

TESTIMONY OF THE NATIONAL INDIAN CHILD WELFARE ASSOCIATION, BEFORE THE OREGON HOUSE JUDICIARY COMMITTEE, ON HB 4148 OREGON INDIAN CHILD WELFARE ACT WITH -2 AMENDMENT

February 10, 2020

The National Indian Child Welfare Association is a nonprofit American Indian and Alaska Native organization with an all-Native board of directors. We are dedicated to the well-being of American Indian and Alaska Native children and families and we carry out our work through public policy development, research, professional workforce training, and community development. We are a national organization, but we were founded in Oregon in 1987 and continue to play an active role in assisting tribes and the state in improving services and outcomes for American Indian and Alaska Native children. Our focus is primarily child welfare, but we also work in children's mental health, juvenile justice, and other related social services. Our testimony will focus on the history of federal and state policy impacting American Indian and Alaska Native children leading to the passage of the Indian Child Welfare Act, Oregon's role in the passage of this federal law, the basis for this law and continued need, and support for the law and best practices in states.

Federal policy over the last two hundred years plus was primarily focused on assimilating Native children and families through policies that disrupted family integrity and disconnected Native children and families from their culture and support systems. In 1819, the United States government established the Civilization Fund, the first federal policy to directly affect Indian children. It provided grants to private agencies, primarily churches, to establish programs to "civilize the Indian." In a report to Congress in 1867, the commissioner of Indian Services declared that the only successful way to deal with the "Indian problem" was to separate Indian children completely from their tribes and families. In support of this policy, both the government and private institutions developed large mission boarding schools for Indian children that were characterized by military-type discipline and forbade the children from speaking their language, practicing their religion, or engaging in their culture. Many of these institutions housed more than a thousand students ranging in age from 3–13. Approximately half of the Native children that were placed in these boarding schools died from disease, abuse, or extreme isolation.

Federal assimilation policy continued into the 1950s with the continued operation of the boarding schools and forced removal of Native children from their families. The passage of Public Law 280 in 1953 represented the culmination of almost a century-old federal policy of assimilation. It discontinued the federal recognition of tribal governments and tribal authority. Its ultimate goal was to terminate the very existence of all Indian tribes and relocate Native families to urban areas far from their extended family, culture, and support systems. These policies continued well into the 1960s.

Throughout the 1950s, 60s, and 70s, the adoption of Indian children into non-Indian homes, primarily within the private sector, was widespread. In 1959, the Child Welfare League of America, the standard-setting body for child welfare agencies, in cooperation with the Bureau of Indian Affairs, initiated the Indian Adoption Project. In the first year of this project, 395 Indian children were placed for adoption with non-Indian families in Eastern metropolitan areas. In 2001, the Child Welfare League of America publicly apologized for their role in the Indian Adoption Project.

Greater awareness of the destructiveness of these federal policies began to increase across Indian Country, culminating in a 1976 study by the Association on American Indian Affairs that found 25–35% of all Indian children were being placed in out-of-home care by state child welfare systems and private agencies. Eighty-five percent of those children were being placed in non-Indian homes or institutions. In a response to the overwhelming evidence from Indian communities that the loss of their children meant the destruction of Native culture, Congress passed the Indian Child Welfare Act of 1978. Oregon tribes and political leaders were involved in the passage of the Indian Child Welfare Act. Oregon Senator Mark Hatfield was a strong supporter of the legislation and worked with tribal governments in Oregon to increase support for the legislation in the Congress.

The Indian Child Welfare Act has three main purposes. First, it provides requirements for state and private agencies to ensure Native children and families in state child welfare systems are treated fairly and their tribal governments are involved. Second, it recognizes the inherent authority of tribes to be involved in matters impacting the well-being of their tribal citizens. Third, it provides small grants to tribes to build their own child welfare systems. The Indian Child Welfare Act's protections are not based upon a racial classification of Native people, but rather on their political status as citizens of a tribal nation. This political status is part of the foundation for the unique government-to-government relationship between the federal government and tribal governments, but also informs and supports the government-to-government relationship that exist between tribal and state governments. The State of Oregon has long recognized the inherent sovereignty of tribal governments and the importance of establishing a government-to-government relationship with tribes and supportive state policy to compliment that relationship.

Today the need for the Indian Child Welfare Act is as important as ever. While out-of-home placements of Native children have decreased significantly since the act's passage, Native children are still disproportionately placed in out-of-home care nationally and in over 14 state foster care systems. This includes Oregon's foster care system, in which Native children are disproportionately placed in state foster care at a rate three times their rate in the overall Oregon child population. The Indian Child Welfare Act provides important guidance on how to improve outcomes for Native children and families by focusing on the role of extended family in the services and placement process, promoting early and effective engagement with the child's tribe, and moving past minimum efforts to prevent removal and heal families and instead working to promote more creative and active efforts in rehabilitating families. These are cornerstones of good practice in child welfare for all children and families, and 31 regional and national child and family advocacy and standard setting organizations have called the Indian Child Welfare Act the "gold standard" of child welfare practice. HB 4148 seeks to ensure the Indian Child Welfare Act's best practices for Native children and families are also ensured in Oregon state law.

Tribes and states working together on these issues is critical to success. The solutions need to emphasize collaborative and equitable partnerships that establish state—not just federal—policy development. State ICWA laws raise the level of awareness of ICWA within the state judiciary and child-serving agencies, both public and private. They also provide details of how best to implement the federal law within a particular state that may not be available in federal statute or guidance. Most federal child welfare laws recognized this and require states to codify federal child welfare requirements in state law. Having a state Indian Child Welfare Act also helps create more buy-in from implementing agencies and their partners. The Oregon Department of Human Services partners and contracts with a large number of private agencies across the state, and these agencies are more likely to understand and support the Indian Child Welfare Act's requirements if they are embedded in state law. Finally, a state Indian Child Welfare Act can provide more clarity on how other state child welfare laws and policies and the Indian Child Welfare Act integrate.

The National Indian Child Welfare Association has been involved in helping numerous tribes and states improve services and outcomes for Native children and families. The process used to develop HB 4148 engaged primary stakeholders in a meaningful process to develop one of the best state Indian Child Welfare Act bills we have worked on. We heartily support HB 4148 and hope that the Oregon Legislature will recognize this opportunity and enact the Oregon Indian Child Welfare Act into law.