see what we can build for our children.”  
– Sitting Bull*

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<sup>11</sup> 25 U.S.C. § 1901 (5). The Indian Child Welfare Act.

### 3. Culturally Responsive Child Welfare Practice

*“No person among us desires any other reward for performing a brave and worthy action, but the consciousness of having served his nation.”*  
– Thayendanegea, Mohawk

*Facing the Legacy of Internalized Racism: “We are all related”*

**Story: “The Wasted Strengths of Indian Families”**

“... The negative influences on Indian families, though unintended, have nevertheless been burdensome and, at times, devastating. All tribes are based upon the family unit, and in all tribes we both share in the love of our children and find meaning in helping them grown to maturity to represent the best that human beings can be. In this an Indian parent is no different from any other parent, and an Indian child no different from any other child, no matter what their race or station in life may be.”

– Carolyn Attneave

*The Destruction of the American Indian Family.* p. 29.<sup>12</sup>

What does this mean to responsive practice? We need to learn about our own cultures, historical losses, and ethnocentric biases. We have to look at levels of privilege and how people have been marginalized or kept in boxes and we need to examine our experiences with racist discrimination.

Being culturally responsive recognizes that there are tremendous differences in traditions among tribes and within tribes. Every individual varies in levels of acculturation. Most Indian people have been exposed to and learned to adapt to dominant culture systems in order to survive. Identity may be more or less traditional. There may be little familiarity with tribal ways of home reservations or groups. Some families may have lived away from original tribal areas for several generations or some families may be the first generation to live in an urban setting.

Workers are asked to consider the similarities and the differences of Indian definitions of “home” and “family” and one’s own definitions of the same. Origin stories are another mutual consideration. For instance, the Bible tells one origin story; the Hopi in Arizona have another belief; the Ojibwe in North Dakota have another belief; and the Buddhists tell another story; and

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<sup>12</sup> Gooden, Myrna & Esquibel-Hunt, D. (2000). “Resource Guide for Indian Child Welfare Practice: Ensuring Safety and Permanence for Indian Children.” Salt Lake City, UT: University of Utah. p. 11.

archeologists have a theory. Basic among all of the stories is that we are all human beings ... we are all the two-leggeds ... we are all related.

### *Foundational American Indian Values*<sup>13</sup>

In *Walking in Moccasins: Indian Child Welfare in the 21st Century*, we proposed a broader definition of culturally responsive practice that goes beyond learning history, valuing diversity, and complying with policy. We believe that all child welfare workers, agencies, educators, and policy makers must consciously choose a change of heart and deliberately put on a pair of moccasins. In this broader definition, the individual becomes a part of the collective and is re-dedicated to serve Indian children, families, communities, and nations from the spirit of the Indian Child Welfare Act.

The fundamental concern in culturally responsive practice is values. While there is great diversity among and within the various American Indian tribes, there are a number of common values which provide a foundation for culturally responsive child welfare practice. These values have been identified by a number of authors<sup>14</sup> and are summarized in Table One:

**Table 1: Shared Traditional American Indian Values**

**Value: Autonomy**

*American Indian people value personal freedom and autonomy.*

- Each person is valued as an individual; children are sacred.
- Extended families provide extensive, consistent, and loving care of infants and small children, reinforcing their value.
- Children are given opportunities to be self-reliant and responsible to the welfare of the tribe early in their lives.
- Children learn by observing modeling by other family, clan, and tribal members.

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<sup>13</sup> Hunt, D.E., Gooden, M., & Barkdull, C. (2001). "Walking in moccasins: Indian child welfare in the 21<sup>st</sup> century." In Sallee, A.L., Lawson, H.A. & Briar-Lawson, K. (2001). Innovative practices with vulnerable children and families. Dubuque, IA: eddie bowers publishing, inc. [Excerpted from pp.166-168.]

<sup>14</sup> See complete citations in "Suggested Readings":  
Edwards, E.D. and Egbert-Edwards, M. (1998).  
Timas, A. and Reedy, R. (1998).  
Moran, J.A. (1999).  
Sachs, S., Harris, L., Morris, B., and Hunt, D. (1999).



**Value: Solidarity**

*American Indian people value family and tribal solidarity and cohesiveness.*

- Each person perceives themselves as first a member of a specific tribe (Ojibwe, Yurok, Diné, Haida); secondly, as an American Indian/Alaska Native.
- Has considerable pride in clan and tribal lineage and heritage.
- Is expected to bring honor and respect to their families, clans, and tribes; individual behavior reflects the whole.
- Respects all tribal members: children, youth, adults, and elders.
- Is prepared to sacrifice with humility for the collective.
- Is generous with one's talents and material goods.

**Value: Competence**

*American Indian people value attainment of knowledge and skills.*

- Each person is encouraged to develop unique talents, knowledge, and skills that will benefit themselves and the group.
- As the people learn from their environments and animals, the knowledge is passed on.
- Each skill acquired by young people is positively noted without any “fanfare” – reinforcing personal satisfaction for a job well done.
- Self-improvement is valued over comparison with others; thus, competition is discouraged.

**Value: Spirituality**

*American Indian people believe in a Supreme Being and the continuity of life.*

- Each person strives to maintain a positive balance and harmony with their Supreme Being and all living things.
- The people believe that all of the Creator's works have spirits and are to be treated respectfully.
- Many tribes have detailed accounts of their “creation” or “origin” stories.
- It is important to show respect and reverence for the land, their homelands, and those areas sacred to them.
- Spirituality and religious practices are routinely integrated throughout each day's activities.
- Every thought and action is powerful and affects the past, present, and future of all.

**Value: Balance**

*American Indian people value harmony and balance.*

- Each person demonstrates appreciation for life by the way in which they positively regard and reinforce their physical, mental, emotional, and spiritual health.
- Each person is appreciated for what they contribute to the well being of the group.
- Industry is valued; so is time for leisure, fun, social development, and social interaction.
- Appreciating balance and harmony leads to understanding the appropriate times for hunting, harvesting, and utilization of nature's bounties, and for the appropriate use of all natural resources.

**Value: Wisdom**

*As all other values are achieved, wisdom is acquired.*

- Much wisdom is transmitted to American Indian people through their elders.
- When one lives in harmony with the cultural wisdom, people experience contentment and physical and emotional well being.
- The roles of men and women are highly valued and complementary.
- When people are secure within themselves and their culture, they are better able to contribute positively to the well being of others, in particular the children.

With regards to children, it is generally considered the responsibility of the entire tribe or community to protect the children by carefully watching, witnessing, and intervening according to custom when the child is in danger.<sup>15</sup> Individual cultural identity is an extension of the tribal and family identity, with each child having a unique place in the collective. In other words, from the Indian perspective, the child does not “belong” to only the parents, but is a treasured resource for the whole tribe. The extended network of kin, non-kin, and clan comprise the Indian child’s “family.” Therefore, decisions about child safety and well-being are likely to be based on criteria different from U.S. mainstream child welfare assumptions, and include an expanded set of resources beyond the nuclear family. For Indian people, the termination of parental rights would equate to the termination of tribal membership because the “parents” are all those who are invested in the child’s happiness. Likewise, “foster care” is an unknown concept in most native languages.<sup>16</sup>

Therefore, when making Indian child welfare decisions, there are differing cultural standards which must be considered. Culturally appropriate decisions, in the long term, are in the best interest of the lifetime development of the Indian child. These decisions are guided by the standards developed under the ICWA. Table Two is an example of the cultural differences which might be encountered by Indian and non-Indian workers.

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<sup>15</sup> Sachs, et.al. (1999).

<sup>16</sup> National Indian Child Welfare Association. (1996). Cross-cultural skills in Indian child welfare: A guide for the non-Indian. Portland, OR: Author.

**Table 2: Cultural Differences in Indian Child Welfare Decision-Making**

<i>Decisions About</i>	<i>Indian Perspective</i>	<i>Non-Indian Perspective</i>
Safety	In a general state of happiness.	Clean, secure environment.
Removal	Child is abused and neglected.	Child is not “safe” (checklist).
Placement	With the child’s extended family first.	Any available foster or adoptive home.
Reunification	As soon as possible; active efforts.	Only if deemed necessary; reasonable efforts.
Adoption	With the child’s extended family; only as a last resort. Safety and permanence with those considered “mine” and “like me.”	Soon ... <to be out of the system> safety/permanence first, reunification last.

Basically, in the Indian perspective, strengthening families strengthens the culture and a family cannot be strong if the child is not part of it. Indian children are most permanently stable and safe when they are emotionally and psychologically connected to their culture and in the care of those with whom they have a natural bond. This is the *spirit* of the ICWA.

### *Creating an Environment of Safety*

The strength of a spider’s web can be compared to the delicacy of a child’s life. If one strand is broken, it can be mended ... with deliberate care and careful devotion. This same care and devotion is needed for Indian families to feel “safe enough” to disclose in an office setting or when under the microscope of bureaucracy. This does not mean that a sign saying, “Indians welcomed here,” needs to be hung outside the worker’s door nor a banner spread across the waiting room wall. It does mean, however, that the atmosphere needs to reflect warmth and openness. For instance, a simple one-page flyer containing ICWA information could be kept on the end table in a waiting room or an office. In a mental health clinic, one of the authors was meeting with a new client. The client’s ancestry was disclosed because the author wore Indian jewelry. The client asked her first, “Are you Indian?” As the story goes, the client was listed on the intake form as being “Caucasian” and when the worker pointed that out, the client responded, “I didn’t want to tell the woman I was Indian ‘cause I didn’t want them to report me or refuse to help me.” The environment of safety is a critical issue.

There are a number of competencies and relational aspects of practice that will benefit workers in very practical ways wherever they may be in Indian Country. Many of these competencies, particularly those within the knowledge and policy domains, are addressed in greater depth in the “Walking in Moccasins” chapter. The competencies are categorized into three areas and listed in Table Three:

1. **Foundational values** needed for successful practice with American Indian individuals, families, and communities

2. **Basic relational skills and attitudes** that are more likely to promote positive and trust-building relationships with American Indian people
3. **Knowledge domains** that include familiarity with local systems, policy and institutional barriers to change, and laws that affect American Indian families

**Table 3: Competencies for Culturally Responsive Practice<sup>17</sup>**

<i>Foundational Values</i>	<i>Basic Relational Skills and Attitudes</i>	<i>Knowledge Domains</i>
<ul style="list-style-type: none"> <li>• Respect for one’s own culture.</li> <li>• Self-awareness of one’s own biases.</li> <li>• Recognition of the ongoing realities of racism and marginalization of American Indian peoples.</li> <li>• Appreciation of diversity and difference.</li> <li>• Respect for the right to self-determination.</li> <li>• Acknowledgment of the expertise of individuals, families, and communities to recognize and solve their own problems.</li> <li>• Belief in the inherent worth and dignity of all individuals.</li> <li>• Valuing culture as a source of strength and empowerment.</li> <li>• Unwavering commitment to social justice.</li> </ul>	<ul style="list-style-type: none"> <li>• Being respectful, humble and willing to learn.</li> <li>• Being aware of the dynamics of power and privilege in helping relationships.</li> <li>• Being patient and tolerating silences.</li> <li>• Allowing time for trust to develop.</li> <li>• Keeping commitments.</li> <li>• Listening to the stories of oppressive history.</li> <li>• Affirming the trauma, grief and loss associated with colonialism and forced assimilation.</li> <li>• Validating the strengths and resiliency in survival.</li> <li>• Negotiation and conflict mediation.</li> </ul>	<ul style="list-style-type: none"> <li>• Knowing how to assess for Indian ancestry.</li> <li>• Assessing for co-occurring needs of individuals and families.</li> <li>• Fostering helpful collaborations within and between helping agencies.</li> <li>• Understanding the role of tribal sovereignty.</li> <li>• Being aware of the implications of devolution and governmental trust responsibility to American Indians.</li> <li>• Understanding the spirit, intent, and content of laws that affect Indian children and families.</li> <li>• Knowing how welfare reform and adoption law reforms affect American Indian child welfare practice.</li> </ul>

*“Why don’t Indians want to identify themselves?”*

To create the safety for families referred to in public child welfare systems, it is essential to understand the reactions of American Indian parents. To begin with, having one’s children removed and having to experience an intrusive, shaming process hardly seems like a “safe” experience for anyone. Some researchers have noticed that when children are removed, Indian parents sometimes seem to give up. They are often seen as “non-compliant” or “resistant” to court ordered treatment plans, or may fail to show up for supervised visits with their children. Taken at face value, these behaviors might seem to indicate indifference. The same behaviors might make sense in light of the history of tribal people. To identify oneself historically meant extermination, removal from one’s home land, increased prejudice, and exposure to violence.

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<sup>17</sup> Hunt, D.E., Gooden, M., & Barkdull, C. (2001). “Walking in moccasins: Indian child welfare in the 21<sup>st</sup> century.” In Sallee, A.L., Lawson, H.A. & Briar-Lawson, K. (2001). Innovative practices with vulnerable children and families. Dubuque, IA: eddie bowers publishing, inc. [Adapted from pp. 171.]

Most poignantly, identification meant increased probability of child removal.<sup>18</sup>

This reluctance, which results in feeling not safe, could contribute to the frustrations encountered when ancestry is revealed later in the permanency planning process. Child protection workers, juvenile judges, guardians ad litem, and dependency and neglect attorneys have voiced the irritation that families do not often identify themselves as having tribal ancestry until the “11th hour” in the permanency process. In other words, as families face the real prospect of losing their children permanently through adoption, they search for any possible way to prevent this loss. From a strengths perspective, these are parents who could be viewed as expressing their bond to their children and looking for any and all possible resources to assure that continuation. On the other side, attorneys and social caseworkers have watched the bonding process between foster parents and children, and have seen the children grow and seemingly blossom in areas of its life while away from their parents. Both Indian families and child welfare systems could be expressing their care for the child.

These dilemmas speak to the need for early identification of ancestry, rapid and effective tribal involvement, and appropriate placement with extended family, tribal, or other Indian caregivers. They speak to the need for the active rehabilitative efforts with families required for family preservation and reunification under the ICWA. When these things are not done or not completely documented, states and counties run the risk of having procedures interrupted, lives put on hold, and time in substitute care extended. At the “11th hour,” court proceedings are likely to become more adversarial as the stakes increase on both sides. Remember, under the ICWA, tribes can intervene at any point in the permanency process.

### *Assessing for Indian Ancestry*

Assessment for Indian ancestry is the first step in assuring full implementation of the ICWA and opens the way for culturally responsive practice with Indian families. Because of boarding schools and relocation programs, many people of Indian descent have multiple ancestries. In that blending of groups, there are American Indian children who have a variety of features which may or may not be associated with “looking Indian.” An Indian child’s skin may range from very fair to very dark, and eyes may be of any color. Therefore, workers should never assume that a child is NOT Indian, and assessment of ancestry should occur *with every child* referred for protective services.

**Story:**

“Are you Indian?” the children would ask. I would say, “Yes.” They would look at me then at my sister and say, “Nah, I don’t think so. I think the Indians just stole you but your sister is an Indian.” They were talking about skin and eye color. My eyes are hazel and my skin is olive; my sister has chocolate brown

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<sup>18</sup> Horejsi, C., Heavy Runner Craig, B., and Pablo, J. (1992). Reactions by Native American parents to child protection agencies: Cultural and community factors. *Child Welfare*, 17(4). Washington, DC: Child Welfare League of America, Inc. pp. 329-342.

eyes and blue-black hair. We have the same parents; we are descendants of French Canadians and Turtle Mountain Ojibwes. For our tribe, there are no borders between the United States and Canada ... there are only Ojibwe People who are my relatives.<sup>19</sup>

American Indian/Alaska Native people have skin, eye, and hair colors that vary; hair texture will vary, too. Consider Indian people to be along a continuum: from blond-white to blue-black, and all colors in between. Consider American Indian/Alaska Natives to be along the culture continuum, too, from very traditional to completely acculturated; and there are very fine division lines along this continuum.

Taking a non-stereotypical view of Indians means that meeting people in a clinical setting requires appropriately asking about heritage. Statements like, “I see by your intake sheet that you are Caucasian,” may open the door slightly because the statement shows the worker is open to discussing race. The worker who takes a risk by offering a statement like, “I was born in North Dakota where there are a lot of Norwegians so the hospital people automatically assumed that I was white rather than Indian,” will probably open the door much wider. The difference is in the offering, “I am ...” versus “you are....” There is no set script and there are no magic words to assess for Indian ancestry but there are key questions for all families at assessment (see below). Additionally, there are special things that can happen in an interview that will help the worker and client communicate and a bridge can be built to cross the cultural barriers; some examples follow:

<i>Worker</i>	<i>Client</i>
Offer a handshake as a sign of respect.	Expect a <i>gentle</i> handshake as a sign of respect in return.
Avoid jargon; simple direct statements are more important.	Listening attentively for understanding and how all of “this” applies to the client and family.
Eye contact may be a worker norm.	Lowering the eyes may be a cultural norm.
Watching the clock may be a worker requirement.	Quality time will be more important to the client.
Talking in a loud voice may be a way to get a point across.	Talking in softer tones is likely to be the polite, respectful manner.
Ask questions clearly and succinctly, then <b>WAIT</b> for the answer.	Taking time to understand then answer questions is critical; the long-term outcomes are being considered.
Listening is the key element in working with	Oral tradition is ancient; words spoken have

<sup>19</sup> Gooden, Myrna & Esquibel-Hunt, D. (2000). “Resource Guide for Indian Child Welfare Practice: Ensuring Safety and Permanence for Indian Children.” Salt Lake City, UT: University of Utah. p. 18.

<i>Worker</i>	<i>Client</i>
Indian people.	long-term effects.
Being focused on one client may be the worker's assignment.	More than one family member may be with the client as a sign of support.
Assessment of the client may be the worker's task.	Assessment of the worker will be the client's response.
Worker's may be expected to make home visits.	Welcoming a planned visitor is easier than welcoming someone unannounced.
Worker's must respond with acceptance when offered food or drink in the home; not accepting would be considered rude.	Traditions and culture often require food and drink before any "business" is conducted in the home – the comfort of the visitor is paramount.
Watch body language and the overall environment for interview or assessment readiness; do not RUSH.	The time for "business" is usually signaled by a shift in body weight forward or a verbal acknowledgment that "now" is the time.
Casual conversation may not be considered "work" to a "worker."	Casual conversation is part of becoming "acquainted" with the worker and is usually not meant to disrespect the task.
"Visiting" with the client may not be considered part of the job or task.	"Visiting" with the guest is an important part of building trust.

Key questions for *all families* at intake might include the following:

- How does your family identify its ethnic or cultural heritage?
- How do the grandparents on the mother's side identify their ancestry? The father's side?
- Are any members of the child's family American Indian?
- Do any of the child's relatives have an American Indian tribal enrollment?
- Who in the family are tribally enrolled?
- What is the tribal affiliation or agency?
- Do you know if the child/children are eligible for enrollment in an American Indian tribe?
- Where is the tribe located?
- Do you have tribal identification or enrollment documentation?
- Is there someone in your family you might want to ask about tribal ancestry?

Remembering that history shows increased negative outcomes for those identified as American Indian, informing families about their rights under the ICWA is one way workers can help facilitate increased safety.

### *Helping Families Understand Their Rights Under the ICWA*

After 500 years of colonization, having “rights” is a difficult concept for some Indians to understand, even in the 21<sup>st</sup> Century. Knowledge of the ICWA is the first step for child welfare workers in helping families. Families should be told about the ICWA and its protections. It should not be assumed that because a family is Indian that they know the law. The following information might be offered to families:

- When families are accused of abuse or neglect, there is a higher standard of proof required for removal or termination of parental rights.
- A higher level of rehabilitative efforts must be offered to Indian families to keep them together and help them reunify.
- Families who cannot pay for legal help must be offered a court appointed attorney.
- Tribes must be notified and have the right to intervene or take jurisdiction.
- Every attempt must be made to place children first with relatives, a tribal family, or another Indian family.
- All children who are eligible for enrollment are covered by the ICWA.

*“Let us put our minds together  
to see what we can build for our children.”  
– Sitting Bull*



## 4. Notifying and Including Tribes in the Permanency Planning Web

*“Taking the up front appropriate steps to ensure ICWA is followed saves time, effort, and heartache in the end.”*

*– Linda Woodward, Director, Cherokee Nation Indian Child Welfare Program*

The Indian Child Welfare Act is founded on the premise of government-to-government relationships between sovereign nations. Because the ICWA acknowledges the sovereign right of Indian Nations to determine the best interests of their own children, public agencies are required to notify tribes when an Indian child is referred for protective services. Once Indian ancestry has been identified, this notification should occur as soon as possible to assure that legal, cultural, and permanency standards mandated for Indian children are met. Thorough documentation of assessment of ancestry, tribal enrollment inquiries, and tribal notification will assist state and county courts in assuring the ICWA standards have been met regarding permanency decisions for Indian children.

### *Determining Eligibility for Tribal Enrollment*

Remember that the ICWA requires the child be a member of or eligible for membership in an Indian tribe and be the biological child of a member of an Indian tribe.<sup>20</sup> In all instances, the tribes make the rules and the state public child welfare agencies and juvenile courts must follow those rules.

Ultimately, the tribes have the power to establish criteria for enrollment. Therefore, it is wise for the child welfare worker to proceed under the assumption of eligibility when the family identifies tribal heritage.

***Certain documents can help tribes certify enrollment or eligibility.*** Documents that need to be kept in a safe place are the same documents needed from the parents or guardians of an Indian child:

- Birth certificates with mother’s and father’s names.
- Any additional records that reflect a family “tree” or genealogical record.
- Adoption or guardianship documents.
- Notarized agreements of temporary custody.
- Enrollment or census numbers.
- Social security numbers.
- Certificates of Indian blood (CIBs).

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<sup>20</sup> 25 U.S.C. 1903(4).

In helping Indian families gain their rights under the ICWA, the Denver Indian Family Resource Center has developed a form to request information about enrollment. The form is sent to the tribal enrollment office, the ICWA officer, or social services, and in some cases to the juvenile court judge or tribal chair. The idea is that not all tribes have equivalent offices to handle requests about enrollment. In addition, it is good to let those directly responsible for the ICWA issues know that there is a compelling and urgent reason for the request: the life and future of one of their children who is being placed in substitute care and who may rapidly be placed for adoption by a non-tribal family. Where tribes are unable to verify enrollment eligibility of their children who are not living on the reservation or within tribal boundaries, a heartfelt plea is made to the tribe for adoption or customary claim to the child.

It is important to note that tribes change their criterion for enrollment from time to time. Some tribes are becoming more lenient and some more strict in their requirements. For example, the Nambe Pueblo in New Mexico just expanded its enrollment criteria from 1/4 blood quantum to 1/8. Even if the worker has had recent experience with a particular tribe, it is important to notify the tribe directly when possible. Every effort must then be made to ensure that tribes are notified to confirm or deny enrollment eligibility.

### *Locating Tribes*

In the assessment for Indian ancestry, the family or informant should be asked for the specific tribal name, and location. Information in **Appendices F and G** may prove useful in locating tribal resources.

Because of the effects of federal policies and relocation on urban areas, many Indian families have been cut off from the formal structures of their tribal governments. Knowing the general location of a tribe within a region may be the only information the client or family has to offer. In these instances, telephoning the regional BIA office would be the best avenue. Ask for the tribal enrollment office or the tribal records office. Individuals in these offices are accustomed to inquiries and will be able to help.

The bureaucratic structure is fairly simple and straightforward. The U.S. Department of Interior is headed by the Secretary of the Interior which regulates the BIA. The BIA is headed by the Assistant Secretary of Indian Affairs and has a central office in Washington, DC. The Division of Social Services telephone number is (202) 208-2536. The BIA is further divided into 12 regions with 12 regional directors and with specific boundaries, e.g., the Alaska Region is within the boundaries of the State of Alaska and the Western Region includes the States of Arizona, California, Nevada, and Utah. These offices and telephone numbers can be located on the website [www.bia.gov](http://www.bia.gov).

If more specific information such as region, tribe, city, or state is known, **Appendix D** lists where inquiries can be made. Some tribes may not have a formal enrollment office, especially if it is a small tribe, and others may have a very formal process for requesting information including notarized forms. Another detailed list of Indian Child Welfare Designated Agents is published online at [www.doi.gov/bia/desigag.html](http://www.doi.gov/bia/desigag.html).

In many states, organizations which serve American Indian families can provide assistance in locating tribal ICWA contacts. States which contain federally recognized tribes may also have Commissions on Indian Affairs or tribal liaisons who are appointed by the governor.

### *Requesting Help from the Tribe*

#### **Understanding a Tribal Response to ICWA Notification**

Public child welfare agencies are sometimes confused and frustrated about the apparent lack of responsiveness on the part of tribes to their appropriate and committed efforts at notification. When tribes do not respond or do not intervene, there may be an assumption that there is a lack of concern.

Linda Woodward is right about the heartache involved in child welfare practice and the heartache does not singularly lie with the worker. When one of their children is involved in an ICWA case, their hearts ache, too. Unfortunately, many tribes are small entities with little or no infrastructure which may lack resources or specific personnel to attend to the needs of tribal families off the reservation. In addition, some tribes may be unaware of time limits imposed by the Adoption and Safe Families Act (ASFA) of 1997. Because of loss of cultural values which resulted from federal policies, some tribes that have many resources are embroiled in internal political conflicts which prevent a compassionate response from elected tribal officials.

Some tribes which could access Title IV-E funds to develop resources for children in out-of-home placements lack the knowledge and skill required to do so. Formal initiatives are now being coordinated by the National Indian Child Welfare Association (NICWA) in partnership with the Casey Family Program to help tribes become more responsive to requests for ICWA information and intervention. Public agencies should consider contacting NICWA with their concerns about tribal response. In some instances, local resources can be identified to assist in bridging cultural or political differences. It is also possible that tribes have not received the notices sent by public agencies due to inaccurate addresses. Therefore, a return receipt is required by the ICWA and should always be requested.

#### **Formally Notifying Tribes**

Remember that it is critical to the welfare of the child and everyone involved that the law be followed, especially when notifying the tribe. See **Appendix A**, and follow **§ 1912. Pending court proceedings** to the letter of the law. Any questions about these procedures and requirements should be directed to: 1) the National Indian Child Welfare Association, 2) the tribe, and 3) the BIA.

*“Let us put our minds together  
to see what we can build for our children.”  
– Sitting Bull*

# 5. Understanding Active Rehabilitative Efforts

*Definition of wraparound services in Indian Country:*

*“We do whatever it takes to keep families together  
and children safe.”*

*– Susan Paulson, Director*

*Native American Children and Family Services Training Institute*

## *Advocating for Indian Families Involved with the Child Welfare System*

Under the ICWA, there is a higher standard for family preservation and reunification. As compared to the “reasonable efforts” required by the Adoption and Safe Families Act (ASFA) of 1997, the ICWA specifies “**active rehabilitative efforts.**” This higher standard means working differently with Indian families. Depending of the level of understanding, cultural competence, and administrative support, workers may feel resentful about having to provide “special” treatment for one group over another. After all, child protection work is already extremely labor intensive and caseworkers are often overwhelmed with high case loads, mountains of paperwork, and secondary emotional trauma from watching families have children removed and struggling to accomplish mandated changes.

Good practice standards should always involve assessing the family’s capacity to rehabilitate. This judgment would take into consideration generational patterns of coping and functioning and the family’s belief systems related to long term systemic prejudice. The family’s internal and external resources for change would be evaluated, and treatment length would be individualized. Ideally, workers and child welfare systems would have all the time and resources needed to help families stay together and keep children safe. In the current policy environment of time limits for permanency planning, and the movement to terminate parental rights and adopt children quickly, workers as well as families can become discouraged and even hopeless about family change. It is well documented, for example, that most families who are referred for child abuse and neglect have co-occurring issues of substance abuse, mental health, poverty or unemployment, and domestic violence. Most of these issues are unlikely to be resolved in the 12 to 15 months usually afforded by juvenile courts for family rehabilitation.

In Indian families, these same problems exist widely, but often at more extreme levels than for other families. In addition, due to the disruption in natural family relations created by historical child removal and placement in boarding schools, Indian parents often lack the bonding and nurturing skills needed to attend to their children’s needs fully. Parents who were placed in boarding schools as children also were likely to have experienced numerous forms of abuse themselves, increasing the probability of repeating these abuses with their own children.<sup>21</sup> Because the federal trust relationship between the federal government and any tribe prescribes

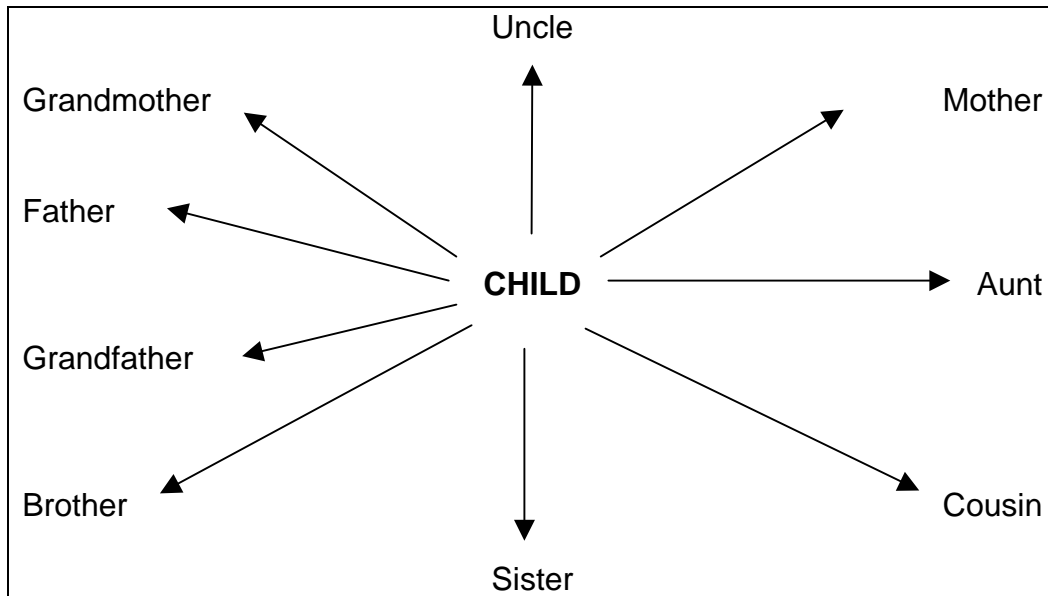
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<sup>21</sup> Robin, R.W., Rasmussen, J.K., & Gonzalez-Santin, E. (1999). “Impact of childhood out-of-home placement on a southwestern American Indian tribe.” In H.N. Weaver. (Ed.) *Voices of first nations people*. New York: The Haworth Press, Inc. pp. 69-89. [Authors’ note: The ten chapters in this text are excellent!]

federal attention to Indian family welfare, these higher standards for treatment are legally required. Fortunately, many Indian communities still have strong networks of extended kin and non-kin families which intervene informally when children are vulnerable.

### *Understanding the Indian Extended Family*

#### **The Indian Extended Family**



In ICWA, “extended family members shall be defined by the law or custom of the child’s tribe ....”<sup>22</sup> Consider the above drawing. With the CHILD at the center, how many mothers, fathers, grandparents, siblings, and other kin can be included inside the box? Outside the box? The ultimate number is the definition of the American Indian extended family. Judge William A. Thorne (Utah Appellate Court) tells a story about having a custody hearing for a child. When he asked, “To whom does this child belong?” 150 people stood up and said, “The child is mine!”

Consider this drawing a valuable clinical tool, as well. With the CHILD at the center, ask different individuals involved with the case to draw solid lines from the child to indicate strong relationships; draw broken lines to indicate weak relationships; and drawn an X through kin who have no relationship; then put names above the kin title. After everyone has completed the exercise, discuss the similarities and differences then identify strengths in order to help the family solve problems. A worker’s best resource for understanding the Indian “extended” family is the Indian family genogram.

NICWA<sup>23</sup> outlines eight specific things workers should keep in mind about casework with extended families (EFs):

<sup>22</sup> U.S.C. Title 25 §1903(2).

<sup>23</sup> National Indian Child Welfare Association. (1996). Cross-cultural skills in Indian child welfare: A guide for the non-Indian. Portland, OR: Author. pp. 59-60.

1. The EF is the primary support network for most Indian people.
2. EFs have their own rules, norms, values, and traditions that govern how they help and care for their members that should be respected.
3. EFs need to be included in creating and implementing a plan so that parents, extended family, and agency can work as a team.
4. EFs deserve enough information about the situation in order to be prepared for any problems in the child's behavior, and to understand their role.
5. EFs need to be made aware of financial assistance available to them.
6. EFs need the assistance of the worker in gaining access to the resources necessary to help children with special emotional, physical, or mental needs.
7. Supportive casework services can aid the EF in coping with problems that arise as a result of the placement.
8. Intertribal or interracial marriages may present unique problems regarding differing values or traditions within the EF structure

### *Active Efforts and Placement of Children under the ICWA*

The first active effort of child welfare systems on behalf of Indian families is the placement of children in substitute care with extended family members. Placement preferences stipulated in the ICWA are in the following order:

1. EXTENDED FAMILY
2. TRIBAL FAMILY
3. OTHER INDIAN FAMILY
4. NON-INDIAN FAMILY

These preferences are intended to keep children in the most culturally congruent environment in order to prevent cultural loss and identity confusion. While placement with extended family members may not be considered “foster family care” in the non-Indian child welfare system, it is the backbone of substitute care with Indian clients.<sup>24</sup> Placement is the first step in the permanency planning process which, for Indian children, considers the long-term effects of culturally incongruent placement. Keeping children safe means more than providing for the basic needs of the child. For Indian children, safety and permanency is best accomplished when children remain connected to the extended family and tribal culture.

Again, the child must be identified as Indian and assumed to be eligible for tribal enrollment in planning for placement. Public child welfare systems ideally have fulfilled the requirements under the Multi-Ethnic Placement Act – Inter-Ethnic Adoption Provisions (MEPA-IAP) and the ICWA to recruit and train appropriate foster homes. Culturally responsive systems will also have provided supports and mechanisms for kinship placements, subsidized guardianship, or other programs that promote extended family involvement.

Early advocacy is crucial for families to receive active efforts. In Denver County, an Indian mother was charged with felony child abuse and incarcerated. Fortunately, she had already established a relationship with the Denver Indian Health and Family Services, and had been

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<sup>24</sup> Ibid.

referred to Denver Indian Family Resource Center (DIFRC), an advocacy program. When the child was removed, advocacy was initiated immediately. Within a few days, the social worker at DIFRC had verified the child's eligibility for tribal enrollment, and contacted the county intake worker. When the intake worker received the news that the child was tribal, she took pre-emptive action by seeking placement with an Indian foster mother. As in most public agencies, there were few such families. Fortunately, the worker was able to identify an appropriate placement and had the knowledge of the ICWA and cultural competence required.

### *Case Management and Active Efforts*

Active efforts continue after placement in adopting a case management and monitoring style that takes into account the reactions of native parents previously discussed. Once parents have been charged in a juvenile court with having neglected or abused dependent children, a treatment plan is recommended.

- It is important that social caseworkers make these recommendations based on thorough knowledge of the family history, and prioritize the prescribed treatments to address the underlying causes of child maltreatment.
- It is important to include the parents and extended family members or community advocates in the discussion of what should be done to help Indian parents be reunited with their children and prepare to keep the children safe in the future.
- Strength-based and family-centered approaches not only are most effective for positive outcomes, but also are culturally congruent.
- It is important to recognize that the courts will often accept the recommendations of the social caseworkers in mandating the plans.
- Therefore, cultural competence for child welfare workers is critical in planning for active efforts at Indian family reunification.

Successful treatment plans are likely to include services to families that are culturally relevant and responsive.

- Often the family is able to identify providers in the community who are known to work appropriately and respectfully with Indian people.
- Workers should make every effort to refer families to services where they will feel understood and welcome.
- Sometimes non-Indian service providers who are trusted by members of the Indian community can be located.
- Schools of social work, Indian service organizations, or NICWA may be able to help in the referral process.
- Every attempt should be made to locate natural helpers from within the community.
- The family should also be asked about spiritual people that they might wish to include in the process.
- Community collaboration among agencies is a best practice in child welfare.
- Combined staffing among agencies that serve the Indian family helps create the safety net of coordination of services.
- Getting signed release of information documents helps promote open communication among providers.

- Including the families in such efforts ensures clear understanding among all concerned.

Families in the system often require multiple treatments. Attempting to co-locate services and streamlining treatments can help relieve some of the stress for both families and providers.

### ***Culturally Responsive Innovative (Model) Child Welfare Practices***

Increasingly, public child protection agencies are recognizing the need for innovations that will improve outcomes of child safety and permanency. Many states are now experiencing serious consequences from litigation that has charged child welfare systems with failure to protect children. As the old saying goes, “If you do what you have always done, you will get what you have always gotten.”

Fortunately for American Indian families, these innovations are culturally congruent. One such movement is the inclusion of Family Group Conferencing in planning for child safety. This model, based on Maori child welfare in New Zealand, is similar to others that promote early inclusion of extended families in creating within-family services and supports and that rely less on substitute care options outside the family circle. As a Maori elder once said, “There is no such thing as ‘parental rights’ in our culture. Parents are not even thought capable of raising their own children.” In many indigenous cultures, it is usually the grandparents, aunts, and uncles who provide the training and discipline for children.

The Washington State Division of Children and Family Services collaborated in 1997 with the University of Washington School of Social Work to train workers and implement family group conferences. Four American Indian tribes were included. The tribes felt it was a particularly respectful way to help empower families and communities to care for their own children. These meetings are also a good time to educate the family on their rights under ICWA and gain the information from extended family needed to verify tribal enrollment.

Another innovation in Milwaukee County, Wisconsin, utilizes family group conferences within 72 hours of child referral. Once family strengths and needs are assessed, prevention and safety services are offered as “front loading” services to help families stay together. There has been a dramatic reduction in child placement in substitute care through this approach.

In Oakland, California, a new program places entire families with specially trained foster parents. Rather than separating children from their parents, Family Shared Care offers families hands on coaching and mentoring needed to improve child safety and permanency. Foster parents are paid full time wages to stay home with the referred families. Tremendous satisfaction has been expressed by both the providers and recipients of services.

***“Let us put our minds together  
to see what we can build for our children.”  
– Sitting Bull***



# 6. Recruiting and Training Indian Foster Families

*“There is nothing in our languages that relates to the concept of foster care.”*  
– National Indian Child Welfare Association

## *Why Don't We Have More Indian Foster Families?*

Most American Indian people today live in urban areas away from the geographical regions of their tribes. Many tribes lack resources for providing services to off-reservation members. Urban tribal children are usually at the mercy of public welfare systems to provide the culturally appropriate substitute care placements that are mandated by ICWA. Many Indian children who have been born off the reservation do not meet eligibility requirements for tribal enrollment. However, even when Indian children do not qualify for protection under the Indian Child Welfare Act, the Multi-Ethnic Placement Act (MEPA) requires that states recruit foster and adoptive homes that will be racially and culturally congruent for children. The Inter-Ethnic Placement Amendment to MEPA imposes serious financial sanctions on states who fail to recruit such families. Nonetheless, in urban areas, a great variance in availability and accessibility of culturally responsive services and advocacy for Indian families involved in child protective systems is found. We must ask ourselves why this deficit of Indian foster families exists.

- The assumption is made by states and counties that “Indians have ICWA, so they will provide their own foster homes.”
- Despite over-representation of American Indian children in the child welfare system, there is still an “insignificant” number of Indian children overall. In terms of sheer numbers, African American children usually represent the largest number of children in the system, with Hispanic children second and American Indian children third. White children are under-represented, according to population proportions, but the vast majority of foster families recruited and trained are white.
- The bias exists that families are the source of child neglect and abuse, leading to actual practice which excludes families of color from the recruitment and training process. This bias extends to use of extended family as kinship placements.
- Most workers are white, while most clients are people of color. As human beings we are most comfortable working with people who are similar. Recruiters and trainers may consciously or unconsciously prefer to work with those who are like themselves – white.
- Indian families have had extremely negative experiences with child removal by social welfare systems. Government systems have been responsible for permanent loss of children in the past. Under ASFA, Indian children are again being permanently removed from their families and communities, and lost to adoption. Therefore, the requirements for certification as a foster home can feel very threatening.

Most foster placement in among Indian families occurs informally, before systems can intervene. While foster care payments and services could help kin and non-kin extended families with instrumental and concrete support, Indian foster caregivers often prefer to work outside the system and deal with the strain on family resources. This speaks to the resilience of Indian extended families, but sadly, also indicates a lack of cultural responsiveness by foster and adoptive recruitment departments.

### *Training in Communities: Everyone is Important*

Child rearing in the Indian culture is not solely a private affair. Parents, extended family, clan, and tribe all share responsibility for the well-being of children.

**Story:**

“So, how do you get foster parents into your program?” one Indian woman asked the other. “Well, first you stand out on your porch,” she said softly, “and you wait. Then when a young woman comes along and says, ‘I have to go to jail, will you care for my child for three months?’ then you take the child and you become a foster parent yourself. Then, and only then, will you know what it’s like to be a foster parent and then, too, you’ll know how to recruit them.”

– Roxy Gignon  
Menominee Native American Foster Parents Association<sup>25</sup>

Another approach to getting foster parents recruited for training means taking a folding table, a comfortable chair, a sign-up sheet, good intentions, and a lot of smiles along with a banner saying, “Are you interested in foster parent training?” to the local powwows ... then wait. There will be a few who ask questions and one or two who will sign up for the training and that will be the just the beginning.

The next step will be to find a training site, a place where Indian families can meet and feel safe. The site should have comfortable seating, bright lighting, good ventilation, and space for equipment (flip charts and an overhead projector and screen).

Publicizing the training means having all the details outlined. The training dates and times will need to be flexible. Be prepared to spend weekends and evenings conducting the “formal” training sessions. The people who are interested in being foster parents will likely be parents themselves and may have home or work obligations. As the foster parent recruiter in an Indian community, whether reservation or urban, find the busiest person you know and ask them to do something more ... be a foster parent. Take meal times into consideration, too. Busy people need to eat and it’s only common courtesy to feed guests. Be sure everyone understands the

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<sup>25</sup> Gooden, Myrna & Esquibel-Hunt, D. (2000). “Resource Guide for Indian Child Welfare Practice: Ensuring Safety and Permanence for Indian Children.” Salt Lake City, UT: University of Utah. p. 31.

purpose of the training. If travel reimbursement or child care is available, be sure everyone understands how reimbursements are approved and paid. Use local radio and television public service announcements (PSAs) to your advantage in order to recruit foster parents as well as announce training dates and times.

Invite everyone in the child welfare community to attend the training. Start with family experts (people who have been clients in the child welfare system), child welfare service providers, guardian ad litem representatives, CASA volunteers, attorneys, and judges. This collaborative effort is critical to the successful placement of Indian children in Indian foster parent homes.

The Indian child welfare worker works on behalf of *children with families*, recognizing and encouraging the strengths of the extended family, traditional values, and the local community. Some say, “It takes a village to raise a child,” yet the expectation is that a young woman who is sentenced to jail time will lose her child to the nearest available foster home rather than to the “auntie” who will lovingly care for the child.

### *Technical Resources*

The Native American Children and Family Services Training Institute (NACFSTI)<sup>26</sup> is one of the best technical resources in Indian Country today. They are absolutely dedicated to their mission: “... to empower individuals, families, and community to create a safe and healthy environment so children and families can achieve their highest potential.” They have developed a foster parent curriculum that is culturally relevant to Indian children and families and has been field-tested with four tribes in North Dakota: 1) Three Affiliated Tribes, 2) Standing Rock Sioux Tribe, 3) Spirit Lake Sioux Tribe, and 4) Turtle Mountain Chippewa Tribe. Additionally, the curriculum is taught nationally. The following is excerpted from NACFSTI’s training announcement brochure:<sup>27</sup>

“Foster Parent Training: Extending our Families through Unity” is a one of a kind and user-friendly curriculum based on traditions and cultures of Indian people. It is designed to address issues Native American foster parents have identified as important.

This unique training provides many helpful hints and tools foster parents can use to problem solve in their everyday lives as caregivers.

Our Native American Children deserve to have the best care possible and this training prepares foster parents to do just that. In Native American cultures, children are considered sacred. The creator intends the sacred to be loved and nurtured. To this end, the underlying philosophy is to help children grow to meet their potential in mind, body, spirit and emotions.

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<sup>26</sup> Native American Children and Family Services Training Institute, 4007 State Street Suite 110, Bismarck, ND 58501; telephone 701.255.6374; telefax 701.255.6394; email [nacfsti@btigate.com](mailto:nacfsti@btigate.com)

<sup>27</sup> Used with permission.

The curriculum was developed to assist people in training others to become foster parents. The complete packet contains the curriculum, overheads, and training materials and is available for purchase. NACFSTI strongly recommends that facilitators who will be using the curriculum complete 15 hours of training in the NACFSTI Train-the-Trainers session before training others. Call 701.255.6374 for registration information. NACFSTI training will teach facilitators how to use the curriculum effectively. Facilitators will acquire several teaching skills through a variety of teaching activities and methodologies and will learn to be better facilitators by using debriefing techniques as well as group dynamics.

Once the community facilitators complete the NACFSTI training, the 30-hour training for foster parents can be done. The foster parent training is divided into ten three-hour sessions, briefly described as follows:

1. **Foster Parent Orientation:** working as a professional team member to care for children in foster care.
2. **Human Growth and Development:** physical, mental, social, moral, spiritual, and emotional development. Why some children may have developmental delays.
3. **Attachment and Loss:** the affectionate bond between people. Children experience a loss when entering foster care.
4. **Protecting, Nurturing, and Meeting Needs through Discipline:** teaches responsibility and decision making. Discipline skills are included.
5. **Intergenerational Grief:** is passed from one generation to the next. This trauma promotes negative coping behaviors. Awareness is critical for healing.
6. **Effects of Addiction in Children:** Many children in foster care have experienced addiction in their families which contributes to child abuse and neglect.
7. **Child Abuse, Neglect, and Sexual Abuse:** are the reasons children are removed from their homes. How can foster parents help the children relate to others in healthy ways.
8. **Promoting Permanency Outcomes:** the way a child sees how they belong to a family, extended family, or cultural group over time.
9. **Kinship Care and Self-Esteem:** being a foster parent to your own relative may be challenging. Divided loyalties and setting boundaries are special considerations. How can we help children grow up to be healthy?
10. **We Are All Related:** conclusion.

**“Let us put our minds together  
to see what we can build for our children.”  
– Sitting Bull**

# 7. Planning for the Seventh Generation

*“Everything on earth has a purpose,  
every disease an herb to cure it,  
and every person a mission.”  
– Mourning Dove, Salish*

## Story:

And so the elders came to sit in the council circle under the great arms of the Tree People. And there were Eagle, Coyote, Bear, and Buffalo, Raven, Turtle and Spider, grandmothers and grandfathers, and medicine People from many Nations. And they sat in silence ... listening.

They heard the generations crying and they counted every tear. They heard the People pleading for their children ... and they listened.

Bear spoke to break the silence, “Elders of the Nations, I implore you to join me in prayer. Our People need us. Generations upon generations of children have been taken. Generations upon generations of mothers and fathers have cried. The damage is immeasurable.” And the elders agreed with Bear and joined in prayer, to mourn the losses.

When Eagle spread his wings and stood upright, he asked, “Elders of the Nations, please join me hand-in-hand.” And they did. The circle was complete and all could see the strength in the unity. “What we say and do today must be from the heart for it will effect seven generations of our People,” he whispered. And they all nodded in assent ... whatever the task.

So it was then and so it is today ... what we say and do must be from the heart for it will effect seven generations of our People ... whatever the task.

Aho!<sup>28</sup>

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<sup>28</sup> Gooden, Myrna & Esquibel-Hunt, D. (2000). “Resource Guide for Indian Child Welfare Practice: Ensuring Safety and Permanence for Indian Children.” Salt Lake City, UT: University of Utah. p. 35.

Some say seventy generations have been lost due to extermination, expulsion, exclusion, and assimilation until Native People finally could become self-determined. Perhaps this is true. Whatever the measure may be, 500 years of American history won't likely be changed by one resource guide on the Indian Child Welfare Act. In planning for healing of Indian families in your communities, some best practice strategies are offered for consideration. What we hope and pray for is that each individual person who shares our vision for a better future for Indian children will use this resource guide to the best of their ability and, in doing so, will effect change.

### *Design Teams in Community Work<sup>29</sup>*

Design Teams are examples of collaborative community change. They basically consist of caring people who come together to improve the quality of life of children and families. Some come together as brand new collaborations. Others have found creative ways of tailoring their process to complement existing reform initiatives or collaborations that may already be underway.

The exact nature of any Design Team's membership will be driven by the community need being addressed. The most effective Design Teams will include:

- Frontline practitioners, middle managers, and top administrators representing community agencies that serve families. These may include:
  - Financial assistance
  - Employment assistance
  - Child welfare
  - Domestic violence services
  - Substance abuse prevention and treatment
  - Mental health counseling
  - Education
  - Court systems
- Family Experts or Community Consultants who are current or former clients of services, valued community members, elders, or youth who may receive stipends for contributing their expertise.
- A liaison, or liaisons, from partnering colleges or universities. These liaisons may be a resource for facilitators for the Design Team.

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<sup>29</sup> Barkdull, C., Gooden, M. & Hunt, D.E. (2000). "Creating dreamcatchers: American Indian/Alaska Native family preservation." Workshop 17 at the Family Preservation Institute's Annual Conference, San Antonio, TX. September 5-8, 2000.

Design Teams combine training, collaboration, problem solving, and community building in ways that build on and support each other for the purpose of improving the lives of children and families. The Design Team environment promotes:

- Open minds, hearts and ears.
- Recognition that no family (including our own) is without problems, and that problems frequently occur together (co-occurring needs).
- Valuing the expertise of families, elders, and children.
- Willingness to risk, be inventive, and not “know” all the answers.
- Understanding that the process (how to get there) is as important as the product (the outcomes you hope to achieve).
- The belief that real change takes time.
- Commitment to facilitating change both from the bottom up and the top down.
- Group norms and values that promote the celebration of successes and value the learning that comes from setbacks and failures.
- Understanding that culturally responsive, family-centered practice requires a change of heart as well as a change of mind.

Design Teams are best practice examples of collaboration. This approach may already be active in your community under another name, such as Treatment Team, but the concept is basically the same ... people helping people.

### *Mentioning A Few Exemplary Programs*

New, exciting, and healing things are happening every day in Indian Country. The more we researched, the more successes we found to celebrate. One special resource is the newspaper, Indian Country Today. Kevin Peninska was the editor for several special “Healing Journey” issues that were dedicated to positive programs and their outcomes. Mr. Peninska is taking the healing journey concept one step further by publishing the Well Nations Magazine,<sup>30</sup> beginning circulation in January, 2001.

### **Southern Ute Indian Tribe in Ignacio**

Not many tribes can tackle an 80% drop-out/push-out rate the way the Southern Ute Indian Tribe has in the past two years. The statistic alone was alarming. Yet, the community was able to support the implementation of a tribally-owned and operated school. The school opened its

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<sup>30</sup> Peninska, K. Well Nations Magazine. 520 Kansas City Street Suite 308, Rapid City, SD 57701; telephone 605.348.9283; telefax 605.348.9284; email [wellnations@dtgnet.com](mailto:wellnations@dtgnet.com)

doors in September, 2000, to Ute children from toddler to grade three. The curriculum is based on Montessori teaching methods. However, the community has added a cultural component into the academic day. The people involved are wholly dedicated to their People.

With the support of the tribal council, Gary Martinez, Tribal Services Director, contacted the University of Utah, Graduate School of Social Work, Social Research Institute to ask for a Design Team facilitator in April, 1999. Carenlee Barkdull became the university facilitator who helped start the Southern Ute Design Team and, since that time, they have designed and implemented wraparound services in the community. Part of the design includes a coordinator who is one of the Southern Ute Indian Academy staff members. The coordinator's responsibilities include keeping a watchful eye on at-risk children. Basically, when an at-risk child is identified, the coordinator calls the Design Team members together to wraparound the services needed for the child. Then culturally appropriate interventions can be done with the child and family.

Additionally, the Southern Ute Design Team meets monthly in a formal setting to discuss community needs and to outline long-term goals and objectives for Southern Ute children and families. It continues as a highly successful venture.

### **Big Lake Project in Salt Lake City**

Learning one new skill is a challenge, but learning several new skills can be overwhelming. The Strengthening Families Program is designed to teach communication and parenting skills in increments so they will not be quite so overwhelming. The program is being taught across the nation by various organizations and is funded by the Office of Juvenile Justice as a prevention program.

One such program is The Big Lake Project, where Indian families come together for dinner at 5:30 p.m. on Mondays for a 14-week period. Each week a specific skill is highlighted. After dinner, the parents collect into one group with two teachers, and children between the ages of seven and 12 collect into another group with two helpers. In the separate groups, they discuss the previous week's homework then they all practice the current week's new skill. Smaller children are cared for in a separate room by child care workers. After an hour or so, the families all come together to practice the new skill, with the teachers and helpers available if needed. Key to the family's success is the ability to accept help when needed and to do on-the-spot problem solving.

In addition to having their Monday night dinner together, families are encouraged to plan how to spend their \$100 graduation award, which is a gift certificate to a local department store. It is not always easy to agree on what to buy, but it is very rewarding to see the families learn to negotiate with one another and to ultimately celebrate together at graduation.

Indian families are recruited by word-of-mouth, public service announcements on KRCL Radio (a local NPR station with an Indian hour on Sunday mornings), and by reputation. The first families were recruited in the summer of 1999. They used the curriculum as it had been written and then worked with the co-principal investigators, Drs. Connie Tait and John Peregoy, to revise the curriculum to be more appropriate for Indian families. The closing focus group ensured the success story. Since this initial success, several families have had the opportunity to



strengthen their home life with better parenting and communication with their children. The Big Lake Project will continue through the summer of 2001.

### **The Seventh Generation Family Program in Denver**

This is another Strengthening Families Program that is being operated in an urban area for Indian families. Under the supervision of the University of Denver's Graduate School of Social Work and Dr. Jim Moran, Susan Yellow Horse is the Program Manager. Their program flyer lists the focus criteria as "at least one American Indian caretaker and at least one American Indian child between the ages of six years and 12 years."<sup>31</sup> This 12-week program concentrates on basically the same areas as The Big Lake Project, which are summarized as: family communication; problem solving; decision making and refusal skills; and parenting skills. The program's goals are to help families to:

- Improve family functioning
- Clarify family rules
- Decrease family conflict
- Increase children's pro-social skills
- Decrease sibling conflict
- Reduce children's problem behaviors

### **Fost-Adopt: A Cherokee Adoption Program<sup>32</sup>**

Outcome measurements and outcome-based management in evaluating child welfare agency performance became critical with the passage of the Adoption and Safe Families Act (ASFA) of

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<sup>31</sup> Yellow Horse, S. (2000). "The Seventh Generation Strengthening Indian Families Program." University of Denver, Graduate School of Social Work. Telephone 303.871.7533 for additional information.

<sup>32</sup> Woodward, L. & Maher, J. (1999). "'Fost-Adopt' A Cherokee adoption program." Pathways, 14(1). Portland, OR: National Indian Child Welfare Association.

1997 (Public Law 105-89). The ASFA also expands funding for Title IV-E demonstration projects for 10 states each year beginning in 1997 with planned national coverage by 2002.<sup>33</sup>

The Cherokee Nation, under Linda Woodward's leadership, took a very creative path to combine requirements of both the ASFA and the ICWA beginning in 1992. Cherokee families responded to the need for adoptive homes with a total of 100 homes available by the end of December, 1993. Unfortunately, foster placement homes were needed, too. The Cherokee Nation staff developed a Fost-Adopt program that trains potential adoptive parents about the benefits and pitfalls of accepting children who are not legally free for adoption. It is a win-win situation for everyone, especially the at-risk child. Additionally, the Cherokee Nation has developed an adoption contract with the State of Oklahoma. Developing the Cherokee Nation's adoption program and having the state and tribal contract in place eliminates the uncertainty about Indian placement availability. There are details, of course, and problems do arise. However, the important thing to remember is the unique placement of each Cherokee child in a Cherokee home.

### **TOCRA Design Team in Salt Lake City**

Sitting in council is the least likely way to describe the start-up of this Design Team. It was three women sitting together in a conference room who were trying to figure out a way for Utah to become ICWA compliant. They are diverse in culture as well as education but all desirous of the same outcome. The social worker said this, the law student said that, and the trainer asked questions. The result was a call to the community to meet in July, 2000, initially to work on a training module. However, in the Fall, the focus turned to becoming a statewide initiative for all Indian children and the work has only begun.

TOCRA is an acronym for Training Opportunities for Cultural Responsiveness and Awareness, which is funded under discretionary training grant #90CT0054/01 from the U.S. Children's Bureau for the project period of September 30, 1999 to September 29, 2002. Sharing this resource guide with members of the TOCRA Design Team will bridge the community commitment to the ICWA compliance requirements and be an excellent good start.

### **Concluding Remarks**

A lot of work still needs to be done since not one of the 50 states is in compliance with the ICWA today. We make a fervent call to the state governmental agencies to become compliant as quickly and efficiently as possible. This means examining child protective service actions from a rehabilitative viewpoint.

We ask that tribes work collaboratively with state agencies to reach effective agreements on handling their ICWA cases. We hope that Indian parents will learn their rights as well as their responsibilities under the ICWA. We respectfully request that Indian families open their hearts and their doors to become the foster homes our children need.

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<sup>33</sup> Gordon, A.L. (1999). Outcome initiatives in child welfare. Washington, DC: Child Welfare League of America, Inc. Press. pp. v-vi.

We challenge social work programs at universities and colleges to better educate students for work in Indian communities. We challenge the U.S. Government to provide funding to tribes to be able to accomplish the ICWA needs. We also challenge the U.S. Government to develop sanctions for states who fail to meet the ICWA requirements and, consequently, fail to meet the needs of Indian children and families.

Fortunately, the U.S. Children's Bureau, on the cusp of the new century, had the foresight to provide funding for this resource guide and training stipends to American Indian social work students beginning in 1998. And, now, the University of Utah's technology will be used to make this resource guide available in hard copy and online. We celebrate the partnership that demonstrates the council elders' dreams and Sitting Bull's words:

***“Let us put our minds together  
to see what we can build for our children.”  
– Sitting Bull***

# Appendix A: ICWA Legislation

- Indian Child Welfare Act, Public Law 95-608
- Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC)
- Federal Register Vol. 44 No. 238 – Monday, November 26, 1979

*Indian Child Welfare Act, Public Law 95-608*

**UNITED STATES CODE TITLE 25  
- INDIANS CHAPTER 21 -  
INDIAN CHILD WELFARE**

Contents

**CHAPTER 21 - INDIAN CHILD WELFARE**

- § 1901. Congressional findings.
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**SUBCHAPTER I - CHILD CUSTODY PROCEEDINGS**

- § 1911. Indian tribe jurisdiction over Indian child custody proceedings.
- § 1912. Pending court proceedings.
- § 1913. Parental rights; voluntary termination.
- § 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations.
- § 1915. Placement of Indian children.
- § 1916. Return of custody.
- § 1917. Tribal affiliation information and other information for protection of rights from tribal relationship;  
application of subject of adoptive placement; disclosure by court.
- § 1918. Reassumption of jurisdiction over child custody proceedings.
- § 1919. Agreements between States and Indian tribes.
- § 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception.
- § 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child.
- § 1922. Emergency removal or placement of child; termination; appropriate action.
- § 1923. Effective date.

**SUBCHAPTER II - INDIAN CHILD AND FAMILY PROGRAMS**

- § 1931. Grants for on or near reservation programs and child welfare codes.
- § 1932. Grants for off-reservation programs for additional services.
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**SUBCHAPTER III - RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES**

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#### **SUBCHAPTER IV - MISCELLANEOUS PROVISIONS**

§ 1961. Locally convenient day schools.

§ 1962. Copies to States.

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#### **§ 1901. Congressional findings**

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds –

(1) that clause 3, section 8, article I of the United States Constitution provides that “The Congress shall have Power \* \* \* To regulate Commerce \* \* \* with Indian tribes (FOOTNOTE 1)” and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(FOOTNOTE 1) So in original. Probably should be capitalized.

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

#### **§ 1902. Congressional declaration of policy**

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the

unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

### § 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term -

(1) “child custody proceeding” shall mean and include –

(i) “foster care placement” which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) “termination of parental rights” which shall mean any action resulting in the termination of the parent-child relationship;

(iii) “preadoptive placement” which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) “adoptive placement” which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) “extended family member” shall be as defined by the law or custom of the Indian child’s tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) “Indian” means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;

(4) “Indian child” means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) “Indian child’s tribe” means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) “Indian custodian” means 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;

- (7) “Indian organization” means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;
- (8) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43;
- (9) “parent” means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;
- (10) “reservation” means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;
- (11) “Secretary” means the Secretary of the Interior; and
- (12) “tribal court” means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

## **§ 1911. Indian tribe jurisdiction over Indian child custody proceedings**

### **(a) Exclusive jurisdiction**

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

### **(b) Transfer of proceedings; declination by tribal court**

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child’s tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child’s tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

### **(c) State court proceedings; intervention**



In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

**§ 1912.** Pending court proceedings

(a) Notice; time for commencement of proceedings; additional time for preparation

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) Examination of reports or other documents

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide

remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

### § 1913. Parental rights; voluntary termination

(a) Consent; record; certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) Collateral attack; vacation of decree and return of custody; limitations

After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

**§ 1914.** Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

Any 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.

**§ 1915.** Placement of Indian children

(a) Adoptive placements; preferences

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with -

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority;  
or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section.

Where appropriate, the preference of the Indian child or parent shall be considered: Provided, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability

A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

**§ 1916.** Return of custody

(a) Petition; best interests of child

Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

(b) Removal from foster care home; placement procedure

Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

**§ 1917.** Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

**§ 1918.** Reassumption of jurisdiction over child custody proceedings

(a) Petition; suitable plan; approval by Secretary

Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) Criteria applicable to consideration by Secretary; partial retrocession

(1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

(c) Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval

If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Pending actions or proceedings unaffected

Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

**§ 1919.** Agreements between States and Indian tribes

(a) Subject coverage

States and Indian tribes are authorized to enter into agreements with each other respecting 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 Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected

Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

**§ 1920.** Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

**§ 1921.** Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

**§ 1922.** Emergency removal or placement of child; termination; appropriate action

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

**§ 1923.** Effective date

None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one

hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

**§ 1931.** Grants for on or near reservation programs and child welfare codes

(a) Statement of purpose; scope of programs

The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to -

- (1) a system for licensing or otherwise regulating Indian foster and adoptive homes;
  - (2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;
  - (3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;
  - (4) home improvement programs;
  - (5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;
  - (6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;
  - (7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and
  - (8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.
- (b) Non-Federal matching funds for related Social Security or other Federal financial assistance programs; assistance for such programs unaffected; State licensing or approval for qualification for assistance under federally assisted program

Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act (42 U.S.C. 620 et seq., 1397 et seq.) or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this chapter. The provision or possibility of assistance under this

chapter shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

**§ 1932. Grants for off-reservation programs for additional services**

The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to –

- (1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;
- (2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;
- (3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and
- (4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

**§ 1933. Funds for on and off reservation programs**

- (a) Appropriated funds for similar programs of Department of Health and Human Services; appropriation in advance for payments

In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health and Human Services, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health and Human Services: Provided, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

- (b) Appropriation authorization under section 13 of this title

Funds for the purposes of this chapter may be appropriated pursuant to the provisions of section 13 of this title.

**§ 1934. “Indian” defined for certain purposes**

For the purposes of sections 1932 and 1933 of this title, the term "Indian" shall include persons defined in section 1603(c) of this title.

**§ 1951. Information availability to and disclosure by Secretary**



(a) Copy of final decree or order; other information; anonymity affidavit; exemption from Freedom of Information Act

Any State court entering a final decree or order in any Indian child adoptive placement after November 8, 1978, shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show -

- (1) the name and tribal affiliation of the child;
- (2) the names and addresses of the biological parents;
- (3) the names and addresses of the adoptive parents; and
- (4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment

Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

#### **§ 1952. Rules and regulations**

Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.

#### **§ 1961. Locally convenient day schools**

(a) Sense of Congress

It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) Report to Congress; contents, etc.

The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health and Human Services, a report on the feasibility of providing Indian

children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

**§ 1962. Copies to the States**

Within sixty days after November 8, 1978, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this chapter, together with committee reports and an explanation of the provisions of this chapter.

**§ 1963. Severability**

If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby.

For more information on public policy issues, contact NICWA staff member David Simmons by e-mail at [desimmons@nicwa.org](mailto:desimmons@nicwa.org) or by phone at 503.222.4044 ext. 19.

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## *Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC)*

Select chapters and sections are referenced as follows:

### **Determination if child is an Indian child and inquiry for tribal eligibility**

- NRS 432B.190
- NRS 432B.397
- NAC 432B.263

**NRS 432B.190 Regulations to be adopted by division of child and family services.** The division of child and family services shall, in consultation with each agency which provides child welfare services, adopt:

1. Regulations establishing reasonable and uniform standards for:
  - (a) Child welfare services provided in this state;
  - (b) Programs for the prevention of abuse or neglect of a child and the achievement of the permanent placement of a child;
  - (c) The development of local councils involving public and private organizations;
  - (d) Reports of abuse or neglect, records of these reports and the response to these reports;
  - (e) Carrying out the provisions of NRS 432B.260, including, without limitation, the qualifications of persons with whom agencies which provide child welfare services enter into agreements to provide services to children and families;
  - (f) The management and assessment of reported cases of abuse or neglect;
  - (g) The protection of the legal rights of parents and children;
  - (h) Emergency shelter for a child;
  - (i) The prevention, identification and correction of abuse or neglect of a child in residential institutions;
  - (j) Evaluating the development and contents of a plan submitted for approval pursuant to NRS 432B.395;
  - (k) Developing and distributing to persons who are responsible for a child's welfare a pamphlet that sets forth the procedures for taking a child for placement in protective custody and the legal rights of persons who are parties to a proceeding held pursuant to NRS 432B.410 to 432B.590, inclusive, during all stages of the proceeding; and
  - (l) Making the necessary inquiries required pursuant to NRS 432B.397 to determine whether a child is an Indian child; and
2. Such other regulations as are necessary for the administration of NRS 432B.010 to 432B.606, inclusive.

(Added to NRS by 1985, 1370; A 1987, 1439; 1991, 922; 1993, 2706; 1995, 787; 1997, 2471; 2001, 1700, 1839, 1850; 2001 Special Session, 36)

**NRS 432B.397 Inquiry to determine whether child is Indian child; report to court; training regarding requirements of Indian Child Welfare Act.**

1. The agency which provides child welfare services for a child that is taken into custody pursuant to this chapter shall make all necessary inquiries to determine whether the child is an Indian child. The agency shall report that determination to the court.

2. An agency which provides child welfare services pursuant to this chapter shall provide training for its personnel regarding the requirements of the Indian Child Welfare Act.

(Added to NRS by 1995, 786; A 2001 Special Session, 46)

**NAC 432B.263 Inquiry to determine whether child is Indian child; recording of information provided; verification of inquiries. (NRS 432B.190, 432B.397)**

1. For the purposes of complying with the provisions of NRS 432B.397, the agency which provides child welfare services shall, upon taking a child into protective custody, ask a parent, legal guardian or relative of the child, if available, whether the child is an Indian child.

2. If the parent, legal guardian or relative of the child indicates that the child is or may be an Indian child, the agency shall ask the person to provide the following information:

(a) The name and location of the tribe to which the child belongs;

(b) The enrollment number of the child, if the tribe to which the child belongs has assigned such a number;

(c) Whether the child has resided or been domiciled on a reservation or has been a ward of a tribal court;

(d) The name, including the maiden name, if any, and the enrollment number of each Indian relative of the child, including, but not limited to, the parents and grandparents of the child;

(e) The enrollment number of each Indian relative of the child, including, but not limited to, the parents and grandparents of the child, if the tribe to which the relative belongs has assigned such a number; and

(f) If the child is an Alaskan native, the name of the child's village or regional corporation.

3. The agency shall record, in writing, the information provided by a parent, legal guardian or relative pursuant to this section.

4. The agency shall provide the court with verification that the inquiries set forth in subsections 1 and 2, as applicable, were made for each child for whom a petition has been filed.

5. As used in this section, "Indian child" has the meaning ascribed to it in NRS 432B.067.

(Added to NAC by Div. of Child & Fam. Services, eff. 7-8-96; A by R045-02, 7-23-2002)

**Exclusive jurisdiction**

- NRS 432B.410
- NRS 127.110
- NRS 127.013
- NRS 127.052

**NRS 432B.410 Exclusive original jurisdiction; action does not preclude prosecution.**

1. Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act, the court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is a child in need of protection or may be a child in need of protection.

2. Action taken by the court because of the abuse or neglect of a child does not preclude the prosecution and conviction of any person for violation of NRS 200.508 based on the same facts.  
(Added to NRS by 1985, 1379; A 1991, 2186; 1995, 787)

**NRS 127.110 When petition may be filed; contents of petition; limitation on entry of adoption order.**

1. A petition for adoption of a child who currently resides in the home of the petitioners may be filed at any time after the child has lived in the home for 30 days.

2. The petition for adoption must state, in substance, the following:

(a) The full name and age of the petitioners and the period the petitioners have resided in the State of Nevada before the filing of the petition.

(b) The age of the child sought to be adopted and the period that the child has lived in the home of petitioners before the filing of the petition.

(c) That it is the desire of the petitioners that the relationship of parent and child be established between them and the child.

(d) Their desire that the name of the child be changed, together with the new name desired.

(e) That the petitioners are fit and proper persons to have the care and custody of the child.

(f) That they are financially able to provide for the child.

(g) That there has been a full compliance with the law in regard to consent to adoption.

(h) That there has been a full compliance with NRS 127.220 to 127.310, inclusive.

(i) Whether the child is known to be an Indian child.

3. No order of adoption may be entered unless there has been full compliance with the provisions of NRS 127.220 to 127.310, inclusive.

[11:332:1953]—(NRS A 1961, 738; 1965, 1320; 1987, 2051; 1995, 781)

**NRS 127.013 Transfer of proceedings to Indian tribe.**

1. If proceedings pursuant to this chapter involve the relinquishment of an Indian child who is a ward of a tribal court, resides on a reservation or is domiciled on a reservation, the court shall transfer the proceedings to the Indian child's tribe in accordance with the Indian Child Welfare Act.

2. For the purposes of this section, the domicile of an Indian child must be determined according to Federal common law.

(Added to NRS by 1995, 780)

**NRS 127.052 Agency to determine whether child is Indian child; notification of child's tribe.**

1. Each agency which, pursuant to NRS 127.050, accepts a relinquishment for the adoption of a child shall make all necessary inquiries to determine whether the child is an Indian child. If it determines that the child is an Indian child and that the child is a ward of a tribal court, resides on a reservation or is domiciled on a reservation, the agency shall so notify the child's tribe in writing.

2. The division shall adopt regulations establishing reasonable and uniform standards for making the necessary inquiries to determine whether a child is an Indian child.

3. For the purposes of this section, the domicile of an Indian child must be determined according to Federal common law.

(Added to NRS by 1995, 780)

## Full faith and credit

- NRS 127.017
- NRS 432B.465

**NRS 127.017 Extent to which court must give full faith and credit to judicial proceedings of Indian tribe.** Each court in this state which exercises jurisdiction pursuant to this chapter in a case involving an Indian child shall give full faith and credit to the judicial proceedings of an Indian tribe to the same extent that the Indian tribe gives full faith and credit to the judicial proceedings of the courts of this state.

(Added to NRS by 1995, 780)

**NRS 432B.465 Full faith and credit to judicial proceedings of Indian tribe.** Each court in this state which exercises jurisdiction pursuant to this chapter in a case involving an Indian child shall give full faith and credit to the judicial proceedings of an Indian tribe to the same extent that the Indian tribe gives full faith and credit to the judicial proceedings of the courts of this state.

(Added to NRS by 1995, 786)

## Notice to tribe regarding court proceedings

- NRS 432B.425

**NRS 432B.425 Notification of tribe if proceedings involve Indian child; transfer of proceedings to Indian child's tribe.** If proceedings pursuant to this chapter involve the protection of an Indian child, the court shall:

1. Cause the Indian child's tribe to be notified in writing at the beginning of the proceedings in the manner provided in the Indian Child Welfare Act. If the Indian child is eligible for membership in more than one tribe, each tribe must be notified.

2. Transfer the proceedings to the Indian child's tribe in accordance with the Indian Child Welfare Act.

3. If a tribe declines jurisdiction, exercise its jurisdiction as provided in the Indian Child Welfare Act.

(Added to NRS by 1995, 786)

## Appointment of council

- NRS 432B.420

**NRS 432B.420 Right of parent or other responsible person to representation by attorney; authority of court to appoint attorney to represent child; authority and rights of child's attorney; compensation of attorney; appointment of attorney as guardian ad litem.**

1. A parent or other person responsible for the welfare of a child who is alleged to have abused or neglected the child may be represented by an attorney at all stages of any proceedings under NRS 432B.410 to 432B.590, inclusive. Except as otherwise provided in subsection 2, if the person is indigent, the court may appoint an attorney to represent him. The court may, if it

finds it appropriate, appoint an attorney to represent the child. The child may be represented by an attorney at all stages of any proceedings held pursuant to NRS 432B.410 to 432B.590, inclusive. If the child is represented by an attorney, the attorney has the same authority and rights as an attorney representing a party to the proceedings.

2. If the court determines that the parent of an Indian child for whom protective custody is sought is indigent, the court:

(a) Shall appoint an attorney to represent the parent;

(b) May appoint an attorney to represent the Indian child; and

(c) May apply to the Secretary of the Interior for the payment of the fees and expenses of such an attorney, as provided in the Indian Child Welfare Act.

3. Each attorney, other than a public defender, if appointed under the provisions of subsection 1, is entitled to the same compensation and payment for expenses from the county as provided in NRS 7.125 and 7.135 for an attorney appointed to represent a person charged with a crime. Except as otherwise provided in NRS 432B.500, an attorney appointed to represent a child may also be appointed as guardian ad litem for the child. He may not receive any compensation for his services as a guardian ad litem.

(Added to NRS by 1985, 1379; A 1987, 1308; 1995, 787; 1999, 2037; 2001, 1703)

### **Foster care placement – expert witness testimony**

- NRS 432B.451

#### **NRS 432B.451 Qualified expert witness required in proceeding to place Indian child in foster care.**

1. Any proceeding to place an Indian child in foster care pursuant to this chapter must include the testimony of at least one qualified expert witness as provided in the Indian Child Welfare Act.

2. For the purposes of this section, “qualified expert witness” includes, without limitation:

(a) An Indian person who has personal knowledge about the Indian child’s tribe and its customs related to raising a child and the organization of the family; and

(b) A person who has:

(1) Substantial experience and training regarding the customs of Indian tribes related to raising a child; and

(2) Extensive knowledge of the social values and cultural influences of Indian tribes.

(Added to NRS by 1995, 786)

**NOTE:** Please see NRS 127 for information on the adoption of children and adults.

*Federal Register*

The text from Vol. 44 No. 238 – Monday, November 26, 1979 immediately follows this page.



## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Guidelines for State Courts; Indian Child Custody Proceedings

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

There was published in the Federal Register, Vol. 44, No. 79/Monday, April 23, 1979 a notice entitled Recommended Guidelines for State Courts—Indian Child Custody Proceedings. This notice pertained directly to implementation of the Indian Child Welfare Act of 1978, Pub. L. 95-608, 92 Stat. 3069, 25 U.S.C. 1901 *et seq.* A subsequent Federal Register notice which invited public comment concerning the above was published on June 5, 1979. As a result of comments received, the recommended guidelines were revised and are provided below in final form.

## Introduction

Although the rulemaking procedures of the Administrative Procedures Act have been followed in developing these guidelines, they are not published as regulations because they are not intended to have binding legislative effect. Many of these guidelines represent the interpretation of the Interior Department of certain provisions of the Act. Other guidelines provide procedures which, if followed, will help assure that rights guaranteed by the Act are protected when state courts decide Indian child custody matters. To the extent that the Department's interpretations of the Act are correct, contrary interpretations by the courts would be violations of the Act. If procedures different from those recommended in these guidelines are adopted by a state, their adequacy to protect rights guaranteed by the Act will have to be judged on their own merits.

Where Congress expressly delegates to the Secretary the primary responsibility for interpreting a statutory term, regulations interpreting that term have legislative effect. Courts are not free to set aside those regulations simply because they would have interpreted that statute in a different manner. Where, however, primary responsibility

for interpreting a statutory term rests with the courts, administrative interpretations of statutory terms are given important but not controlling significance. *Batterton v. Francis*, 432 U.S. 418, 424-425 (1977).

In other words, when the Department writes rules needed to carry out responsibilities Congress has explicitly imposed on the Department, those rules are binding. A violation of those rules is a violation of the law. When, however, the Department writes rules or guidelines advising some other agency how it should carry out responsibilities explicitly assigned to it by Congress, those rules or guidelines are not, by themselves, binding. Courts will take what this Department has to say into account in such instances, but they are free to act contrary to what the Department has said if they are convinced that the Department's guidelines are not required by the statute itself.

Portions of the Indian Child Welfare Act do expressly delegate to the Secretary of the Interior responsibility for interpreting statutory language. For example, under 25 U.S.C. 1918, the Secretary is directed to determine whether a plan for re-assumption of jurisdiction is "feasible" as that term is used in the statute. This and other areas where primary responsibility for implementing portions of the Act rest with this Department, are covered in regulations promulgated on July 31, 1979, at 44 FR 45092.

Primary responsibility for interpreting other language used in the Act, however, rests with the courts that decide Indian child custody cases. For example, the legislative history of the Act states explicitly that the use of the term "good cause" was designed to provide state courts with flexibility in determining the disposition of a placement proceeding involving an Indian child. S. Rep. No. 95-597, 95th Cong., 1st Sess. 17 (1977). The Department's interpretation of statutory language of this type is published in these guidelines.

Some commenters asserted that Congressional delegation to this Department of authority to promulgate regulations with binding legislative effect with respect to all provisions of the Act is found at 25 U.S.C. 1952, which states, "Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules

and regulations as may be necessary to carry out the provisions of this chapter." Promulgation of regulations with legislative effect with respect to most of the responsibilities of state or tribal courts under the Act, however, is not necessary to carry out the Act. State and tribal courts are fully capable of carrying out the responsibilities imposed on them by Congress without being under the direct supervision of this Department.

Nothing in the legislative history indicates that Congress intended this Department to exercise supervisory control over state or tribal courts or to legislate for them with respect to Indian child custody matters. For Congress to assign to an administrative agency such supervisory control over courts would be an extraordinary step.

Nothing in the language or legislative history of 25 U.S.C. 1952 compels the conclusion that Congress intended to vest this Department with such extraordinary power. Both the language and the legislative history indicate that the purpose of that section was simply to assure that the Department moved promptly to promulgate regulations to carry out the responsibilities Congress had assigned it under the Act. Assignment of supervisory authority over the courts to an administrative agency is a measure so at odds with concepts of both federalism and separation of powers that it should not be imputed to Congress in the absence of an express declaration of Congressional intent to that effect.

Some commenters also recommended that the guidelines be published as regulations and that the decision of whether the law permits such regulations to be binding be left to the court. That approach has not been adopted because the Department has an obligation not to assert authority that it concludes it does not have.

Each section of the revised guidelines is accompanied by commentary explaining why the Department believes states should adopt that section and to provide some guidance where the guidelines themselves may need to be interpreted in the light of specific circumstances.

The original guidelines used the word "should" instead of "shall" in most provisions. The term "should" was used to communicate the fact that the guidelines were the Department's interpretations of the Act and were not intended to have binding legislative effect. Many commenters, however, interpreted the use of "should" as an

attempt by this Department to make statutory requirements themselves optional. That was not the intent. If a state adopts those guidelines, they should be stated in mandatory terms. For that reason the word "shall" has replaced "should" in the revised guidelines. The status of these guidelines as interpretative rather than legislative in nature is adequately set out in the introduction.

In some instances a state may wish to establish rules that provide even greater protection for rights guaranteed by the Act than those suggested by these guidelines. These guidelines are not intended to discourage such action. Care should be taken, however, that the provision of additional protections to some parties to a child custody proceeding does not deprive other parties of rights guaranteed to them by the Act.

In some instances the guidelines do little more than restate the statutory language. This is done in order to make the guidelines more complete so that they can be followed without the need to refer to the statute in every instance. Omission of any statutory language, of course, does not in any way affect the applicability of the statute.

A number of commenters recommended that special definitions of residence and domicile be included in the guidelines. Such definitions were not included because these terms are well defined under existing state law. There is no indication that these state law definitions tend to undermine in any way the purposes of the Act. Recommending special definitions for the purpose of this Act alone would simply provide unnecessary complications in the law.

A number of commenters recommended that the guidelines include recommendations for tribal-state agreements under 25 U.S.C. 1919. A number of other commenters, however, criticized the one provision in the original guidelines addressing that subject as tending to impose on such agreements restrictions that Congress did not intend should be imposed. Because of the wide variation in the situations and attitudes of states and tribes, it is difficult to deal with that issue in the context of guidelines. The Department is currently developing materials to aid states and tribes with such agreements. The Department hopes to have those materials available later this year. For these reasons, the provision in the original guidelines concerning tribal-state agreements has

been deleted from the guidelines.

The Department has also received many requests for assistance from tribal courts in carrying out the new responsibilities resulting from the passage of this Act. The Department intends to provide additional guidance and assistance in that area also in the future. Providing guidance to state courts was given a higher priority because the Act imposes many more procedures on state courts than it does on tribal courts.

Many commenters have urged the Department to discuss the effect of the Act on the financial responsibilities of states and tribes to provide services to Indian children. Many such services are funded in large part by the Department of Health, Education, and Welfare. The policies and regulations of that Department will have a significant impact on the issue of financial responsibility. Officials of Interior and HEW will be discussing this issue with each other. It is anticipated that more detailed guidance on questions of financial responsibility will be provided as a result of those consultations.

One commenter recommended that the Department establish a monitoring procedure to exercise its right under 25 U.S.C. 1915(e) to review state court placement records. HEW currently reviews state placement records on a systematic basis as part of its responsibilities with respect to statutes it administers. Interior Department officials are discussing with HEW officials the establishment of a procedure for collecting data to review compliance with the Indian Child Welfare Act.

Inquiries concerning these recommended guidelines may be directed to the nearest of the following regional and field offices of the Solicitor for the Interior Department:

Office of the Regional Solicitor, Department of the Interior, 510 L Street, Suite 408,

Anchorage, Alaska 99501, (907) 265-5301.

Office of the Regional Solicitor, Department of the Interior, Richard B. Russell Federal Building, 75 Spring St., SW., Suite 132a, Atlanta, Georgia 30303, (404) 221-4447.

Office of the Regional Solicitor, Department of the Interior, c/o U.S. Fish & Wildlife Service, Suite 308, 1 Gateway Center, Newton Corner, Massachusetts 02158, (617) 829-9258.

Office of the Field Solicitor, Department of the Interior, 688 Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, (612) 725-3540.

Office of the Regional Solicitor, Department of the Interior, P.O. Box 25007, Denver Federal Center, Denver, Colorado 80225, (303) 234-3173.

Office of the Field Solicitor, Department of the Interior, P.O. Box 549, Aberdeen, South Dakota 57401, (605) 225-7254.

Office of the Field Solicitor, Department of the Interior, P.O. Box 1538, Billings, Montana 59103, (406) 245-6711.

Office of the Regional Solicitor, Department of the Interior, Room E-2753, 2800 Cottage Way, Sacramento, California 95823, (916) 484-4331.

Office of the Field Solicitor, Department of the Interior, Valley Bank Center, Suite 280, 201 North Central Avenue, Phoenix, Arizona 85073, (602) 281-4758.

Office of the Field Solicitor, Department of the Interior, 3810 Central Avenue, Suite 104, Riverside, California 92508, (714) 787-1560.

Office of the Field Solicitor, Department of the Interior, Window Rock, Arizona 86515, (602) 871-8151.

Office of the Regional Solicitor, Department of the Interior, Room 3068, Page Belcher Federal Building, Tulsa, Oklahoma 74103, (918) 581-7501.

Office of the Field Solicitor, Department of the Interior, Room 7102, Federal Building & Courthouse, 500 Gold Avenue, S.W., Albuquerque, New Mexico 87101, (505) 766-2547.

Office of the Field Solicitor, Department of the Interior, P.O. Box 397, W.C.D. Office Building, Route 1, Anadarko, Oklahoma 73003, (405) 247-8673.

Office of the Field Solicitor, Department of the Interior, P.O. Box 1508, Room 319, Federal Building, 5th and Broadway, Muskogee, Oklahoma 74401, (918) 683-3111.

Office of the Field Solicitor, Department of the Interior, c/o Osage Agency, Grandview Avenue, Pawnee, Oklahoma 74058, (918) 287-2431.

Office of the Regional Solicitor, Department of the Interior, Suite 6201, Federal Building, 125 South State Street, Salt Lake City, Utah 84138, (801) 524-5877.

Office of the Regional Solicitor, Department of the Interior, Lloyd 500 Building, Suite 607, 500 N.E. Multnomah Street, Portland, Oregon 97232, (503) 231-2125.

## **Guidelines for State Courts**

### **A. Policy**

#### **B. Pre-trial requirements**

1. Determination that child is an Indian
2. Determination of Indian child's tribe
3. Determination that placement is covered by the Act
4. Determination of jurisdiction
5. Notice requirements
6. Time limits and extensions
7. Emergency removal of an Indian child
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#### **C. Requests for transfer to tribal court**

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2. Criteria and procedures for ruling on 25 U.S.C. § 1911(b) transfer petitions
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#### **D. Adjudication of involuntary placements, adoptions or terminations of parental rights**

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1. Execution of consent
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1. Petition to vacate adoption
2. Adult adoptee rights
3. Notice of change in child's status
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### **A. Policy**

(1) Congress through the Indian Child Welfare Act has expressed its clear preference for keeping Indian children with their families, deferring to tribal judgment on matters concerning the custody of tribal children, and placing Indian children who must be removed from their homes within their own families or Indian tribes. Proceedings in state courts involving the custody of Indian children shall follow strict procedures and meet stringent requirements to justify any result in an individual case contrary to these preferences. The Indian Child Welfare Act, the federal regulations implementing the Act, the recommended guidelines and any state statutes, regulations or rules promulgated to implement the Act shall be liberally construed in favor of a result that is consistent with these preferences. Any ambiguities in any of such statutes, regulations, rules or guidelines shall be resolved in favor of the result that is most consistent with these preferences.

(2) In any child custody proceeding where applicable state or other federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Indian Child Welfare Act, the state court shall apply the state or other federal law, provided that application of that law does not infringe any right accorded by the Indian Child Welfare Act to an Indian tribe or child.

### **B. Pretrial requirements**

#### **B.1. Determination That Child Is an Indian**

(a) When a state court has reason to believe a child involved in a child custody proceeding is an Indian, the court shall seek verification of the child's status from either the Bureau of Indian Affairs or the child's tribe. In a voluntary placement proceeding where a consenting parent evidences a desire for anonymity, the court shall make its inquiry in a manner that will not cause the parent's identity to become publicly known.

(b)(i) The determination by a tribe that a child is or is not a member of that tribe, is or is not eligible for membership in that tribe, or that the biological parent is or is not a member of that tribe is conclusive.

(ii) Absent a contrary determination by the tribe that is alleged to be the Indian child's tribe, a determination by the Bureau of Indian Affairs that a child is or is not an Indian child is conclusive.

(c) Circumstances under which a state court has reason to believe a child involved in a child custody proceeding is an Indian include but are not limited to the following:

(i) Any party to the case, Indian tribe, Indian organization or public or private agency informs the court that the child is an Indian child.

(ii) Any public or state-licensed agency involved in child protection services or family support has discovered information which suggests that the child is an Indian child.

(iii) The child who is the subject of the proceeding gives the court reason to believe he or she is an Indian child.

(iv) The residence or the domicile of the child, his or her biological parents, or the Indian custodian is known by the court to be or is shown to be a predominantly Indian community.

(v) An officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

## **B.2. Determination of Indian Child's Tribe**

(a) Where an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe but is not a member of any of them, the court is called upon to determine with which tribe the child has more significant contacts.

(b) The court shall send the notice specified in recommended guideline B.4. to each such tribe. The notice shall specify the other tribe or tribes that are being considered as the child's tribe and invite each tribe's views on which tribe shall be so designated.

(c) In determining which tribe shall be designated the Indian child's tribe, the court shall consider, among other things, the following factors:

(i) length of residence on or near the reservation of each tribe and frequency of contacts with each tribe;

(ii) child's participation in activities of each tribe;

(iii) child's fluency in the language of each tribe;

(iv) whether there has been a previous adjudication with respect to the child by a court of one of the tribes;

(v) residence on or near one of the tribes' reservation by the child's relatives;

(vi) tribal membership of custodial parent or Indian custodian;

(vii) interest asserted by each tribe in response to the notice specified in subsection B.2.(b) of these guidelines; and

(viii) the child's self identification.

(d) The court's determination together with the reasons for it shall be set out in a written document and made a part of the record of the proceeding. A copy of that document shall be sent to each party to the proceeding and to each person or governmental agency that received notice of the proceeding.

(e) If the child is a member of only one tribe, that tribe shall be designated the Indian child's tribe even though the child is eligible for membership in another tribe. If a child becomes a member of one tribe during or after the proceeding, that tribe shall be designated as the Indian child's tribe with respect to all subsequent actions related to the proceeding. If the child becomes a member of a tribe other than the one designated by the court as the Indian child's tribe, actions taken based on the court's determination prior to the child's becoming a tribal member continue to be valid.

## **B.3. Determination That Placement Is Covered by the Act**

(a) Although most juvenile delinquency proceedings are not covered by the Act, the Act does apply to status offenses, such as truancy and incorrigibility, which can only be committed by children, and to any juvenile delinquency proceeding that results in the termination of a parental relationship.

(b) Child custody disputes arising in the context of divorce or separation proceedings or similar domestic relations proceedings are not covered by the Act so long as custody is awarded to one of the parents.

(c) Voluntary placements which do not operate to prohibit the child's parent or Indian custodian from regaining custody of the child at any time are not covered by the Act. Where such placements are made pursuant to a written agreement, that agreement shall state explicitly the right of the parent or custodian to regain custody of the child upon demand.

## **B.4. Determination of Jurisdiction**

(a) In any Indian child custody proceeding in state court, the court shall determine the residence and domicile of the child. Except as provided in Section B.7. of these guidelines, if either the residence or domicile is on a reservation where the tribe exercises exclusive jurisdiction over child custody proceedings, the proceedings in state court shall be dismissed.

(b) If the Indian child has previously resided or been domiciled on the reservation, the state court shall contact the tribal court to determine whether the child is a ward of the tribal court. Except as provided in Section B.7. of these guidelines, if the child is a ward of a tribal court, the state court proceedings shall be dismissed.

## **B.5. Notice Requirements**

(a) In any involuntary child custody proceeding, the state court shall make inquiries to determine if the child involved is a member of an Indian tribe or if a parent of the child is a member of an Indian tribe and the child is eligible for membership in an Indian tribe.

(b) In any involuntary Indian child custody proceeding, notice of the proceeding shall be sent to the parents and Indian custodians, if any, and to any tribes that may be the Indian child's tribe by registered mail with return

receipt requested. The notice shall be written in clear and understandable language and include the following information:

- (i) The name of the Indian child.
  - (ii) His or her tribal affiliation.
  - (iii) A copy of the petition, complaint or other document by which the proceeding was initiated.
  - (iv) The name of the petitioner and the name and address of the petitioner's attorney.
  - (v) A statement of the right of the biological parents or Indian custodians and the Indian child's tribe to intervene in the proceeding.
  - (vi) A statement that if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent them.
  - (vii) A statement of the right of the natural parents or Indian custodians and the Indian child's tribe to have, on request, twenty days (or such additional time as may be permitted under state law) to prepare for the proceedings.
  - (viii) The location, mailing address and telephone number of the court.
  - (ix) A statement of the right of the parents or Indian custodians or the Indian child's tribe to petition the court to transfer the proceeding to the Indian child's tribal court.
  - (x) The potential legal consequences of an adjudication on future custodial rights of the parents or Indian custodians.
  - (xi) A statement in the notice to the tribe that since child custody proceedings are usually conducted on a confidential basis, tribal officials should keep confidential the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's right under the Act.
- (c) The tribe, parents or Indian custodians receiving notice from the petitioner of the pendency of a child custody proceeding has the right, upon request, to be granted twenty days (or such additional time as may be permitted under state law) from the date upon which the notice was received to prepare for the proceeding.
- (d) The original or a copy of each notice sent pursuant to this section shall be filed with the court together with any return receipts or other proof of service.
- (e) Notice may be personally served on any person entitled to receive notice in lieu of mail service.
- (f) If a parent or Indian custodian appears in court without an attorney,

the court shall inform him or her of the right to appointed counsel, the right to request that the proceeding be transferred to tribal court or to object to such transfer, the right to request additional time to prepare for the proceeding and the right (if the parent or Indian custodian is not already a party) to intervene in the proceedings.

(g) If the court or a petitioning party has reason to believe that a parent or Indian custodian is not likely to understand the contents of the notice because of lack of adequate comprehension of written English, a copy of the notice shall be sent to the Bureau of Indian Affairs agency nearest to the residence of that person requesting that Bureau of Indian Affairs personnel arrange to have the notice explained to that person in the language that he or she best understands.

#### B.6. Time Limits and Extensions

(a) A tribe, parent or Indian custodian entitled to notice of the pendency of a child custody proceeding has a right, upon request, to be granted an additional twenty days from the date upon which notice was received to prepare for participation in the proceeding.

(b) The proceeding may not begin until all of the following dates have passed:

(i) ten days after the parent or Indian custodian (or Secretary where the parent or Indian custodian is unknown to the petitioner) has received notice;

(ii) ten days after the Indian child's tribe (or the Secretary if the Indian child's tribe is unknown to the petitioner) has received notice;

(iii) thirty days after the parent or Indian custodian has received notice if the parent or Indian custodian has requested an additional twenty days to prepare for the proceeding; and

(iv) Thirty days after the Indian child's tribe has received notice if the Indian child's tribe has requested an additional twenty days to prepare for the proceeding.

(c) The time limits listed in this section are the minimum time periods required by the Act. The court may grant more more time to prepare where state law permits.

#### B.7. Emergency Removal of an Indian Child

(a) Whenever an Indian child is removed from the physical custody of the child's parents or Indian custodians pursuant to the emergency removal or

custody provisions of state law, the agency responsible for the removal action shall immediately cause an inquiry to be made as to the residence and domicile of the child.

(b) When a court order authorizing continued emergency physical custody is sought, the petition for that order shall be accompanied by an affidavit containing the following information:

(i) The name, age and last known address of the Indian child.

(ii) The name and address of the child's parents and Indian custodians, if any. If such persons are unknown, a detailed explanation of what efforts have been made to locate them shall be included.

(iii) Facts necessary to determine the residence and the domicile of the Indian child and whether either the residence or domicile is on an Indian reservation. If either the residence or domicile is believed to be on an Indian reservation, the name of the reservation shall be stated.

(iv) The tribal affiliation of the child and of the parents and/or Indian custodians.

(v) A specific and detailed account of the circumstances that lead the agency responsible for the emergency removal of the child to take that action.

(vi) If the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to transfer the child to the tribe's jurisdiction.

(vii) A statement of the specific actions that have been taken to assist the parents or Indian custodians so the child may safely be returned to their custody.

(c) If the Indian child is not restored to the parents or Indian custodians or jurisdiction is not transferred to the tribe, the agency responsible for the child's removal must promptly commence a state court proceeding for foster care placement. If the child resides or is domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, such placement must terminate as soon as the imminent physical damage or harm to the child which resulted in the emergency removal no longer exists or as soon as the tribe exercises jurisdiction over the case—whichever is earlier.

(d) Absent extraordinary circumstances, temporary emergency custody shall not be continued for more than 90 days without a determination by

the court, supported by clear and convincing evidence and the testimony of at least one qualified expert witness, that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

#### B.8. Improper Removal From Custody

(a) If, in the course of any Indian child custody proceeding, the court has reason to believe that the child who is the subject of the proceeding may have been improperly removed from the custody of his or her parent or Indian custodian or that the child has been improperly retained after a visit or other temporary relinquishment of custody, and that the petitioner is responsible for such removal or retention, the court shall immediately stay the proceedings until a determination can be made on the question of improper removal or retention.

(b) If the court finds that the petitioner is responsible for an improper removal or retention, the child shall be immediately returned to his or her parents or Indian custodian.

#### C. Requests for Transfer to Tribal Court

##### C.1. Petitions under 25 U.S.C. § 1911(b) for transfer of proceeding

Either parent, the Indian custodian or the Indian child's tribe may, orally or in writing, request the court to transfer the Indian child custody proceeding to the tribal court of the child's tribe. The request shall be made promptly after receiving notice of the proceeding. If the request is made orally it shall be reduced to writing by the court and made a part of the record.

##### C.2. Criteria and Procedures for Ruling on 25 U.S.C. § 1911(b) Transfer Petitions

(a) Upon receipt of a petition to transfer by a parent, Indian custodian or the Indian child's tribe, the court must transfer unless either parent objects to such transfer, the tribal court declines jurisdiction, or the court determines that good cause to the contrary exists for denying the transfer.

(b) If the court believes or any party asserts that good cause to the contrary exists, the reasons for such belief or assertion shall be stated in writing and made available to the parties who are petitioning for transfer. The petitioners shall have the opportunity to provide the

### C.3. Determination of Good Cause to the Contrary

(a) Good cause not to transfer the proceeding exists if the Indian child's tribe does not have a tribal court as defined by the Act to which the case can be transferred.

(b) Good cause not to transfer the proceeding may exist if any of the following circumstances exists:

(i) The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition promptly after receiving notice of the hearing.

(ii) The Indian child is over twelve years of age and objects to the transfer.

(iii) The evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses.

(iv) The parents of a child over five years of age are not available and the child has had little or no contact with the child's tribe or members of the child's tribe.

(c) Socio-economic conditions and the perceived adequacy of tribal or Bureau of Indian Affairs social services or judicial systems may not be considered in a determination that good cause exists.

(d) The burden of establishing good cause to the contrary shall be on the party opposing the transfer.

### C.4. Tribal Court Declination of Transfer

(a) A tribal court to which transfer is requested may decline to accept such transfer.

(b) Upon receipt of a transfer petition the state court shall notify the tribal court in writing of the proposed transfer. The notice shall state how long the tribal court has to make its decision. The tribal court shall have at least twenty days from the receipt of notice of a proposed transfer to decide whether to decline the transfer. The tribal court may inform the state court of its decision to decline either orally or in writing.

(c) Parties shall file with the tribal court any arguments they wish to make either for or against tribal declination of transfer. Such arguments shall be made orally in open court or in written pleadings that are served on all other parties.

(d) If the case is transferred the state court shall provide the tribal court with all available information on the case.

### D. Adjudication of Involuntary Placements, Adoptions, or Terminations or Terminations of Parental Rights

#### D.1. Access to Reports

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child has the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based. No decision of the court shall be based on any report or other document not filed with the court.

#### D.2. Efforts To Alleviate Need To Remove Child From Parents or Indian Custodians

Any party petitioning a state court for foster care placement or termination of parental rights to an Indian child must demonstrate to the court that prior to the commencement of the proceeding active efforts have been made to alleviate the need to remove the Indian child from his or her parents or Indian custodians. These efforts shall take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe. They shall also involve and use the available resources of the extended family, the tribe, Indian social service agencies and individual Indian care givers.

#### D.3. Standards of Evidence

(a) The court may not issue an order effecting a foster care placement of an Indian child unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody with the child's parents or Indian custodian is likely to result in serious emotional or physical damage to the child.

(b) The court may not order a termination of parental rights unless the court's order is supported by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(c) Evidence that only shows the existence of community or family poverty, crowded or inadequate housing, alcohol abuse, or non-conforming social behavior does not constitute clear and convincing evidence that continued custody is likely to result



in serious emotional or physical damage to the child. To be clear and convincing, the evidence must show the existence of particular conditions in the home that are likely to result in serious emotional or physical damage to the particular child who is the subject of the proceeding. The evidence must show the causal relationship between the conditions that exist and the damage that is likely to result.

#### D.4. Qualified Expert Witnesses

(a) Removal of an Indian child from his or her family must be based on competent testimony from one or more experts qualified to speak specifically to the issue of whether continued custody by the parents or Indian custodians is likely to result in serious physical or emotional damage to the child.

(b) Persons with the following characteristics are most likely to meet the requirements for a qualified expert witness for purposes of Indian child custody proceedings:

(i) A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices.

(ii) A lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe.

(iii) A professional person having substantial education and experience in the area of his or her specialty.

(c) The court or any party may request the assistance of the Indian child's tribe or the Bureau of Indian Affairs agency serving the Indian child's tribe in locating persons qualified to serve as expert witnesses.

### E. Voluntary Proceedings

#### E.1. Execution of Consent

To be valid, consent to a voluntary termination of parental rights or adoption must be executed in writing and recorded before a judge or magistrate of a court of competent jurisdiction. A certificate of the court must accompany any consent and must certify that the terms and consequences of the consent were explained in detail and in the language of the parent or Indian custodian, if English is not the primary language, and were fully understood by the parent or Indian custodian. Execution of consent need not be in open court where confidentiality is requested or indicated.

#### E.2. Content of Consent Document

(a) The consent document shall contain the name and birthdate of the Indian child, the name of the Indian child's tribe, any identifying number or other indication of the child's membership in the tribe, if any, and the name and address of the consenting parent or Indian custodian.

(b) A consent to foster care placement shall contain, in addition to the information specified in (a), the name and address of the person or entity by or through whom the placement was arranged, if any, or the name and address of the prospective foster parents, if known at the time.

(c) A consent to termination of parental rights or adoption shall contain, in addition to the information specified in (a), the name and address of the person or entity by or through whom any preadoptive or adoptive placement has been or is to be arranged.

#### E.3. Withdrawal of Consent to Placement

Where a parent or Indian custodian has consented to a foster care placement under state law, such consent may be withdrawn at any time by filing, in the court where consent was executed and filed, an instrument executed by the parent or Indian custodian. When a parent or Indian custodian withdraws consent to foster care placement, the child shall as soon as is practicable be returned to that parent or Indian custodian.

#### E.4. Withdrawal of Consent to Adoption

A consent to termination of parental rights or adoption may be withdrawn by the parent at any time prior to entry of a final decree of voluntary termination or adoption by filing in the court where the consent is filed an instrument executed under oath by the parent stipulating his or her intention to withdraw such consent. The clerk of the court where the withdrawal of consent is filed shall promptly notify the party by or through whom any preadoptive or adoptive placement has been arranged of such filing and that party shall insure the return of the child to the parent as soon as practicable.

## *F. Dispositions*

### **F.1. Adoptive Placements**

(a) In any adoptive placement of an Indian child under state law preference must be given (in the order listed below) absent good cause to the contrary, to placement of the child with:

(i) A member of the child's extended family;

(ii) Other members of the Indian child's tribe; or

(iii) Other Indian families, including families of single parents.

(b) The Indian child's tribe may establish a different order of preference by resolution. That order of preference must be followed so long as placement is the least restrictive setting appropriate to the child's needs.

(c) Unless a consenting parent evidences a desire for anonymity, the court or agency shall notify the child's extended family and the Indian child's tribe that their members will be given preference in the adoption decision.

### **F.2. Foster Care or Preadoptive Placements**

In any foster care or preadoptive placement of an Indian child:

(a) The child must be placed in the least restrictive setting which

(i) most approximates a family;

(ii) in which his or her special needs may be met; and

(iii) which is in reasonable proximity to his or her home.

(b) Preference must be given in the following order, absent good cause to the contrary, to placement with:

(i) A member of the Indian child's extended family;

(ii) A foster home, licensed, approved or specified by the Indian child's tribe, whether on or off the reservation;

(iii) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

(c) The Indian child's tribe may establish a different order of preference by resolution, and that order of preference shall be followed so long as the criteria enumerated in subsection (a) are met.

### **F.3. Good Cause To Modify Preferences**

(a) For purposes of foster care, preadoptive or adoptive placement, a determination of good cause not to follow the order of preference set out above shall be based on one or more of the following considerations:

(i) The request of the biological parents or the child when the child is of sufficient age.

(ii) The extraordinary physical or emotional needs of the child as established by testimony of a qualified expert witness.

(iii) The unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria.

(b) The burden of establishing the existence of good cause not to follow the order of preferences established in subsection (b) shall be on the party urging that the preferences not be followed.

## *G. Post-Trial Rights*

### **G.1. Petition To Vacate Adoption**

(a) Within two years after a final decree of adoption of any Indian child by a state court, or within any longer period of time permitted by the law of the state, a parent who executed a consent to termination of paternal rights or adoption of that child may petition the court in which the final adoption decree was entered to vacate the decree and revoke the consent on the grounds that such consent was obtained by fraud or duress.

(b) Upon the filing of such petition, the court shall give notice to all parties to the adoption proceedings and shall proceed to hold a hearing on the petition. Where the court finds that the parent's consent was obtained through fraud or duress, it must vacate the decree of adoption and order the consent revoked and order the child returned to the parent.

### **G.2. Adult Adoptee Rights**

(a) Upon application by an Indian individual who has reached age 18 who was the subject of an adoptive placement, the court which entered the final decree must inform such individual of the tribal affiliations, if any of the individual's biological parents and provide such other information necessary to protect any rights flowing from the individual's tribal relationship.

(b) The section applies regardless of whether or not the original adoption was subject to the provisions of the Act.

(c) Where state law prohibits revelation of the identity of the biological parent, assistance of the Bureau of Indian Affairs shall be sought where necessary to help an adoptee who is eligible for membership in a tribe establish that right without breaching the confidentiality of the record.

#### **G.3. Notice of Change in Child's Status**

(a) Whenever a final decree of adoption of an Indian child has been vacated or set aside, or the adoptive parent has voluntarily consented to the termination of his or her parental rights to the child, or whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive placement, or adoptive placement, notice by the court or an agency authorized by the court shall be given to the child's biological parents or prior Indian custodians. Such notice shall inform the recipient of his or her right to petition for return of custody of the child.

(b) A parent or Indian custodian may waive his or her right to such notice by executing a written waiver of notice filed with the court. Such waiver may be revoked at any time by filing with the court a written notice of revocation, but such revocation would not affect any proceeding which occurred before the filing of the notice of revocation.

#### **G.4. Maintenance of Records**

The state shall establish a single location where all records of every foster care, preadoptive placement and adoptive placement of Indian children by courts of that state will be available within seven days of a request by an Indian child's tribe or the Secretary. The records shall contain, at a minimum, the petition or complaint, all substantive orders entered in the proceeding, and the complete record of the placement determination.

# Appendix B: ICWA Checklist and Forms

- ICWA Checklist (sample)
- ICWA Court Notice
- ICWA Jurisdictional Grid (draft)

## NEVADA ICWA CHECKLIST

### **Removing an Indian child in protective custody proceedings:**

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- Tribe is notified of the right to intervene.
- Proof by clear and convincing evidence by a qualified expert that the child will suffer emotional or physical harm if returned home.
- Proof DSS made active efforts to prevent the placement.
- Preference to placement with extended family members, approved tribal home, Indian foster home or Indian-approved institution.

### **Approving the voluntary placement of an Indian child:**

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- Parent signs written consent before judge.
- Consent is signed more than 10 days after child's birth.
- Certify you explained terms and consequences and the parent understood.
- Certify if the explanation was in English or translated into another language the parent understood.
- Preference to placement with extended family members, approved tribal home, Indian foster home or Indian approved institution.

### **Terminating parental rights to an Indian child:**

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- Tribe notified of right to intervene.
- Proof beyond a reasonable doubt by a qualified expert that the child will suffer emotional or physical harm if returned home.
- Proof DSS made active efforts to reunify the family.
- Preference to placement with extended family members, tribal members or other Indian families.

### **Accepting relinquishment of an Indian child:**

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- Parent signs the written consent before a judge.
- Consent is signed more than 10 days after child's birth.
- Certify you explained terms and consequences and the parent understood.
- Certify if explanation was in English or translated into another language the parent understood.
- Preference to placement with extended family members, tribal members or other Indian families.

For more information on ICWA, refer to B.J. Jones, *The Indian Child Welfare Act Handbook* (American Bar Association 1995). This book summarizes case law nationally, includes the BIA guidelines, and lists the addresses of all federally recognized tribes. To order, call 1-800-285-2221.

**Letterhead (Each Agency)**

**State of Nevada, Department  
of Child & Family Services**

**Clark County, Nevada  
Family & Youth Services**

**Washoe County  
Department of Social Services**

**INDIAN CHILD WELFARE ACT - DETERMINING TRIBAL ELIGIBILITY  
AND NOTICE OF COURT PROCEEDINGS**

**TO:** \_\_\_\_\_

\_\_\_\_\_  
**Indian Tribe**

**Name of Child:** \_\_\_\_\_

**Date of Birth:** \_\_\_\_\_ **Case #** \_\_\_\_\_

**Your response is needed within 10 days of receipt of this letter.**

**NOTICE: Child custody proceedings are conducted on a confidential basis. Tribal officials should keep confidential all information concerning this matter. This information should not be revealed to anyone who does not have authority to access the information in order to exercise the Tribe's rights under the Indian Child Welfare Act.**

Pursuant to the Indian Child Welfare Act you are hereby notified that a hearing has been scheduled concerning the care, custody and control of the minor child(ren) listed above (petition/ complaint attached). There may be potential legal consequences of adjudication on future custodial rights of the parents or Indian custodians. This agency is in need of your assistance to determine whether this child(ren) are subject to the provisions of the Indian Child Welfare Act, 25 U.S.C. 1901, et.seq., and/or the Indian provisions of Nevada Revised Statutes. Please verify if the parent(s) and child(ren) are enrolled or eligible for enrollment.

The Indian Child Welfare Act, 43 USC 1606 defines an "Indian child" as an unmarried person under the age of 18 years who either: (a) is a member of a federally recognized tribe, or (b) eligible for membership in a federally recognized tribe and is the biological child of a member of a federally recognized tribe.

If the child is eligible for rights provided under the Indian Child Welfare Act, the Tribe has a right to information for pending proceedings and has a right to intervene. The Tribe, Indian custodian or parents may petition the Court to transfer the proceedings to the child's Tribe (Tribal Court), absent objection by either parent. The parents or Indian custodians have the right to an attorney to represent them at this proceeding and if they are unable to afford an attorney one may be appointed by the (State or County) Court to represent them. No foster care placement or termination of parental rights proceeding shall be held until at least (10) days after receipt of this notice. The parent, Indian custodian or Tribe, upon request, shall be granted an additional (20) twenty days to prepare for hearings. Per U.S.C.S. 25, I.C.W.A., 1912 (a), regardless if the child's determined tribe responds, elects to intervene transfer or intervene and not transfer, the tribe(s) have a right to be advised of the child's progress and to on-going court proceeding notices, registered mail with return receipt.

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court. If the child(ren) are eligible for tribal membership with your Tribe you can request documents to assist with determination for court intervention.

To assist with a determination if the child's eligible tribe has exclusive jurisdiction please inform me if the child(ren) are eligible under the Indian Child Welfare Act, has been a ward of tribal court, or if the present or past residence has been on reservation. Please respond in writing or if you have questions please contact our office phone number referenced above. Your earliest response is very appreciated. If you need additional time or information in order to determine the child's Indian status please immediately contact me.

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**Judicial Court/Address**

**Please return Indian Child Welfare Act response to:**

Assigned Social Worker \_\_\_\_\_ Date \_\_\_\_\_

Phone # \_\_\_\_\_

cc: Tribal Social Services

Mailing Instruction: Send by Registered Mail, Return Receipt: all notices of court proceedings to parents or Indian custodian and child's eligible Tribe(s).

Form #

**INDIAN CHILD WELFARE ACT - DETERMINING TRIBAL ELIGIBILITY**

Use one page for each child. If information unknown, specify UNK. File copy in each child’s case. Once tribe(s) respond report determination to the Court.

These proceedings are a result of alleged abuse or neglect and may result in Court Wardship that may eventually lead to the parents losing care, custody and control of their child(ren). The following names and related information is to assist with determination.

	Child(ren),	D.O.B.	Father	Mother (include maiden)
Name				
Address				
Reported Tribal Affiliation, Location If Alaskan Native specify child’s Village or Regional Corporation.				
Enrollment # (if known)				
If residence on Reservation, Domiciled or Ward of Tribal Court (specify)				
Grand-Parents, Specify Maternal or Paternal				
Additional explanation as needed.				



## STATE OF NEVADA OVERVIEW OF JURISDICTIONAL TABLES INDIAN CHILD WELFARE ACT

The jurisdictional tables are aimed at providing guidance for determining which agency has the responsibility to respond to child abuse and neglect when it involves Native American Indian children. The tables do not cover every possible circumstance, but are an attempt to organize information to assist with understanding the complexity of jurisdictional issues involving State/Tribal relations and the Indian Child Welfare Act (I.C.W.A.), (U.S.C. Title 25, Chapter 21). Workers should contact the tribe or the Bureau of Indian Affairs for assistance with making jurisdictional decisions. The safety of the child should always be the foremost consideration regardless of jurisdiction.

Jurisdictional issues stem from tribal sovereignty and the right of self-governance and the tribe's interactions with state and local county government entities. It is important to understand tribal sovereignty and its impact on jurisdictional boundaries. The following excerpt provides a brief description of "tribal sovereignty" taken from the National Council of State Legislators, *Environmental Management Series* that was prepared for the "State and Tribal Government Working Group" by Jeanette Wolfley and Susan Johnson: "As sovereign governments, Indian nations generally have the power to maintain law and order by (1) enacting laws governing the conduct of people, both Indian and non-Indians within reservation boundaries; (2) establishing enforcement bodies such as tribal police forces and courts to administer justice; (3) excluding non-tribal members from the reservation; and (4) regulating activities on the reservation such as hunting, fishing and gathering, as well as domestic relations of its members, property use, environmental affairs, and commerce and trade within the reservation. Tribes also may have the power to tax activities and commerce on the reservation."

The most important jurisdictional determination for a child welfare agency to make is where the alleged child abuse occurred. Each tribe may have a variation on the application of the law and it is very important to contact the tribe when a report is received that may involve a jurisdictional issue.

A key element of the jurisdictional application of the I.C.W.A. is the establishment of tribal enrollment for the child. Caseworkers must ask if the child is a Native American Indian child and carefully document all efforts made to verify the enrollment status of the child.

The attached tables depict possible scenarios of child abuse and neglect under civil law and do not apply to criminal law. Each scenario is dependent upon who reports the abuse first and to which agency. The tables reflect the application of the I.C.W.A. from the perspective of the State/County child welfare agency. The definitions used in the tables are taken from the Indian Child Welfare Act.

The grid is organized to provide the "who or what" components across the top of the table: Indian child, Non-Indian child; Indian perpetrator, Non-Indian perpetrator; On tribal land/reservation, Off tribal land/reservation; Meets ICWA requirements; Tribal police, State/County law enforcement, Tribal and State/County law enforcement; Tribal court, State/County court; State/County child welfare agency, Tribal social services agency – child welfare agency.

The side grid sets the scenario by identifying the victim, perpetrator and location of the alleged incident. The second section contains the questions with the response(s) checked under the appropriate column. Questions for each scenario are:

- 1) Does the child meet ICWA requirements?
- 2) Who initiates the investigation?
- 3) Who decides to remove the child?
- 4) Who takes the case to court?
- 5) Which court?
- 6) Who promotes and upholds reunification?
- 7) Who performs in-home services?
- 8) Who locates foster home placement?

**JURISDICTIONAL SCENARIOS BASED ON FEDERAL & STATE DEFINITIONS**  
**Indian Child Welfare Act (U.S.C. Code Title 25, Chapter 21, Subchapter 1)**

**§ 1903. Definitions**

For the purposes of this chapter, except as may be specifically provided otherwise, the term -

- (1) "child custody proceeding" shall mean and include –
  - (i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
  - (ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;
  - (iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and
  - (iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.
- (2) **"extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;**
- (3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;
- (4) **"Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;**
- (5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;
- (6) **"Indian custodian" means 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;**
- (7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;
- (8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43;
- (9) **"parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;**
- (10) **"reservation" means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;**
- (11) "Secretary" means the Secretary of the Interior; and
- (12) **"tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.**

**STATE OF NEVADA DEFINITIONS – Nevada Revised Statutes, Chapter 432B: Protection of Children From Abuse and Neglect**

**NRS 432B.080 "Parent"** defined "means a natural or adoptive parent whose parental rights have not been terminated."

**NRS 432B.130 Persons responsible for child's welfare** - "A person is responsible for a child's welfare under the provisions of this chapter if he is the child's parent, guardian, a stepparent with whom the child lives, an adult person continually or regularly found in the same household as the child, or a person directly responsible or serving as a volunteer for or employed in a public or private home, institution or facility where the child actually resides or is receiving child care outside of his home for a portion of the day."

## JURISDICTIONAL TABLE 1

**Scenario 1: An Indian child (enrolled member of a tribe) is violated by a non-Indian adult perpetrator on the reservation. The child then leaves the reservation after the incident is reported and investigated.**

<i>Scenario 1: An <u>Indian child</u> (enrolled member of a tribe) is violated by a <u>non-Indian adult perpetrator</u> on the <u>reservation</u>. The child then leaves the reservation after the incident is reported and investigated.</i>	Indian Child	Non-Indian Child	Indian Perpetrator	Non-Indian Perpetrator	On Indian Tribal Land (reservation)	Off Indian Tribal Land	Meets ICWA requirements	Tribal Police	State/County Law enforcement	Tribal Police and State or County law enforcement	Tribal Court	State or County Court	State or County Child Welfare Agency	Tribal Social Services Child Welfare Agency
Victim is:	X													
Perpetrator is the child's parent per the ICWA definition of parent:				X										
Perpetrator is not related to the family or child:														
Location of alleged abuse incident:					X*1									
1) Does the child meet ICWA requirements?							N/A							
2) Who initiates investigation?								X*2						
3) Who decides to remove the child?								X						X
4) Who takes the case to court?														X
5) Which court?											X			
6) Who promotes and upholds reunification?														X
7) Who performs In-Home Services?														X
8) Who locates foster home placement?														X
Scenario based on accepted ICWA definitions of child, parent (U.S.C. Code Title 25, Chapter 21, Subchapter 1)														
X*1 If the child moves from the reservation after the incident is reported and before services are provided, the tribe would maintain jurisdiction and the tribe would continue to provide services or make arrangements for services to be provided off the reservation. If the child moved to another state, the tribe may provide courtesy information to the Interstate Compact of the Placement of Children (ICPC) although the tribe is not part of the Interstate Compact. The tribe may even request courtesy supervision of the case from a nearby tribe or the other state/county.														
X*2 Tribal police will initiate the investigation and if they determine that the matter is a felony offense, they may refer the case to the FBI or the Bureau of Indian Affairs.														
Each tribe has different laws. Each tribe has different resources available to them. It is important to contact the tribe if there are any questions regarding the report.														

## JURISDICTIONAL TABLE 2

**Scenario 2: An Indian child (enrolled member of a tribe) is violated by an Indian perpetrator and the incident occurs off tribal land and the child does not live on the tribal/reservation land.**

<i>Scenario 2: An <u>Indian child</u> (enrolled member of a tribe) is violated by an <u>Indian perpetrator</u> and the <u>incident occurs off tribal land</u> and the <u>child does not live on the tribal/reservation land</u>.</i>	Indian Child	Non-Indian Child	Indian Perpetrator	Non-Indian Perpetrator	On Indian Tribal Land (reservation)	Off Indian Tribal Land	Meets ICWA requirements	Tribal Police	State/County Law enforcement	Tribal Police and State or County law enforcement together	Tribal Court	State or County Court	State or County Child Welfare Agency	Tribal Social Services Child Welfare Agency
Victim is:	X													
Perpetrator is the child's parent per the ICWA definition of parent:			X											
Perpetrator is not related to the family or child:														
Location of alleged abuse incident:						X								
1) Does the child meet ICWA requirements?							X*1							
2) Who initiates investigation?									X					
3) Who decides to remove the child?									X				X*2	
4) Who takes the case to court?													X*2	
5) Which court?												X*2		
6) Who promotes and upholds reunification?													X*2	X*2
7) Who performs In-Home Services?													X*2	X*2
8) Who locates foster home placement?													X*2	X*2
Scenario based on accepted ICWA definitions of child, parent (U.S.C. Code Title 25, Chapter 21, Subchapter 1) & NRS 432B, 432B.080, .130														
X*1 The State or county child welfare agency must inquire about whether the child is an Indian child. If the child appears to be an Indian child and meets the ICWA definition of an "Indian child," the child welfare agency will contact the tribe pursuant to law.														
X*2 If the child is identified as an Indian child and meets the enrollment requirements of their tribe, the tribe may intervene. If the tribe intervenes, the case may be transferred to the tribal court. If the case is transferred to the tribal court, it is no longer an ICWA case. Social services and placement may be provided by the tribal social services agency. However, there may be instances when the tribal court may work together with the State or County child welfare agency. There is no set formula for each and every ICWA case because it depends upon the tribe, circumstances and resources.														

### JURISDICTIONAL TABLE 3

**Scenario 3: An Indian child (enrolled member of a tribe) is violated by an unrelated non-Indian perpetrator, such as a significant other, and the incident occurs on the tribal reservation. The child also lives on the reservation.**

<i>Scenario 3: An <u>Indian child</u> (enrolled member of a tribe) is violated by an <u>unrelated non-Indian perpetrator</u>, such as a <u>significant other</u>, and the incident occurs on the tribal reservation. The child also lives on the reservation.</i>	Indian Child	Non-Indian Child	Indian Perpetrator	Non-Indian Perpetrator	On Indian Tribal Land (reservation)	Off Indian Tribal Land	Meets ICWA requirements	Tribal Police	State/County Law enforcement	Tribal Police and State or county law enforcement together	Tribal Court	State or County Court	State or County Child Welfare Agency	Tribal Social Services - Child Welfare Agency
Victim is:	X													
Perpetrator is the child's parent per the ICWA definition of parent:														
Perpetrator is not related to the family or child:				X										
Location of alleged abuse incident:					X									
1) Does the child meet ICWA requirements?							N/A							
2) Who initiates investigation?								X*1						
3) Who decides to remove the child?														X
4) Who takes the case to court?														X
5) Which court?											X			
6) Who promotes and upholds reunification?														X
7) Who performs In-Home Services?														X
8) Who locates foster home placement?														x
Scenario based on accepted ICWA definitions of child, parent (U.S.C. Code Title 25, Chapter 21, Subchapter 1)														
X*1 Tribal police will initiate the investigation, but if the crime appears to be a federal offense, the matter may be referred for investigation to the FBI or Bureau of Indian Affairs.														

## JURISDICTIONAL TABLE 4

**Scenario 4: An Indian child (enrolled member of a tribe) is violated by a non-Indian perpetrator and the incident occurred on the reservation. The Indian child lives on the reservation and the perpetrator lives off the reservation.**

<i>Scenario 4: An <u>Indian child</u>(enrolled member of a tribe) is violated by a <u>non-Indian perpetrator</u> and the incident occurred <u>on the reservation</u>. The Indian child lives on the reservation and the perpetrator lives off the reservation.</i>	Indian Child	Non-Indian Child	Indian Perpetrator	Non-Indian Perpetrator	On Indian Tribal Land (reservation)	Off Indian Tribal Land	Meets ICWA requirements	Tribal Police	State/County Law enforcement	Tribal Police and State or County law enforcement together	Tribal Court	Federal Court	State or County Child Welfare Agency	Tribal Social Services - Child Welfare Agency
Victim is:	X													
Perpetrator is the child's parent per the ICWA definition of parent:														
Perpetrator is not related to the family or child:				X										
Location of alleged abuse incident:					X									
1) Does the child meet ICWA requirements?							N/A							
2) Who initiates investigation?								X*1		X*1				
3) Who decides to take custody?														X
4) Who takes the case to court?								X*1		X*1				
5) Which court?												X		
6) Who promotes and upholds reunification?														X
7) Who performs In-Home Services?														X
8) Who locates foster home placement?														X
Scenario based on accepted ICWA definitions of child, parent (U.S.C. Code Title 25, Chapter 21, Subchapter 1)														
X*1 Response is variable by offense and location. Tribal police may initiate the investigation, but request that the local FBI or Bureau of Indian Affairs conduct the investigation. In this scenario, custody may not be an issue since the perpetrator is not related to the child, however, if the incident is a result of neglect or lack of supervision of the child by the parent, the custody decision may be made by tribal social services.														
"Generally, tribes have the inherent right to exercise civil jurisdiction within the geographical area they control. This civil jurisdiction includes the right to govern non-Indians within the bounds of the reservation, although states also have limited civil jurisdiction within Indian country. Criminal jurisdiction on a reservation, however, is a complex issue. Indian law scholar Stephen Pevar has identified four principles governing criminal jurisdiction in Indian country: 1) Tribes have the inherent right to exercise criminal jurisdiction over tribal members; 2) Congress may limit or abolish tribal criminal jurisdiction; 3) Tribes lack criminal jurisdiction over non-Indians unless Congress has expressly "given" tribes that power; 4) A state does not have jurisdiction over crimes committed by tribal members on the reservation unless Congress has expressly granted states that power." Excerpt from NCSL, <u>Environmental Management Series</u> that was prepared for the "State and Tribal Government Working Group" by Jeanette Wolfley and Susan Johnson.														

### Jurisdictional Table 5

**Scenario 5: An Indian child (enrolled member of a tribe) is violated by a non-Indian perpetrator and the incident occurred off the reservation. The Indian child lives on the reservation and the perpetrator lives off the reservation.**

<i>Scenario 5: An <u>Indian child</u> (enrolled member of a tribe) is violated by a <u>non-Indian perpetrator</u> and the incident occurred <u>off the reservation</u>.</i>	Indian Child	Non-Indian Child	Indian Perpetrator	Non-Indian Perpetrator	On Indian Tribal Land (reservation)	Off Indian Tribal Land	Meets ICWA requirements	Tribal Police	State/County Law enforcement	Tribal Police and State together	Tribal Court	State or County Court	State or County Child Welfare Agency	Tribal Child Welfare Agency
Victim is:	X													
Perpetrator is the child's parent per the ICWA definition:				X										
Perpetrator is not related to the family or child:														
Location of alleged abuse incident:						X								
1) Does the child meet ICWA requirements?							X*1							
2) Who initiates investigation?									X					
3) Who decides to remove the child?									X				X*2	
4) Who takes the case to court?									X		X*3		X*2	
5) Which court?												X*2		
6) Who promotes and upholds reunification?													X*2	
7) Who performs In-Home Services?													X*2	
8) Who locates foster home placement?													X*2	
Scenario based on accepted ICWA definitions of child, parent (U.S.C. Code Title 25, Chapter 21, Subchapter 1); NRS 432B														
X*1 The child welfare agency must inquire about whether the child is an Indian child. If the child appears to be an Indian child and meets the ICWA definition of an "Indian child," the child welfare agency will contact the tribe pursuant to law.														
X*2 If the child is identified as an Indian child and meets the enrollment requirements of their tribe, the tribe may intervene. If the tribe intervenes, the case may be transferred to the tribal court. If the case is transferred to the tribal court, it is no longer an ICWA case. Social services and placement may be provided by the tribal social services agency. However, there may be instances when the tribal court may work together with the State or County child welfare agency. There is no set formula for each and every ICWA case because it depends upon the tribe, circumstances and resources.														
X*3 The matter may be referred to a tribal court – depends upon the circumstances of the case.														

### Jurisdictional Table 6

**Scenario 6: A non-Indian child is violated by an Indian perpetrator and the incident occurred on the reservation. The child lives on the reservation.**

<i>Scenario 6: A <u>non-Indian child</u> is violated by a <u>Indian perpetrator</u> and the incident occurred <u>on the reservation</u>.</i>	Indian Child	Non-Indian Child	Indian Perpetrator	Non-Indian Perpetrator	On Indian Tribal Land (reservation)	Off Indian Tribal Land	Meets ICWA requirements	Tribal Police	State/County Law enforcement	Tribal Police and State together	Tribal Court	State or County Court	State or County Child Welfare Agency	Tribal Child Welfare Agency
Victim is:		X												
Perpetrator is the child's parent per the ICWA definition/NRS 432B:														
Perpetrator is not related to the family or child:			X											
Location of alleged abuse incident:					X									
1) Does the child meet ICWA requirements?							N/A							
2) Who initiates investigation?								X*1	X*1					
3) Who decides to remove the child?										X*1				
4) Who takes the case to court?														X
5) Which court?											X*1	X*1		
6) Who promotes and upholds reunification?													X	
7) Who performs In-Home Services?													X	
8) Who locates foster home placement?													X	
<p>X*1 Tribal police would initiate the investigation and should refer the case to the local county or State agency. If the child is placed in custody, this may be a joint decision between law enforcement agencies and the State or local child welfare agency. The tribal court may handle the case, but could refer the case to the State or local court. Each situation is different and depends upon the circumstances surrounding the case.</p> <p>It is extremely important to coordinate services between agencies.</p>														



### Jurisdictional Table 7

**Scenario 7: A non-Indian child is violated by an Indian perpetrator and the incident occurred off of the reservation.**

<i>Scenario 7: A <u>non-Indian child</u> is violated by an <u>Indian perpetrator</u> and the incident occurred <u>off of the reservation</u>.</i>	Indian Child	Non-Indian Child	Indian Perpetrator	Non-Indian Perpetrator	On Indian Tribal Land (reservation)	Off Indian Tribal Land	Meets ICWA requirements	Tribal Police	State/County Law enforcement	Tribal Police and State together	Tribal Court	State or County Court	State or County Child Welfare Agency	Tribal Child Welfare Agency
Victim is:		X												
Perpetrator is the child's parent per NRS 432B:														
Perpetrator is not related to the family or child:			X											
Location of alleged abuse incident:						X								
1) Does the child meet ICWA requirements?							N/A							
2) Who initiates investigation?									X					
3) Who decides to take custody?									X				X	
4) Who takes the case to court?													X	
5) Which court?												X		
6) Who promotes and upholds reunification?													X	
7) Who performs In-Home Services?													X	
8) Who locates foster home placement?													X	
<p>DEFINITIONS – Nevada Revised Statutes:            NRS 432B.080 “Parent” defined “means a natural or adoptive parent whose parental rights have not been terminated.            NRS 432B.130 Persons responsible for child’s welfare - “A person is responsible for a child’s welfare under the provisions of this chapter if he is the child’s parent, guardian, a stepparent with whom the child lives, an adult person continually or regularly found in the same household as the child, or a person directly responsible or serving as a volunteer for or employed in a public or private home, institution or facility where the child actually resides or is receiving child care outside of his home for a portion of the day.”</p>														

# Appendix C: Nevada Tribal Service Agencies - 2006

## *Bureau of Indian Affairs (BIA)*

The Bureau of Indian Affairs' (BIA) mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes, and Alaska Natives. This is accomplished through the delivery of quality services, maintaining government-to-government relationships within the spirit of Indian self-determination.

The BIA has two offices that serve Nevada:

### BIA – Western Nevada Agency

311 Washington Street  
Carson City, NV 89701

Tel: 775.887.3514  
Fax: 775.885.6857

### BIA – Eastern Nevada Field Office

1555 Shoshone Circle  
Elko, NV 89801

Tel: 775.738.5165  
Fax: 775.738.4710

## *Indian Health Service (IHS)*

The Indian Health Service (IHS), an agency within the Department of Health and Human Services, is responsible for providing federal health services to American Indians and Alaska Natives. The provision of health services to members of federally-recognized tribes grew out of the special government-to-government relationship between the federal government and Indian tribes. This relationship, established in 1787, is based on Article I, Section 8 of the Constitution, and has been given form and substance by numerous treaties, laws, Supreme Court decisions, and Executive Orders. The IHS is the principal federal health care provider and health advocate for Indian people, and its goal is to raise their health status to the highest possible level. The IHS currently provides health services to approximately 1.5 million American Indians and Alaska Natives who belong to more than 557 federally recognized tribes in 35 states.

IHS has a primary regional office that serves Nevada: The Phoenix Area Indian Health Service (PAIHS). The PAIHS Office in Phoenix, Arizona, oversees the delivery of health care to approximately 140,000 Native American users in the tri-state area of Arizona, Nevada, and Utah. Services are comprehensive and range from primary care, including inpatient and outpatient, to tertiary care and specialty services. Additional services include the following:

- Dental services
- Behavioral health
- Public health nursing
- Health education
- Environmental health services

Services are provided through nine service units located throughout the tri-state area. The Phoenix Area works closely with the forty tribes within the tri-state area in providing health care services. There are three urban

programs within the area in Reno, Salt Lake City, and Phoenix. There are two tribal organizations that the PAIHS works with closely: 1) the Inter Tribal Council of Arizona and 2) the Inter Tribal Council of Nevada.

PAIHS has three offices that serve Nevada:

Owyhee Service Unit  
Owyhee PHS Indian Hospital  
P.O. Box 130  
Owyhee, NV 89832  
Tel: 775.757.2415

Schurz Service Unit  
PHS Indian Health Center  
Drawer A  
Schurz, NV 89427  
Tel: 775.773.2345

Elko Service Unit  
PHS Indian Health Center  
515 Shoshone Circle  
Elko, NV 89801  
Tel: 775.738.2252

### *Inter-Tribal Council of Nevada (ITCN)*

The Inter-Tribal Council of Nevada, Inc. (ITCN) is a nonprofit, Tribal organization serving the member reservations and colonies in Nevada. The Governing Body of ITCN consists of an Executive Board, composed of Tribal Chairman from each of these Tribes.

The main intent of ITCN is to serve as a large political body for the small Nevada Tribes. ITCN has played a major role in promoting health, educational, social, economic, and job opportunity programs. ITCN manages federal and State funded programs aimed at improving the wellbeing of community members throughout the State of Nevada.

Current programs include the following:

- Administration of aging
- Child Care Development Block Grant (CCDBG)
- Head Start
- Domestic violence (DOJ)
- Domestic violence (DHHS)
- Native American workforce (NWD)
- Women, infants, and children (WIC)

ITCN has one office that serves Nevada:

680 Greenbrae Drive, Suite 280  
Sparks, NV 89431

Tel: 775.355.0600  
Fax: 775.355.0648

### *Las Vegas Indian Center (LVIC)*

The Las Vegas Indian Center (LVIC) is a nonprofit organization whose mission is to promote the social and economic self-sufficiency of American Indian people and the community at large. The LVIC provides services primarily to the American Indian people residing in the Las Vegas metropolitan area. Agency staff advocate on behalf of all persons requesting services to ensure their access to all available agency and community resources.

Current programs include the following:

- Alcohol and drug abuse
- Basic needs
- Cultural
- Employment and training
- Educational

LVIC has one office that serves Nevada:

2300 W. Bonanza Road  
Las Vegas, NV 89106

Tel: 702.647.5842

Fax: 702.647.2647

### *Nevada Indian Commission (NIC)*

The Nevada Indian Commission's vision is to strive for social and economic equality for all American Indian people living in the state of Nevada, while embracing traditional, cultural, and spiritual values. The mission of the Nevada Indian Commission is to ensure the wellbeing of American Indian citizens throughout the state.

The Nevada Indian Commission is a State agency created by statute in 1965 to study matters affecting the social and economic welfare and wellbeing of American Indians residing in Nevada, including, but not limited to, matters and problems relating to Indian affairs and to federal and State control, responsibility, policy, and operations affecting such Indians. The Indian Commission was originally established to be a mediary for tribal and State relations and the entity whereby tribal concerns and issues affecting Native American Indians could be directly addressed with the Governor.

Commission activities are aimed at developing and improving cooperation and communications between the Tribes, State, local governments, and related public agencies with the purpose of improving the education, employment, health, wellbeing, and socioeconomic status of Nevada's American Indian citizens and enhancing tribal sovereignty, economic opportunities, and community development.

The Commission effectively serves as liaison between the State and the 19 federally recognized tribes comprised of 28 separate tribes, bands, and community councils. The Commission has assisted State agencies and Tribes on issues affecting Nevada's American Indian constituency and serves as a forum in which Indian needs and issues are considered. The Commission is a conduit by which concerns involving Native American Indians or Tribal interests are channeled through the appropriate network and serves as the point of access for Tribes to find out about State government programs and policies.

The Commission, comprised of five Commissioners appointed by the Governor, meets at least quarterly. Three Commissioners are Native American Indian and two Commissioners are drawn from the general public. Staff for the Commission includes an Executive Director appointed by the Governor and a Management Assistant.

The Nevada Indian Commission has one office that serves Nevada:

5500 Snyder Avenue, Building 3  
Carson City, NV 89701

Tel: 775.687.8333

Fax: 775.687.8330

e-mail: [nic@govmail.state.nv.us](mailto:nic@govmail.state.nv.us)

### *Nevada Urban Indians (NUI)*

Nevada Urban Indians, Inc., (NUI) is funded by public and private resources. NUI provides services primarily to the Native American population in the Reno, Sparks, and Carson City area and provides services primarily to Native Americans. NUI's vision is to integrate the Native American healing approach with western health and social care practices to provide quality holistic healthcare. NUI's programs include the following:

- Alcohol and Drug Abuse Prevention Treatment
- Community Health Program
- HIV/AIDS Program
- Johnson O'Malley Program
- Mental Health Program
- Victims of Crime Program

NUI has two offices that serve Nevada:

#### Reno Office

5301 Longley Lane, Suite 178  
Reno, NV 89511

Tel: 775.788.7600

Fax: 775.788.7611

#### Carson City Office

1802 N. Carson City Street  
Carson City, NV 89701

Tel: 775.883.4439

Fax: 775.883.6981

# Appendix D: Overview of Nevada Tribes

## *Battle Mountain*

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<b>Tribe:</b>	Battle Mountain Band Council
<b>Contact Information:</b>	37 Mountain View Drive #C Battle Mountain, NV 89820 Tel: 775.635.2004 Fax: 775.635.8016
<b>Served by:</b>	BIA Eastern Office
<b>ICWA Specialist:</b>	Maria Williams
<b>Social Services Contact:</b>	Vacant Social Worker Battle Mountain Band Social Service/ICWA Programs 37 Mountain View Drive #1040-13 Battle Mountain, NV 89820 Tel: 775.635.9189 Fax: 775.635.9189
<b>Established:</b>	First land established in 1917; most recent land established in 1967.
<b>Membership:</b>	569
<b>Location:</b>	Located off of Interstate 80 in Battle Mountain, Lander County.
<b>Tribal Business:</b>	Convenience store, smoke shop, and gas station
<b>Background:</b>	The colony is located on the west side of the city limits of Battle Mountain on two separate parcels of land.

## *Carson*

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<b>Tribe:</b>	Carson Colony Community Council
<b>Contact Information:</b>	2900 South Curry Street Carson City, NV 89703 Tel: 775.883.6459 Fax: 775.883.6467
<b>Served by:</b>	BIA Western Office
<b>ICWA Specialist:</b>	Vacant – 775.265.4191 ext. 149

**Social Services Contact:** Barbara Bennett  
Social Services Director  
Washoe Tribe Social Services  
919 Highway 395 South  
Gardnerville, NV 89410  
Tel: 775.883.1446 ext. 133  
Fax: 775.265.4593

**Established:** First land established in 1916; most recent land established in 1969.

**Membership:** 119

**Location:** Located one-half mile west of U.S. Highway 395, one mile south of Carson City.

**Tribal Business:** None

**Background:** No information available.

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*Dresslerville*

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**Tribe:** Dresslerville Community Council

**Contact Information:** 585 Watasheamu Drive  
Gardnerville, NV 89410  
Tel: 775.265.5645  
Fax: 775.265.6240

**Served by:** BIA Western Office

**ICWA Specialist:** Vacant – 775.265.4191 ext. 149

**Social Services Contact:** Barbara Bennett  
Social Services Director  
Washoe Tribe Social Services  
919 Highway 395 South  
Gardnerville, NV 89410  
Tel: 775.883.1446 ext. 133  
Fax: 775.265.4593

**Established:** 1916

**Membership:** 276

**Location:** Located one-half mile west of US Highway 395, south of Gardnerville.

**Tribal Business:** None

**Background:** No information available.

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*Duck Valley*

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**Tribe:** Duck Valley Shoshone-Paiute Tribe

**Contact Information:** PO Box 219  
Owyhee, NV 89832  
Tel: 775.757.3211  
Fax: 775.757.3212

**Served by:** BIA Eastern Office

**ICWA Specialist:** None

**Social Services Contact:** Lynette Bitsilly  
Shoshone-Paiute Tribal Social Service/ICWA Programs  
PO Box 219  
Owyhee, NV 89832  
Tel: 775.757.2921  
Fax: 775.757.2219

**Established:** First land established in 1877; most recent land established in 1910.

**Membership:** 1,818

**Location:** The reservation strides the Nevada-Idaho border located approximately 100 miles south of Mountain Home, Idaho, on Highway 51 and is approximately 100 miles north of Elko, on Highway 225.

**Tribal Business:** Duck Valley Gas-N-Go, Gah Nee Enterprises.

**Background:** The headquarters are in Owyhee and the reservation is located in the northeast corner of Elko County and the south part of Idaho State, 100 miles north of Elko.

The land surrounding the reservation is predominantly high desert country, varying in elevation from 5,000 to 7,000 feet. Wildhorse Reservoir is located about 35 miles southeast of Owyhee at the headwater of the Owyhee River. All reservation lands are tribal properties and are contiguous in a nearly square block.

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*Duckwater*

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**Tribe:** Duckwater Shoshone Tribe

**Contact Information:** PO Box 140068  
Duckwater, NV 89314



Tel: 775.863.0227  
Fax: 775.863.0301

**Served by:** BIA Eastern Office

**ICWA Specialist:** Nancy Abel, MSW – 775.863.0222

**Social Services Contact:** Nancy Abel  
Social Worker/ICWA Worker  
Duckwater Tribal Social Service/ICWA Programs  
PO Box 140068  
Duckwater, NV 89314  
Tel: 775.863.0222  
Fax: 775.863.0142

**Established:** First land established in 1940; most recent land established in 1955.

**Membership:** 318

**Location:** Located 19 miles northwest of State Route 379 in Nye County.

**Tribal Business:** Duckwater Construction Company, oil field service, greenhouse operations, and agricultural enterprise.

**Background:** The Duckwater reservation is located partially in White Pine and Nye Counties in east central Nevada, approximately 225 miles southeast of Elko.

### *Elko Band*

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**Tribe:** Elko Band Council

**Contact Information:** 511 Sunset Street  
Elko, NV 89801  
Tel: 775.738.8889  
Fax: 775.778.3397

**Served by:** BIA Eastern Office

**ICWA Specialist:** Lillian Garcia – 775.738.9310

**Social Services Contact:** Margaret Yowell  
Social Worker  
Elko Band Social Services/ICWA Programs  
PO Box 748  
Elko, NV 89801  
Tel: 775.738.9310  
Fax: 775.778-3397

**Established:** 1918

**Membership:** 1,445

**Location:** The colonies are located within the city limits of Elko on four separate parcels of land.

**Tribal Business:** No information.

**Background:** No information.

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*Ely*

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**Tribe:** Ely Shoshone Council

**Contact Information:** 16 Shoshone Circle  
Ely, NV 89301  
Tel: 775.289.3013  
Fax: 775.289.3237

**Served by:** BIA Eastern Office

**ICWA Specialist:** Rae Jean Morrill – 775.289.4133

**Social Services Contact:** Rae Jean Morrill  
Social Worker/ICWA Worker  
Ely Tribal Social Service/ICWA Programs  
16 Shoshone Circle  
Ely, NV 89301  
Tel: 775.289.4133  
Fax: 775.289.3237

**Established:** First land established in 1930; most recent land established in 1977.

**Membership:** 299

**Location:** Located on the southwest and southeast sides of the City of Ely in three separate locations in White Pine County.

**Tribal Business:** Ely Shoshone Smoke Shop, Small World Day Care, and Shoshone Cloth Industries.

**Background:** The colony is located with Ely and White Pine Counties approximately 200 miles southeast of Elko.

**Tribe:** Fallon Paiute-Shoshone Tribe

**Contact Information:** 8955 Mission Road  
Fallon, NV 89406  
Tel: 775.423.6075  
Fax: 775.423.8960

**Served by:** BIA Western Office

**ICWA Specialist:** None

**Social Services Contact:** Vacant  
Social Worker  
Fallon Youth & Family Services  
991 Rio Vista  
Fallon, NV 89406  
Tel: 775.423.1215  
Fax: 775.423.8960

**Established:** First land established in 1890; most recent land established in 1978.

**Membership:** 984

**Location:** Located two miles northeast of Fallon, the Reservation is 12 miles east of Fallon by State Route 116 in Churchill County.

**Tribal Business:** Fox Peak Gas Station & Smoke Shop Convenience Store.

**Background:** The demographics of Churchill County are primarily rural agricultural, with a substantial Naval Air Training Facility located eight miles southeast of the Fallon and about 10 miles south of the reservation. Fallon has a population of about 8,200 and is the only major town within Churchill County. The economy of the area is on the rise due primarily to Naval Base expansion and growth, light industries, services, and casino/gaming establishments.

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*Fort McDermitt*

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**Tribe:** Fort McDermitt Paiute-Shoshone Tribe

**Contact Information:** PO Box 68  
McDermitt, NV 89421  
Tel: 775.532.8521  
Fax: 775.532.8060

**Served by:** BIA Western Office

**ICWA Specialist:** Hope Stern – 775.532.8521

**Social Services Contact:** Vacant  
Supervisory Social Worker  
Fort McDermitt Social Services  
PO Box 68  
McDermitt, NV 89421  
Tel: 775.532.8263  
Fax: 775.532.8060

**Established:** First land established in 1867; most recent land established in 1973.

**Membership:** 884

**Location:** Located four miles southeast of McDermitt in Humboldt County. A major part of the reservation is located in Malheur County, Oregon.

**Tribal Business:** None

**Background:** Located on the Oregon-Nevada border approximately 75 miles north of Winnemucca, the small town of McDermitt is adjacent to the northern portion of the reservation and is the center of activity in the area. Residents include Paiute and Shoshone Indians. Agricultural and meadow lands are located in river valleys. Land rises abruptly and is precipitous in places with steep slopes and bare rock talus and mantle of mixed rock and soil. Above the canyon area, land generally is rocky and rolling. A large part of the cultural portion is in the flood plain.

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*Goshute*

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**Tribe:** Goshute Tribal Social Services/ICWA

**Contact Information:** PO Box 6104  
Ibapah, UT 84034  
Tel: 435.234.1141  
Fax: 435.234.1162

**Served by:** BIA Eastern Office

**ICWA Specialist:** Melissa Oppenheim – 435.234.1178

**Social Services Contact:** Jeanine Hooper  
Social Worker  
Goshute Tribal Social/ICWA Programs  
PO Box 6104  
Ibapah, UT 84034  
Tel: 435.234.1141  
Fax: 435.234.1162

**Established:** First land established in 1912; most recent land established in 1943.

**Membership:** 424

**Location:** The reservation is astride the Nevada-Utah border in White Pine County, Nevada, and Juab and Tooele Counties, Utah. The Reservation is located 75 miles south, by unimproved road of Wendover, Utah, or 50 miles east by unimproved road by Schellbourn Station, U.S. Alternate 93.

**Tribal Business:** Land lease program

**Background:** The reservation is located in White Pine County, in the extreme east central Nevada, and in Juab and Tooele Counties in west central Utah approximately 175 miles southeast of Elko.

*Las Vegas*

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**Tribe:** Las Vegas Paiute Tribe

**Contact Information:** One Paiute Drive  
Las Vegas, NV 89106  
Tel: 702.386.3926  
Fax: 702.383.4019

**Served by:** BIA Southern Office (Utah)

**ICWA Specialist:** Linda Zapp-Cox – 702.386.0266 ext. 276

**Social Services Contact:** Ruth Fitz-Patrick  
Social Worker  
Las Vegas Indian Colony Social Service Program  
One Paiute Drive  
Las Vegas, NV 89106  
Tel: 702.386.0266 ext. 275  
Fax: 702.387.0162

**Established:** First land established in 1911; most recent land established in 1983.

**Membership:** 75

**Location:** Located within the city limits on the west side of Main Street, one mile north of downtown Las Vegas in Clark County. Also north of Las Vegas along the Reno-Tonopah Highway near the Mt. Charleston turnoff.

**Tribal Business:** Las Vegas Colony Smoke Shop, Las Vegas Paiute Tribe Golf Course and Resort, and Las Vegas Paiute Snow Mountain Smoke Shop & Gas

Station

**Background:** The Las Vegas colony is primarily a residential community. Job opportunities exist outside the colony in the diversified economies of Las Vegas, North Las Vegas, and Henderson. Employment opportunities also exist within tribally run businesses.

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*Lovelock*

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**Tribe:** Lovelock Paiute Tribe

**Contact Information:** PO Box 878  
Lovelock, NV 89419  
Tel: 775.273.0642  
Fax: 775.273.1144

**Served by:** BIA Western Office

**ICWA Specialist:** Susan Calvin – 775.273.0642

**Social Services Contact:** Krystal Thacker  
Social Worker  
Lovelock ICWA Program  
PO Box 87  
Lovelock, NV 89419  
Tel: 775.273.0642  
Fax: 775.273.1144

**Established:** First land established in 1907; most recent land established in 1910.

**Membership:** 314

**Location:** Located one block west of Cornell Avenue in southwest Lovelock, Pershing County.

**Tribal Business:** None

**Background:** Traditionally, the northern Paiute people lived in the Great Basin area, occupying about a third of present-day Nevada and land in Oregon, southern Idaho, and eastern California. Within this area, numerous bands lived, hunted, and traveled. The band that lived on the shores of the Great Lahontan Lake near the town of Lovelock called themselves Numuh (the People), but the people were known as the Koop Ticutta (Ground Squirrel Eaters). Traditional hunting and gathering areas, sacred areas, and burial sites are located in the nearby mountains, which rise up to an elevation of 8,000 feet.

The Lovelock Paiute Tribe is located on a colony in southwest

Lovelock, in Pershing County. It is a federally-recognized tribe organized under the IRA of June, 1934. The colony consists of 20 acres surrounded by the town of Lovelock. The colony is adjacent to Interstate 80 and US Highway 40, Lone Mountain Road, and US 95. The Southern Pacific Railroad is adjacent to the Colony.

The entire 20 acres comprising the colony land is held in trust by the US Government on behalf of tribal members. There are no allotments within the colony nor are there any fee lands. The 43 home sites are assignments given to occupants and are located along three streets within the colony. The remaining land is utilized for tribal government buildings, recreational areas, or remains vacant.

### *Moapa*

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<b>Tribe:</b>	Moapa Business Council
<b>Contact Information:</b>	PO Box 340 Moapa, NV 89025 Tel: 702.865.2787 Fax: 702.865.2875
<b>Served by:</b>	BIA Southern Office (Utah)
<b>ICWA Specialist:</b>	Roberta Hanks – 702.865.2708
<b>Social Services Contact:</b>	Debbie McEwan Social Worker Moapa Tribal Social Service Program PO Box 240 Moapa, NV 89026 Tel: 702.865.2708 Fax: 702.865.2078
<b>Established:</b>	First land established in 1874; most recent land established in 1980.
<b>Membership:</b>	283
<b>Location:</b>	Located approximately eight miles west of Glendale, junction of State Route 168 and Interstate 15, approximately 55 miles northeast of Las Vegas in Clark County.
<b>Tribal Business:</b>	Tribal store and casino.
<b>Background:</b>	Moapa Paiute Indian Reservation is located on approximately 71,961 acres of land within Clark County. It is comprised of vermilion cliffs and high desert vegetation.

## *Pyramid Lake*

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<b>Tribe:</b>	Pyramid Lake Paiute Tribe
<b>Contact Information:</b>	PO Box 256 Nixon, NV 89424 Tel: 775.574.1047 Fax: 775.574.1052
<b>Served by:</b>	BIA Western Office
<b>ICWA Specialist:</b>	Dee Crutcher – 775.574.1048
<b>Social Services Contact:</b>	Yvette Zmaila Social Services Director Pyramid Lake Social Services PO Box 256 Nixon, NV 89424 Tel: 775.574.1047 Fax: 775.574.1052
<b>Established:</b>	1859
<b>Membership:</b>	2,013
<b>Location:</b>	Located 35 miles northeast of Reno in Washoe County.
<b>Tribal Business:</b>	I-80 Smoke Shop & Campground, Pyramid Lake Marina, and Nixon Store.
<b>Background:</b>	Located approximately 35 miles northeast of Reno, the Pyramid Lake Reservation is comprised of 476,728 acres. Pyramid Lake property occupies some 109,000 surface acres inside the reservation boundary and has a shoreline of approximately 125 miles. The lake is fed primarily by the Truckee River, and is famous as a fishery for the Lahontan Cutthroat Trout and Cui-ui, which are on the endangered species list. Pyramid Lake has no outlet and is a residual body remaining from the prehistoric Lahontan water body.

## *Reno-Sparks*

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<b>Tribe:</b>	Reno-Sparks Indian Colony
<b>Contact Information:</b>	98 Colony Road Reno, NV 89502 Tel: 775.329.2936 Fax: 775.785-8758



**Served by:** BIA Western Office

**ICWA Specialist:** Gloria Thomas

**Social Services Contact:** Judith Campanaro, MA  
Social Services Director  
Reno-Sparks Social Services  
405 Golden Lane  
Reno, NV 89502  
Tel: 775.329.5071  
Fax: 775.785.8758

**Established:** First land established in 1916; most recent land established in 1986.

**Membership:** 1,087

**Location:** Located at East Second Street adjacent to the city limits of Reno and 10 miles north of Sparks at Hungry Valley, both in Washoe County.

**Tribal Business:** Smoke Shop I, II, III, and IV.

**Background:** The Reno-Sparks Indian Colony is located in Reno and Sparks. The Reno lands include 56,002 acres of contiguous parcels that serve as the original residential sites as well as tribal facilities such as the community center, administration offices, health clinic, education programs, and two tribal enterprise establishments. Approximately 18.5 of the acres provide economic development resources for short and long term lease income from private businesses. The acreage is located between the city limits of Reno and Sparks.

Non-contiguous lands include 8.31 acres on South Virginia Street in Reno, 4.06 acres in Verdi, and 24.02 acres in Spanish Springs which are identified for future tribal economic development projects.

The Hungry Valley community consists of 1,949.39 acres acquired in 1982 that serves as a residential area and the focus of future community development services. There is also potential for limited economic development. However, due to the quantity and quality of water, there are limited plans for commercial development.

The Tribe is currently updating and developing its land use plan and codes to formalize the zoning of residential, commercial, industrial, and future economic development areas.

The population consists of all three major tribes of Nevada: Washoe, Paiute, and Shoshone. The majority of employed colony members work in the Reno-Sparks metropolitan area.

### *South Fork*

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**Tribe:** South Fork Band Council

**Contact Information:** HC30-B-13-Lee  
Elko, NV 89801  
Tel: 775.744.4273  
Fax: 775.744.4523

**Served by:** BIA Eastern Office

**ICWA Specialist:** None

**Social Services Contact:** Karen McDade  
Social Worker  
South Fork Social Service/ICWA Programs  
HC30-B-13-Lee  
Elko, NV 89801  
Tel: 775.744.2412  
Fax: 775.744.2412

**Established:** 1934

**Membership:** 258

**Location:** The reservation is located 30 miles south of Elko.

**Tribal Business:** No information available.

**Background:** No information available.

### *Stewart*

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**Tribe:** Stewart Community Council

**Contact Information:** 5352 Snyder Avenue  
Carson City, NV 89701  
Tel: 775.883.7767  
Fax: 775.883.5679

**Served by:** BIA Western Office

**ICWA Specialist:** Vacant – 775.265.4191 ext. 149

**Social Services Contact:** Barbara Bennett  
Social Services Director  
Washoe Tribe Social Services  
919 Highway 395 South  
Gardnerville, NV 89410  
Tel: 775.883.1446 ext. 133  
Fax: 775.265.4593

**Established:** First land established in 1916; most recent land established in 1983.

**Membership:** 109

**Location:** Located three miles south of Carson City.

**Tribal Business:** None

**Background:** No information available.

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*Summit Lake*

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**Tribe:** Summit Lake Paiute Tribe

**Contact Information:** 655 Anderson Street  
Winnemucca, NV 89445  
Tel: 775.623.5151  
Fax: 775.532-8060

**Served by:** BIA Western Office

**ICWA Specialist:**

**Social Services Contact:** Supervisory Social Worker  
Fort McDermitt Social Services  
PO Box 68  
McDermitt, NV 89421  
Tel: 775.623-5151  
Fax: 775.532.8060

**Established:** First land established in 1913; most recent land established 1971.

**Membership:** 117

**Location:** Located approximately eight miles west of Denio in Humboldt County, Nevada. Access via State Route 140 and unimproved road 8A.

**Tribal Business:** None

**Background:**

Summit Lake is located in the northwest corner of Nevada in the high desert country located in Humboldt County, approximately 185 miles north of Reno, 45 miles south of the Orgeon border, and 70 miles east of the California border. The reservation contains 10,097 acres of tribal land and 764 acres of allotted land. The lake itself varies in size from year to year with an average size of about 600 acres.

Tribal members reside on the reservation seasonally throughout the year due to its remote isolated location. Social, cultural, and economic development are halted largely due to Summit Lake’s geographic location and to historical barriers created by the US Government removing its children at the earliest stage of five years of age from their families, lifestyles, and cultural values to attend boarding schools. Families also moved away from the reservation largely due to family organization and to adapt to the changing environment and times. Social and cultural traditions were lost and it has been difficult at best for Tribal members to find their way back to their traditional homelands.

The community structure remains fairly close to that of the early days of the Summit Lake ancestors. Many tribal members visit Summit Lake to hunt and fish during the Spring, Summer, and Fall seasons.

Harsh weather conditions still present a hazard to those remaining. The Tribe does have a road contract funded through the Bureau of Indian Affairs Self-Determination Act, however, funding is insufficient to maintain open roads during the winter months and so it is dependent upon conditions.

There are approximately 11 land assignments on the reservation that are used for homesteading. The Tribe is in the process of developing a land use plan.

Summit Lake is fed by mountain streams, Mahogany Creek, Summer Camp Creek, and Snow Creek. The lake has one of two remaining self-sustaining lake populations of Lahontan cutthroat trout. The trout are listed as threatened under the Endangered Species Act.

Camp McGarry, part of Summit Lake history, was located on the Summit Lake Reservation. It was established to guard Idaho-Nevada stage lines and later declared a military reservation. Rock structures still remain.

*Te-Moak*

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**Tribe:** Te-Moak Tribal Council

**Contact** 525 Sunset Street

**Information:** Elko, NV 89801  
Tel: 775.738.9251  
Fax: 775.738.2345

**Served by:** BIA Eastern Office

**ICWA Specialist:** No information available.

**Social Services Contact:** Te-Moak Tribal Social Service/ICWA Programs  
525 Sunset Street  
Elko, NV 89801  
Tel: 775.738.9251  
Fax: 775.738.6913

**Established:** 1938

**Membership:** 2,486

**Location:** No information available.

**Tribal Business:** No information available.

**Background:** No information available.

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*Walker River*

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**Tribe:** Walker River Paiute Tribe

**Contact Information:** PO Box 220  
Schurz, NV 89427  
Tel: 775.773.2306  
Fax: 775.773.2585

**Served by:** BIA Western Office

**ICWA Specialist:** None

**Social Services Contact:** Stan Sanchez  
Social Services Director  
Walker River Social Services  
PO Box 146  
Schurz, NV 89427  
Tel: 775.773.2058  
Fax: 775.773.2096

**Established:** First land established in 1859; most recent land established in 1972.

**Membership:** 1,826

**Location:** Located at Schurz in Mineral County. Portions of the reservation are located in Churchill, Lyon, and Mineral Counties.

**Tribal Business:** None

**Background:** The Walker River Paiute Tribe is known as the Agai Dicutta (Trout Eaters). The Walker River Indian Reservation is 100 miles south of Reno and is composed of 323,405 acres. The Walker River flows southerly through the reservation into Weber Reservoir and then to Walker Lake, which lies on the southern end of the reservation. The average rainfall is four inches or less per year.

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*Washoe*

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**Tribe:** Washoe Tribe of Nevada and California

**Contact Information:** 919 Highway 395 South  
Gardnerville, NV 89410  
Tel: 775.265.4191  
Fax: 775.265.6240

**Served by:** BIA Western Office

**ICWA Specialist:** Ray Painter – 775.265.4191 ext. 149

**Social Services Contact:** Barbara Bennett  
Social Services Director  
Washoe Tribe Social Services  
919 Highway 395 South  
Gardnerville, NV 89410  
Tel: 775.883.1446 ext. 133  
Fax: 775.265.4593

**Established:** First land established in 1916; most recent land established in 1983.

**Membership:** 1,600

**Location:** Territorial jurisdiction and tribal lands are located in Carson City and Douglas County, Nevada, and in Alpine County, California. The Tribe is comprised of the Carson Colony, Dresslerville Colony, Stewart Community, and Woodfords Colony along with lands for ranching and some allotment.

**Tribal Business:** Carson Colony Smoke Shop, Chevron gas station, land leasing program,

and Washoe Smoke Shop.

**Background:** “We have always been unique tribe. When the maker scattered the seeds of humanity a few were left over. With all other areas taken, he gave the Washoe a place he had saved for himself, Lake Tahoe. He knew we would protect this special place, as we have for over 9,000 years.” For over 400 generations, Lake Tahoe has been the center of Washoe life. Its crystal clear waters supported all living things, including the Washoe People. In the early spring, the Washoe families would gather at Tahoe to hunt and fish, celebrate the end of winter, and give thanks to the maker.

The family unit is the strength of the Washoe Tribe. In the days before European contact, family groups lived in all areas of Washoe lands. Spring and Summer were spent at Tahoe and in the high mountains. In the Fall, the people gathered at Tahoe to hunt and fish, celebrate the end of Winter, and give thanks to the maker.

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### *Wells*

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**Tribe:** Wells Band Council

**Contact Information:** PO Box 809  
Wells, NV 89835  
Tel: 775.752.3045  
Fax: 775.752.2179

**Served by:** BIA Eastern Office

**ICWA Specialist:** No information available.

**Social Services Contact:** No information available.

**Established:** 1977

**Membership:** 191

**Location:** The Wells Colony is located on the west side of the city limits of Wells, which is 50 miles east of Elko.

**Tribal Business:** No information available.

**Background:** No information available.

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### *Winnemucca*

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**Tribe:** Winnemucca Colony Council

**Contact Information:** PO Box 1370  
Winnemucca, NV 89446  
Tel: 775.623.0888  
Fax: 775.623.6918

**Served by:** BIA Western Office

**ICWA Specialist:** Gwen Cavanaugh – 775.532.8263

**Social Services Contact:** Velma Harjo  
Supervisory Social Worker  
Fort McDermitt Social Services  
PO Box 68  
McDermitt, NV 89421  
Tel: 775.532.8263  
Fax: 775.532.8060

**Established:** First land established in 1917; most recent land established in 1928.

**Membership:** 77

**Location:** Located one block west of Bridge Street, three-quarters of a mile south of downtown Winnemucca in Humboldt County.

**Tribal Business:** Smoke Shop.

**Background:** Winnemucca Indian Colony is located in Winnemucca, approximately 170 miles northeast of Reno. The territorial jurisdiction is comprised of 340 acres.

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*Woodfords*

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**Tribe:** Woodfords Community Council

**Contact Information:** 96 Washoe Blvd.  
Markleeville, CA 96120  
Tel: 530.694.2170  
Fax: 530.694.2467

**Served by:** BIA Western Office

**ICWA Specialist:** Ray Painter – 775.265.4191 ext. 149

**Social Services Contact:** Barbara Bennett  
Social Services Director  
Washoe Tribe Social Services  
919 Highway 395 South



Gardnerville, NV 89410  
Tel: 775.883.1446 ext. 133  
Fax: 775.265.4593

**Established:** 1970

**Membership:** 198

**Location:** Located approximately five miles from the Nevada-California border in Alpine County, California.

**Tribal Business:** None

**Background:** No information.

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*Yerington*

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**Tribe:** Yerington Tribal Council

**Contact Information:** 171 Campbell Lane  
Yerington, NV 89447  
Tel: 775.463.3301  
Fax: 775.463.2416

**Served by:** BIA Western Office

**ICWA Specialist:** None

**Social Services Contact:** Stacy L. Stahl  
Social Services Director  
Yerington Social Services  
171 Campbell Lane  
Yerington, NV 89447  
Tel: 775.883.8334  
Fax: 775.463.5929

**Established:** First land established in 1916; most recent land established in 1979.

**Membership:** 846

**Location:** Colony: located adjacent to Yerington. Ranch: located two miles west of US Alternate 95, approximately 10 miles North of Yerington in Lyon County.

**Tribal Business:** Arrowhead Market, Smoke Shop, and Dairy Queen.

**Background:** Traditional Numu, the Paiute name for themselves which means "Human Beings," believed whatever was taken from the earth required

some form of payment or reimbursement. Living in harmony with Mother Earth meant the Numu must be highly sensitive to seasonal changes and the cyclical patterns of nature. The migratory lifestyle of the traditional Numu was dictated by these changes and patterns. The diet of the Paiute consists primarily of deer, jackrabbit, fish, pinenuts, and various seeds and berries.

### *Yomba*

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**Tribe:** Yomba Shoshone Tribe

**Contact Information:** HC 61 Box 6275  
Austin, NV 89310  
Tel: 775.964.2463  
Fax: 775.964.2443

**Served by:** BIA Western Office

**ICWA Specialist:** None

**Social Services Contact:** Jose Corleto, Jr.  
Eligibility Worker  
Yomba Social Services  
HC 61 Box 6275  
Austin, NV 89310  
Tel: 775.964.2463  
Fax: 775.964.2443

**Established:** First land established in 1934; most recent land established in 1941.

**Membership:** 203

**Location:** Located approximately 55 miles south of Austin by improved State Route 21 at Reese River in Nye County.

**Tribal Business:** None

**Background:** The Yomba Shoshone Reservation is located in the middle of Nevada, about 180 miles east of Carson City. There are 4,718 acres of tribally owned land. The reservation consists of three separate ranch properties purchased in the Reese River Valley at elevations ranging from 6,000 to 7,000 feet. Mountain ranges are located on either side of the valley.

Individual tribe members operate a limited cattle business on Bureau of Land Management (BLM) Forest Service lands using the reservation assignments as “home” ranches. Some natural grasses are irrigated and harvested as hay for feeding the livestock.

# Appendix E: Nevada ICWA Specialists

<i>Tribe</i>	<i>Name</i>	<i>Telephone</i>
Battle Mountain		
Carson	Ray Painter	775.265.4191 ext. 149
Dresslerville	Ray Painter	775.265.4191 ext. 149
Duck Valley		
Duckwater	Beverly Cota	775.863.0222
Elko Band	Lillian Garcia	775.738.8889
Ely	Rae Jean Morrill	775.289.4133
Fallon		
Fort McDermitt	Gwen Cavanaugh	775.532.8263
Goshute	Melissa Oppenheim	435.234.1178
Las Vegas	Linda Zapp-Cox	702.386.0266 ext. 276
Lovelock	Runelda Lambert	775.273.7861
Moapa	Roberta Hanks	702.865.2708
Pyramid Lake	Dee Crutcher	775.574.1048
Reno-Sparks		
South Fork		
Stewart	Ray Painter	775.265.4191 ext. 149
Summit Lake	Gwen Cavanaugh	775.532.8263
Te-Moak		
Walker River		
Washoe	Ray Painter	775.265.4191 ext. 149
Wells		
Winnemucca	Gwen Cavanaugh	775.532.8263
Woodfords	Ray Painter	775.265.4191 ext. 149
Yerington		
Yomba		

# Appendix F: National Tribal Information and Resources

## *ICWA Resources*

Indian Child Welfare Law Center, 1433 E. Franklin, Minneapolis, MN 55404. Telephone: 612.879.9165.  
Website: <http://www.glrain.net/icwalc/index.html>

National Congress of American Indians, 1301 Connecticut Ave NW, Suite 200, Washington, DC 20036.  
Telephone: 202.466.7767. Website: <http://www.ncai.org>

National Indian Child Welfare Association, 3611 SW Hood Street, Suite 201, Portland, OR 97201. Telephone:  
530.222.4044. Website: <http://www.nicwa.org>

National Indian Justice Center, The McNear Building, #7 Fourth Street, Suite 46, Petaluma, CA 94952. Telephone:  
707.762.8113. Website: <http://nijc.indian.com>

Native American Children and Family Services Training Institute, 4007 State Street, Suite 110, Bismarck, ND  
58501. Telephone: 701.255.6374. Fax: 701.255.6394. E-mail: [nacfsti@btigate.com](mailto:nacfsti@btigate.com)

Native American Rights Funds, 1503 Broadway, Boulder, CO 80302. Telephone: 303.447.8760. Website:  
<http://www.narf.org>

## *Other Resources*

Affiliated Tribes of Northwest Indians serve as an online ICWA resource at: <http://www.atni.org>

Alaska Native data online at: <http://www.infoplease.com/ipa/A0113432.html>

Alaska Native Knowledge Network is sponsored by the Alaska Federation of Natives, University of Alaska-Fairbanks, National Science Foundation, Annenberg Rural Challenge and online at:  
<http://www.ankn.uaf.edu>

American Academy of Child and Adolescent Psychiatry website has the “Patients’ Bill of Rights” as well as concerns and pending legislation affecting child and adolescent psychiatrists; also information to help understand child disorders and problems at: <http://www.aacap.org>

American Indian Research and Policy Institute home page offers accurate information about the legal and political history of American Indian nations and the contemporary situation for nations and tribes at:  
<http://www.airpi.org>

Annie E. Casey Foundation website containing information on child well-being, e.g., publications on the foundation’s initiatives, KIDS COUNT working papers; the online newsletter is “Advocasey Online” at:  
<http://www.aecf.org>

Child Trends contains studies of children, youth, and families through research, data collection, and data analysis focusing on such issues as teen pregnancy, poverty, welfare, and child development at:  
<http://www.childtrends.org>

Child Welfare League of America is an international organization that sets the standards for child welfare at:  
<http://www.cwla.org>

*The Circle* is a monthly Native American newspaper online at: <http://TheCircleOnline.org>

Consortium for Alaska Native Higher Education (linked to ANKN above); most of the members list their web pages; the Inupiaq fonts are also available at this site: <http://www.ankn.uaf.edu/canhe.html>

Cradleboard Teaching Project founded by Buffy Sainte-Marie, Ph.D., in 1996 is a project of the Nihewan Foundation for American Indian Education; partnering for Native and mainstream classrooms; must complete an e-form to participate but there is general information at the website:  
<http://www.cradleboard.org>

ERIC: American Indians and Alaska Natives – excellent resource for ERIC Digest articles, specific to AIs/ANs; site is maintained by the U.S. Department of Education and current at: <http://www.ael.org/eric/indians.html>

Harvard University Native American Program at: <http://gseweb.harvard.edu/~nap/index.htm>

Native American Tribal websites and links at: <http://www.nativesearch.com/tribes/website.shtml>

Native Health Research Database sponsored by the University of New Mexico Health Sciences Center Library and the Indian Health Service at: <http://nhrd.unm.edu>

*Natives on the Net* by Lisa Mitten at the University of Pittsburgh at: <http://www.pitt.edu/~lmitten/indians.html>

Native Peoples magazine home page offers online information and links to numerous American Indian/Alaska Native entities at: <http://www.nativepeoples.com>

Native Web resources for indigenous cultures around the world at: <http://www.nativeweb.org>

*Off the Shelf* initiative for Tribal Libraries at: <http://www.wln.com/~connect/triblibs.html>

“Office of the Surgeon General” is the virtual office of the Surgeon General – click on the “4kids” baseball cap on Dr. David Satcher’s desk to find an array of games, directories, poems, and other fun for kids, as well as materials for parents on how to care for their children and materials for teachers on how to teach pupils about health and more: <http://www.surgeongeneral.gov>

Office of Minority Health, Washington, DC at: <http://www.omhrc.gov/new.htm>

*The Tribal Court Clearinghouse* is published online as a public service by the Tribal Law and Policy Institute at <http://www.tribal-institute.org>

Wordcraft Circle of Native Writers & Storytellers, Lee Francis (Laguna Pueblo), Ph.D., National Director, 1744 Del Cielo Drive NW, Albuquerque, NM 87105-1044. Telephone: 505.277.3917. E-mail: [wordcraft@sockets.net](mailto:wordcraft@sockets.net). Website: <http://www.teleport.com/~prentz/wordcraft.html>



# Appendix G: Additional References and Resources

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