



## Improving the Well-being of American Indian and Alaska Native Children and Families through State-Level Efforts to Improve Indian Child Welfare Act Compliance

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### Introduction

The well-being of American Indian and Alaska Native (AI/AN) children and their families is directly connected to the relationship they have with their culture, extended families, and tribal communities. Federal and state child welfare policies and practices have sometimes not well understood or supported these relationships by not recognizing the unique qualities of AI/AN culture and the benefits of nurturing these relationships. The Indian Child Welfare Act (ICWA) was a response to the destructive practices in public and private child welfare systems that broke apart these bonds in many tribal families' lives. Such practices distanced families from the protective factors inherent in tribal communities and culture that can prevent and treat child abuse and neglect concerns.

Since the passage of ICWA in 1978, there has been increasing movement to enhance state policy to support ICWA and address several of the challenges to AI/AN children's well-being. The efforts that have proven most successful have been initiated by tribal governments and AI/AN Indian organizations in collaboration with state governments. This paper will provide background on, and describe, the basic requirements of ICWA, provide an overview of tribal child welfare and court systems, discuss disproportionality and its relationship to trends in ICWA compliance, highlight promising practices in state policy and practice that support ICWA, and underscore the necessity of working with tribal advocates on state child welfare policy change.

## The Indian Child Welfare Act

Federal Indian policy, beginning in the late 19<sup>th</sup> century and continuing into the 1960s, was designed to assimilate AI/AN people through various mechanisms, including removal from their homelands and isolation from their tribal culture. These policies gave rise to the involuntary placement of AI/AN children in military-style boarding schools that emphasized mainstream values and beliefs and punished children for practicing their tribal culture and speaking their language (Crofoot, 2005; Cross, Earle, & Simmons, 2000). AI/AN children placed in these government-funded boarding schools were rarely allowed to return home to visit their families and were taught to reject their tribal identity. The use of these boarding schools affected several generations of tribal families, essentially denying them the opportunity to parent.

Another devastating initiative followed the boarding school era: the Indian Adoption Project, which established a partnership between federal and private agencies that adopted out almost 400 AI/AN children between 1958 and 1967. The adoptions took AI/AN children from 16 western states to White families in the Midwest and Eastern United States (Kreisher, 2002). These efforts were hailed as a victory for civil rights and equality by leaders of the Indian Adoption Project, but tribal leaders and other tribal advocates challenged this view and condemned the policy which led to untold suffering of these children and their tribal families. In 2001, Child Welfare League of America Executive Director Shay Bilchik made a public apology for their role in the Indian Adoption Project in which he said, “No matter how well-intentioned and how squarely in the mainstream this was at the time, it was wrong; it was hurtful; and it reflected a kind of bias that surfaces feelings of shame, as we look back with the 20/20 vision of hindsight.” (Indian Child Welfare Act Law Center, n.d.).

In the late 1960s and into the 1970s, tribal advocates began to see a pattern of biased and abusive public and private child welfare practice that was impacting tribal communities across the nation. This spawned investigations into these practices that later led to the passage of the ICWA. The Association on American Indian Affairs (AAIA) was at the forefront of these investigations that resulted in reports documenting the large numbers of AI/AN children being removed from their homes by state and private adoption agencies. AAIA submitted its findings, which estimated that approximately 25-25 percent of all AI/AN children had been removed from their homes and placed in foster care or adoptive home (H.R. Rep. No. 95-1386, 1978). In some states the removal numbers were even higher.

The overwhelming majority of these removals (approximately 85 percent of foster care and 90 percent of adoptions) resulted in AI/AN children being placed in non-Indian homes, often far from their extended family and tribal communities (H.R. Rep. No. 95-1386, 1978). The reasons for these removals were often not related to the threat of abuse or neglect, but rather to a lack of understanding of tribal child-rearing and cultural practices, as well as bias of those involved in making key decisions in the child welfare process. The AI/AN children’s tribes were typically not notified or allowed to participate in most of these cases, leaving these children and families at the mercy of public and private child welfare systems that were most often not informed or supportive of tribal culture. The crisis was so severe that the future existence of many tribal communities was threatened.

Congress responded to the crisis by enacting ICWA in 1978, which established federal requirements for states and private agencies regarding the handling of child welfare matters involving AI/AN children and families. In addition, ICWA clarified the role of tribal governments in state and private child welfare matters, including the authority of tribes to intervene in state court proceedings and operate their own community-based child

welfare programs. ICWA's protections for AI/AN children and families are based upon their political status as citizens of a tribal government and not a racial classification (Native American Rights Fund, 2011).

## Key Indian Child Welfare Act Requirements

**Sections 1903(1) and (4):** ICWA applies to "Indian children" (a term as used and defined by ICWA that refers to AI/AN children) who are members of a federally recognized tribe or are eligible for membership and have a birth parent who is a member of a federally recognized tribe when the child is involved in a child custody proceeding.

**Section 1911(a):** Clarifies that tribes have jurisdiction over child welfare matters on their tribal lands and that a tribe or parent of an Indian child may petition a state court to transfer jurisdiction of the proceedings to a tribal court.

**Section 1911(c):** Clarifies that an Indian child's tribe or Indian custodian has the right to intervene in state court proceedings regarding the foster care or adoptive placement of an Indian child or termination of parental rights of an Indian child's birth parents (dependency-based guardianships are also included).

**Section 1912(a):** Requires notice to the Indian child's tribe and birth parents or Indian custodian of foster care placement or termination of parental rights proceedings.

**Section 1911(d):** Requires states and federal entities give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe related to child custody proceedings as defined by ICWA.

**Section 1912(c):** Allows a tribe to access all reports or other documents filed with a state court regarding an Indian child that is involved in a state child custody proceeding.

**Section 1912(d):** Requires active efforts to prevent removal and rehabilitate parents so they can be reunified with their children after a removal. The state court must determine that active efforts have been provided and have proven unsuccessful before a foster care placement or termination of parental rights is ordered. Active efforts are considered a higher standard than reasonable efforts.

**Sections 1912(e) and (f):** Contains evidentiary standards to place an Indian child in foster care or terminate parental rights (clear and convincing, and beyond a reasonable doubt, respectively).

**Sections 1912(e) and (f):** Requires a qualified expert witness to testify in proceedings to order a foster care placement for an Indian child or terminate parental rights of an Indian child's parents.

**Section 1913:** Sets out requirements regarding parental consents for voluntary placements and termination of parental rights that include consent be recorded before a court of competent jurisdiction (foster care or adoption).

**Section 1914:** Allows federal court review of state actions that violate certain requirements of ICWA and invalidate those actions if they are proven to be out of compliance with ICWA.

**Section 1915:** Provides placement preferences for foster care and adoptive placements of Indian children (applies to involuntary and voluntary placements).

**Section 1931(b):** Recognizes tribal foster care licensing standards as equivalent to state licensing standards for the purposes of approving placement and meeting other federal requirements.

**Section 1917:** Allows Indian adult adoptees to petition the court where their adoption was finalized to access information to establish their tribal affiliation and protect any rights flowing from their tribal relationship.

**Section 1919:** Authorizes tribes and states to enter into agreements for the care and custody of Indian children. These intergovernmental agreements often address child welfare procedures, access to state and federal funding, and principles of collaboration between these governments.

While implementation has been uneven in many areas, the results of ICWA's requirements have been to:

- 1) Encourage more intensive examination of the efforts to prevent removals of AI/AN children and rehabilitate their parents,
- 2) Improve the identification of tribal and relative families who can serve as placement resources for AI/AN children,
- 3) Increase access to culturally appropriate services,
- 4) Clarify roles between states and tribes in child welfare matters,
- 5) Increase sharing of funding and other resources between states and tribes, and
- 6) Stimulate the development of state policy to improve the effectiveness of services and supports for AI/AN children and families.

Many of ICWA's requirements are considered to be the "gold standard" in child welfare practice and they mirror similar requirements in other federal child welfare laws (*Adoptive Couple v. Baby Girl*). These other federal laws, which are authorized under Titles IV-B and IV-E of the Social Security Act, encourage relative placements, early intervention, collaborative approaches, cross-jurisdictional cooperation, and placing children within the least restrictive settings that are in close proximity to their communities and families.

## Tribal Child Welfare and Court Systems

Historically, tribes exercised sovereignty in full, including addressing threats to children's safety and well-being. Natural helping systems utilizing extended family and clan members, and traditions for regulating civil matters such as child custody, acted to protect AI/AN children and help support families (Cross, Earle, & Simmons, 2000). Tribal elders acted as judges. Traditional chiefs governed as the protectors of family well-being. Tribal clan and kinship systems functioned as social service providers. Tribes had no words in their languages for "orphans" because children in need were the responsibility of everyone in the tribe (Cross, 1995). As Europeans migrated to North America and established new governmental structures, laws, and practices, the capacities and resources that allowed full exercise of tribal sovereignty and related governmental functions were diminished by forced dependence and destruction of traditional governmental structures. However, tribal sovereign authority and the responsibility for the protection of tribal children did not diminish as tribes began to adapt to the changing world around them.

Tribal nation sovereignty—the right to self-govern—is recognized in the U.S. Constitution, treaties between the United States and tribal nations, federal law, U.S. Supreme Court decisions, and presidential executive orders (National Congress of American Indians, n.d.). The United States also has a federal trust relationship with tribal governments. This trust relationship evolved from treaties signed between the United States and tribal nations that includes a responsibility for the U.S. government to protect tribal sovereignty and the rights to land, resources, assets, and treaty rights.

The trust responsibility obligates the federal government to provide resources for tribal governments to support the health and well-being of their tribal members, which includes development and operation of basic governmental services like child welfare. In return for these federal resources and other guarantees, tribal nations ceded millions of acres of land that now constitute what we know as the United States. While the amount of federal resources and funding currently available for tribal governments to exercise their sovereignty in child welfare are insufficient, tribal governments continue to use their sovereignty to help protect and support their children and families throughout the United States wherever they may live.

Today, there are 566 federally recognized tribes (also referred to as Indian nations, bands, pueblos, Native villages, and communities) in the United States that have tribal lands in 34 states (U.S. Department of Interior, 2014). Some states like California and Alaska have over 100 tribes within their borders, while others like Connecticut or South Carolina may only have one or two. Regardless of the number of tribes in each state, all 50 states have AI/AN people living within their boundaries.

All tribal governments offer some level of child welfare services and many also operate tribal court systems. The continuum of services varies greatly between tribes, with some offering a full array of child welfare services that are on par with, or exceed, what many state jurisdictions provide, while others may only perform case monitoring functions on cases that are in state court. As an example, many different entities can be involved in the investigation of child abuse or neglect involving AI/AN children either alone or in combination with other entities. Tribes are involved in 65 percent of investigations, states 42 percent, counties 21 percent, Bureau of Indian Affairs 19 percent, and a consortium of area tribes 9 percent (Earle, 2000). Tribes alone without the assistance of any other entities are involved in only 23 percent of child abuse investigations (Earle, 2000). The U.S. Federal Bureau of Investigation may also be involved in criminal child abuse and neglect investigations that involve AI/AN children on tribal lands.

Even when tribes are not able to provide services like child protection, in-home services, or parenting classes, many tribes participate with states in co-case managing state child welfare cases that involve AI/AN children and families. This can include helping state child welfare agencies identify culturally appropriate services, participating in case reviews and court hearings, locating qualified expert witnesses as required under ICWA, identifying potential placement families, accessing tribal resources and benefits for children and families, and guiding transition planning for children going back home or being moved to another permanent home. Such services and consultation are often critical to ensuring compliance with ICWA and creating opportunities to achieve better outcomes for AI/AN children and their families.

Funding is the primary determinant of how broad an array of child welfare services a tribe may provide. As an example, of the almost \$13.5 billion in federal child welfare funding distributed to states, territories of the United States, and tribes each year, tribal governments receive approximately 1 percent even though their needs and population numbers would indicate larger allocations (American Humane Association, n.d.; Cooper, DeVooght, Fletcher, and Vaughn, 2012; U.S. Department of Interior, 2012). Currently, AI/AN people comprise 1.7 percent of the U.S. population (U.S. Census Bureau, 2011) and have high rates of several key risk factors for child abuse and neglect that are well above the national average (poverty, number of single parent families, and substance abuse). In addition, economic conditions in most tribal communities do not allow for the development of a sustainable or sufficient tax base to support basic government services and infrastructure.

Unemployment and poverty rates in most tribal communities are well above the national average. Austin's analysis of Ruggles, et al.'s 2013 look at American Community Survey data (as cited in Austin, 2013) indicates unemployment rates nationally for AI/AN adults are 14.6 percent, compared to the White unemployment rate of 7.7 percent, and only 49–50 percent of AI/AN adults 16 and older living on or near tribal lands are in the workforce (U.S. Department of Interior, 2013). Poverty rates for the AI/AN populations are 27.8 percent, almost twice the national average of 14.9 percent, and are even higher on many Indian reservations (U.S. Census Bureau, 2012). These conditions contribute to an overall lack of resources to support basic child welfare services for many tribal communities.

Tribes have always had mechanisms for handling disputes and domestic issues that arise within their communities. Historically, these mechanisms have been informal, unwritten, and based upon holistic values and way of life (Melton, 1995). Today, with the exception of a few tribes that still exclusively operate their tribal justice systems traditionally, most tribal courts utilize written procedures and codes and operate their court system in a manner that resembles their state and federal counterparts (Jones, 2000). However, even courts that use less traditional methods of tribal court operation still incorporate their culture and traditional practices. Of the almost 300 tribes that operate a court system today, all of them have codes and/or procedures that are culturally based and unique to their way of life (Tribal Law and Policy Institute, n.d.).

Tribal courts may have many different forms. Some, like a few of the pueblo tribes in New Mexico, operate exclusively in the traditional manner as they always have. Others may use their tribal council or another body appointed by tribal leadership to adjudicate child welfare matters (Vincenti, 1995). The most common model is a hybrid model that uses elements of the American court system while incorporating tribal customs and traditions. Some examples include alternative dispute forums, like the Peacemaker courts operated by the Navajo Nation, or culturally defined customary adoption that helps children find a permanent home without terminating parental rights while maintaining connections with tribal and extended family relationships (Zion, 1998).

While there is some variance in how tribal courts may be structured, they generally perform many of the same functions that non-tribal courts do. They have hearings for emergency removals, substantiation of abuse or neglect allegations, permanency hearings, and finalize guardianships and adoptions. Several have guardian ad litem or court appointed special advocates programs as well as other judicial positions that you will find in state juvenile court systems.

Tribal court jurisdiction operates within a complex set of laws and court decisions. While many tribes in the lower 48 states have exclusive jurisdiction over child welfare proceedings on their lands, there are areas where states may play a role in investigating, managing cases, and adjudicating child welfare proceedings involving AI/AN children and families living on tribal lands. One such law that changed previous jurisdictional schemes in some parts of Indian Country was Public Law 280 (PL 280). (18 U.S.C. § 1162(2012), 28 U.S.C. § 1360 (2012), 25 U.S.C. §§ 1321-1326 ).

The practical effect of the law was to limit tribal exclusive jurisdiction over civil causes of action, including those common to child welfare proceedings, by recognizing state concurrent jurisdiction, but stopping short of replacing tribal exclusive jurisdiction on tribal lands. The negative effect of PL 280 has been the slow down of tribal child welfare program and court system development, as policymakers assume that states and counties are adequately addressing child welfare concerns (Jones, Tilden, & Gaines-Stoner, 2008). It has also subjected large numbers of AI/AN families to state or county child welfare systems that have often not well understood tribal child-rearing or tribal culture, and use interventions that are not well suited to helping AI/AN families rehabilitate successfully.

## Disproportionality and Critical Issues in Indian Child Welfare Act Compliance

While the federal protections of ICWA have provided benefits for thousands of AI/AN children and families in public and private child welfare systems, there continue to be significant challenges in fully implementing

the law. Even with ICWA requirements such as active efforts designed to reduce the flow of AI/AN children into foster care, AI/AN children continue to be over-represented in state foster care systems (Summers, Woods, & Donovan, 2013).

To understand why disproportionate placement of AI/AN children occurs, it is important to understand how decision making in child welfare impacts placement rates. Reports of abuse or neglect involving AI/AN children are consistent or proportionate with their population numbers. As one moves further into the child welfare system decision-making process, disproportionality increases for AI/AN children and families (Annie E. Casey Foundation, 2007).

Rates at which reports of abuse or neglect involving AI/AN children are investigated, substantiated, and removed from their families and placed in foster care are well beyond their population numbers. One study that looked at systemic bias in the child welfare system found AI/AN families were two times more likely to be investigated, two times more likely have reported abuse and neglect substantiated, and four times more likely to have their children removed and placed in foster care than their White counterparts (Annie E. Casey Foundation, 2007). This systemic bias is a primary factor in understanding why AI/AN children are disproportionately represented in many state foster care systems.

Congress enacted ICWA because of the disproportionate placement of AI/AN children in public and private child welfare systems. The law was designed to provide protections against systemic bias and reduce the flow of AI/AN children into these systems. This is accomplished through a number of federal requirements that seek to prevent removal whenever possible, ensure that AI/AN families receive culturally appropriate services and parents have opportunities to be rehabilitated, and ensure that tribes are available as resources throughout the child welfare process and nurture and support child and family connections to their culture, extended family, and tribe. Unfortunately, the implementation of the law is uneven in many jurisdictions. Regular oversight that could prevent noncompliance and inform efforts to correct poor performance is not available at the federal level.

The most critical issues of noncompliance involve (1) lack of regular oversight of ICWA implementation, (2) AI/AN children not being identified early in child welfare proceedings, (3) tribes not receiving early and proper notification of child welfare proceedings involving their member children and families, (4) lack of placement homes that reflect the preferences defined within ICWA, (5) limited training and support for state and private agency staff to develop knowledge and skills in implementing ICWA, and (6) inadequate resources for tribal child welfare agencies to participate and support their state and private agency counterparts.

ICWA is the only major federal child welfare law that does not have oversight assigned to a specific federal agency and a regular evaluation of implementation, either process or outcome related. Reports of noncompliance go uninvestigated by any federal agency, no implementation data is regularly collected and analyzed, and performance improvement plans are not required for agencies that are out of compliance even when the noncompliance is documented. ICWA compliance is most often a case-by-case procedure dependent upon the actions and goodwill of legal parties involved, with the greatest penalty available being invalidation of specific ICWA proceedings. This case-by-case approach does not effectively support system reform and relies on anecdotal information that is not generalizable or helpful in understanding larger trends in compliance. A few states have developed their own ICWA compliance systems, which have helped

promote improved compliance and services to AI/AN children, but they are limited in their ability to inform federal policymakers of national trends and help them develop federal responses.

While federal child welfare data requirements mandate the collection of racial classification for children and families that state agencies serve, the data is self-identified and does not track by political classification or tribal membership. For ICWA protections to apply, a child must either be a member of a federally recognized tribe or be eligible for membership and have a parent that is a tribal member. This is a political classification and only the child's tribe can make this determination regarding membership status or citizenship. In many cases, state and private agency workers do not ask about tribal membership status or are not proficient in knowing how to secure tribal information so that a child's tribe can be properly noticed and have an opportunity to assess the child's membership status.

Notice of child welfare proceedings and placement to the child's tribe is a critical element of ensuring ICWA compliance. Under ICWA, tribes have the authority to participate in child welfare proceedings involving their member children and families. Their role in these proceedings is important in helping state and private agencies identify resources and culturally appropriate services for the family, as well as educating agency and court personnel of the requirements of ICWA. Early notice that contains complete and accurate information to help tribes establish membership and participate in a meaningful fashion in the child welfare process is critical. As evidence of the importance of tribal involvement in state child welfare proceedings involving AI/AN children and families, a 2005 Government Accountability Office (GAO) study regarding the implementation of ICWA found that states depended upon tribes to help them successfully implement ICWA (GAO, 2005). When tribes are not notified or are notified late in proceedings, or when the information provided is incomplete, the result is often a higher risk for delays and changes to placements that could have been avoided with early and proper notice.

While it is acknowledged that there is a general lack of sufficient numbers of placement homes for all children in the child welfare system, the number of placement homes for AI/AN children that are compliant with the placement preferences of ICWA is equally low, if not lower, than those for other populations. ICWA requires that AI/AN children placed in foster care, guardianship, or adoption are placed according to the placement preferences. The foster care and guardianship preferences are (1) an extended family member of the child, (2) a tribally licensed or approved foster home of the child's tribe, (3) an AI/AN foster home licensed or approved by a non-Indian licensing authority (e.g., a state agency), and (4) an institution for children approved by a tribe or operated by an Indian organization. The adoption placement preferences are (1) an extended family member of the child, (2) a member of the child's tribe, and (3) another AI/AN family. States depend heavily upon tribes to identify and recruit AI/AN families in individual cases, but more proactive and culturally based recruitment needs to occur if the numbers of AI/AN placement families are going to increase overall. Furthermore, the process for licensing AI/AN foster homes can often be intimidating and offers limited support for families that are willing to consider becoming a licensed placement provider.

In today's child welfare system, the complexity of the work and competing demands can be difficult to manage. Skills-based training and user-friendly tools are the resources that public and private agency staff need to feel competent in their work with the diverse pool of children and families they will come into contact with. Working successfully with AI/AN children and families requires these same type of resources in addition to skills such as how to successfully engage tribes and knowledge of the unique legal and services frameworks that apply to AI/AN children.



However, many public and private agency professionals and judicial personnel do not have access to comprehensive trainings on the legal requirements of ICWA or the practice skills used to implement the requirements. Often the trainings that are available to public and private agency staff are provided by tribal or urban Indian organization child welfare staff who are carrying active caseloads. Many times these trainings are optional so staff may not participate. Judicial staff also need access to ICWA training and resource materials. Juvenile court judges may be very familiar with state laws, but not as comfortable with federal law like ICWA. Opportunities for state court judges to learn more about tribal-state court improvement projects can assist them in their efforts to make the courtroom more responsive to ICWA requirements and the unique needs of AI/AN children and families.

Like other child welfare work, it takes strong partnerships to ensure that AI/AN children and families receive the protections provided by the law and support to ensure good outcomes. The functioning of tribal and state relationships is a primary determinant of how well ICWA is implemented in any given jurisdiction. Where tribal-state relations are positive and functioning well, tribes are viewed as possessing important resources needed to achieve ICWA compliance and positive outcomes for AI/AN children and families. The 2005 GAO ICWA study found that decisions that influence the placement of AI/AN children can be influenced by the level of cooperation between tribes and states (GAO, 2005). States depend upon tribes to help them effectively implement ICWA. Yet, the level of resources that tribes have to participate in these partnerships affects their ability to be resources to states as well as tribal member children and families. The GAO study found that lack of resources was the primary reason that tribes were not able to assist states with ICWA cases (GAO, 2005).

## Promising Practices in ICWA Implementation

ICWA has been a catalyst for many very positive and successful new policies and practices in child welfare with AI/AN children and families. These promising practices can be found in a number of states and local county jurisdictions, and are the product of partnerships between tribes, states, and counties, typically at the initiation of tribal governments. The examples described below include state law, intergovernmental agreements, tribal-state forums, consultation policies, court procedures, and state agency policies or guidance. In some cases, the examples are unique to their jurisdiction, while others have been replicated in several states. This is not an exhaustive list and readers should inquire as to whether there are similar resource materials in the states they practice in.

### State Law and Policy

- State law defining government-to-government relationship with tribes and consultation process: Oregon Revised Statutes § 182.164 and 182.166
- Government-to-government agreement between a state and tribes establishing the principles and roles for implementing ICWA at the state level: [Washington tribal-state exclusive and concurrent jurisdiction agreements, along with local area agreements](#)
- State law requiring state courts that are holding a child welfare hearing inquire as whether the child that is the subject of the hearing is an Indian child under the definition of ICWA. If the court knows or has reason to believe that the child is an Indian child, they will proceed according to ICWA's requirements

until such time the court knows that the child is *not* an Indian child under ICWA: Oregon Revised Statutes 419B.419B.878)

- State law definition of what information should be in a tribal notice of child welfare proceedings: Iowa Code §§ 232B.5(7)
- State law requiring the district attorney or individuals facilitating voluntary placements of AI/AN children to notify the child's tribe and birth parents or Indian custodians of voluntary proceedings: Oklahoma Statute § 40.4
- State law recognizing culturally based permanent placement options of tribes, such as tribal customary adoption: [California courts website description of the legislation and related materials](#)
- Bench handbook for state courts providing a substantive and procedural overview of ICWA: [California Bench Handbook: The Indian Child Welfare Act \(revised 2013\)](#)
- Guidelines for state agencies, courts, private service providers, and tribes on what constitutes active efforts under ICWA: [Oregon Active Efforts, Principles and Expectations](#)
- State guidance on what constitutes a qualified expert witness under ICWA: [Qualified Expert Witness: Wisconsin Indian Child Welfare Act Implementing Guidelines 2013](#)

### **State Practices and Improvements**

- State-tribal reconciliation process to improve intergovernmental relationships and promote development of effective policy: [Maine Wabanaki-State Truth and Reconciliation Commission](#)
- State guide to ICWA by New York Office of Children and Family Services: [“A Guide to Compliance with the Indian Child Welfare Act”](#)
- [State local and regional community advisory bodies](#) that assist state child welfare agency staff who are working on ICWA cases; they help staff case plans, and identify services and other resources
- [ICWA checklist for state court judges](#) by National Council of Juvenile and Family Court Judges
- Mandatory training of state social workers on ICWA done jointly with tribal social workers: Washington State Social Work Academy Solution-Based ICWA Training and Curriculum
- State-tribal Indian child welfare forums where representatives of each group meet regularly to discuss child welfare policy and practice issues. These forums can provide a framework for tribal-state consultation required under federal law, such as the Title IV-B consultation requirement regarding ICWA implementation (several states have established these forums including Oregon, Montana, Utah, Oklahoma, Washington, and North Dakota)

- State-tribal court improvement forums where representatives of each court system meet regularly to discuss legal, inter-jurisdictional cooperation, and court procedural issues (several states have established these forums, including California, Michigan, Wisconsin, New York, and New Mexico)
- Pass through of federal or state social services funding to tribes, typically through contract or intergovernmental agreement. Examples include: state general revenue, Title IV-E Foster Care and Adoption Assistance, Social Services Block Grant, Community Mental Health Services Block Grant, and Medicaid (several state pass through funds from one or more of these funding sources, including Arizona, Oregon, Washington, Idaho, Alaska, and Minnesota)
- State evaluation of ICWA implementation performed in partnership with tribes. Data is continuously collected and analyzed to identify trends and areas for improvement: [2009 Washington State Indian Child Welfare Case Review example](#)
- State performance-based contracting requirements for use with private providers that require ICWA compliance, service provision in a culturally competent manner, and training of staff on these skill areas: Washington Department of Social and Health Services state performance-based contracting

#### **Additional Resources**

- [National Indian Child Welfare Association Online ICWA Training](#) for use with state, private, and tribal child welfare agency staff
- [ICWA checklist for state court judges](#) from the National Council of Juvenile and Family Court Judges
- ICWA guide from Native American Rights Fund, [“A Practical Guide to the Indian Child Welfare Act”](#)
- [State court ICWA monitoring tool \(QUICWA\)](#)
- [Listing of state Indian child welfare laws and policy](#) by the National Conference for State Legislatures
- [Reconciliation in child welfare resources and initiative](#) developed in partnership with First Nations Child and Family Caring Society, National Indian Child Welfare Association, Child Welfare League of America, and First Nations Repatriation Institute

## Working with Tribal Representatives as Partners in Change

The history of failed federal policy towards AI/AN people and tribes depended upon government support for the philosophy and implementation of colonization rather than self-determination and intergovernmental cooperation. The results were ruinous for tribal communities with the vestiges of those policies still with us today several generations later. Disproportionality and disparate treatment of AI/AN children and families in the child welfare system can only continue when we allow it to continue. Tribal-state partnerships are breaking down the barriers to a more equitable and effective child welfare system for AI/AN children and families. States are increasingly seeing the resources that tribes can provide in this effort and pursuing intergovernmental cooperation at new levels. State leaders who are willing to take the time to listen to their tribal counterparts, and increase their understanding of the needs of tribal communities and the appropriate methods for addressing these needs, will find new opportunities that can benefit both state and tribal governments, as well as the children and families involved in the child welfare system. At a recent state, county, and tribal coordination meeting in Portland, Oregon, two American Indian former foster youth summed up why we need to continue our efforts to partner. “Being in foster care is hard. We talk about foster care as a system, but it has real people in it like us. Don’t give up. It is important what you are doing for us.” (McConnell and McConnell, 2014).



*The First Focus State Policy Advocacy and Reform Center (SPARC), an initiative funded by the Annie E. Casey Foundation, Jim Casey Youth Opportunities Initiative, and Walter S. Johnson Foundations, aims to improve outcomes for children and families involved with the child welfare system by building the capacity of and connections between state child welfare advocates. You can visit us online at [www.childwelfaresparc.org](http://www.childwelfaresparc.org) or on Twitter at [@ChildWelfareHub](https://twitter.com/ChildWelfareHub).*

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