

INFORMATION PACKET:

The Indian Child Welfare Act

Revised 8/23/02

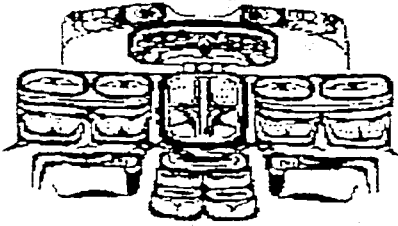


The following information packet contains several articles on the above topic. If you wish to receive training credit for reading this packet, please fill out the "Information Packet Questionnaire" at the back of this packet. Return the questionnaire to the Alaska Center for Resource Families for 1.0 hour of training credit. The articles are yours to keep for further reference.

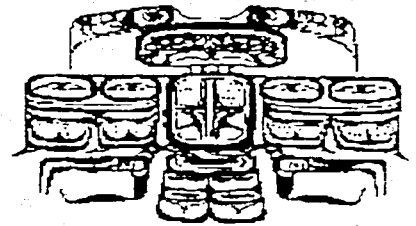
For more information about this topic or other topics related to foster care, please contact:

Alaska Center for Resource Families
815 Second Ave Suite 101
Fairbanks, AK 99701
1-800-478-7307
479-7307 (Fairbanks/North Pole)

The Alaska Center for Resource Families, a project of Northwest Resource Associates, is under contract with the State of Alaska Office of Children's Services to provide training and information to foster parents statewide.



Foster Parent Information



What is the Indian Child Welfare Act (ICWA) and What is the Role of the Tribe?

History:

- The ICWA was established in 1978 based on some of these facts:
 - A high percentage of Indian children removed from their homes were placed in non-Indian homes (up to 90%)
 - Tribes were losing their future generations
 - Children were losing their identity and culture
- Congress recognized that there is no resource more vital to the continued existence and integrity of Indian Tribes than their children.
- U.S. as a trustee has responsibility in protecting Indian Children.

Policy of ICWA (25 U.S.C. 1902):

- Congress declares it 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 services program.

Role of the Tribe in Child In Need of Aid (CINA) cases:

- The tribe has a right to intervene in any case where the child is either a member or is eligible for membership in an Indian tribe. When the tribe intervenes, they become a party to the case so they can have access to all the records, call court hearings and be involved in the decision making process for the child. It is the State's responsibility to notify the tribe if the child is either Native American or Alaska Native and has an open DFYS case. The tribe is a great resource to locate relatives for potential placements.

Cultural Continuity:

- It is important that foster parents encourage the children in their care to have a connection with their culture and heritage. This can be done by communicating with the tribal worker and getting information on their culture, family, values, and traditional. Take the children to cultural events and encourage appropriate relative contact. Even if a child has not lived in their village or is not familiar with their culture, it's important that they have the opportunity to learn about who they are and where their ancestors come from.

Placement Preferences:

- When Native American or Alaska Native children are removed from their home, the ICWA requires the state to follow a placement preference order for both foster and adoptive homes.
- Foster care placement preferences:
 - 1.) A member of the child's extended family
 - 2.) A foster home licensed, approved or specified by the Indian child's tribe (this must be in writing from the tribe)
 - 3.) An Indian foster home licensed or approved by an authorized non-Indian licensing authority (DFYS)
 - 4.) 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
- Adoptive Placement Preferences:
 - 1.) A member of the child's extended family
 - 2.) Other members of the Indian child's tribe
 - 3.) Other Indian families
- Placement preferences can be changed only if the tribe signs a resolution with a different preference.

THE INDIAN CHILD WELFARE ACT

The Indian Child Welfare Act, 25 U.S.C. §1901 et. seq., recognizes that there is a government to government relationship between the United States and Tribes. This law, passed in 1978, affirms that special political relationship, and is not based on race or ethnic factors.

Responding to reports that 25-35% of Indian children nationwide (as high as 50-75% in some states) had been removed from their families and placed at a rate of nearly 90% in non-Indian homes, Congress found that "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children..." Congress also determined that states "...often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. Congress declared that

It is the policy of this nation to protect the best interest of Indian children and to promote the stability and security of Indian Tribes and families by the establishments 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.

PURPOSE OF THE INDIAN CHILD WELFARE ACT

- ICWA regulates States regarding the handling of child abuse and neglect and adoption cases involving Native children - State courts, State Child Protection agencies, and adoption agencies;
- ICWA sets minimum standards for the handling of these cases;
- ICWA authorizes Tribal Courts to adjudicate child abuse and neglect and adoption cases involving Tribal members.

PARTIES IN AN ICWA CASE

- Native child
- Native tribe
- Parent/s or Indian custodian
- State

MAJOR PROVISIONS OF ICWA

A. Identification of ICWA cases

ICWA applies to cases in State courts only (not Tribal courts) in specific situations: (1) child custody proceedings - foster care placement, termination of parental rights, pre-adoptive and adoptive placements (2) involving an Indian child - any person under the age of 18 who is a member of an Indian tribe or the biological child of a member of an Indian tribe and eligible for membership in an Indian tribe. (ONLY A TRIBE CAN DECIDE MEMBERSHIP - "membership" is not the same as "enrollment".)

B. Jurisdiction

Where a Native child resides or is domiciled on his/her reservation or is the ward of the tribal court, only the Tribal court may properly exercise jurisdiction. For all other children, the State court may exercise jurisdiction, but the State court is required to transfer the case to the Tribal court if the Tribe or parents requests transfer except when there is "good cause" not to transfer.

C. Placement

No placement (away from the biological parents, adoptive parents, or Indian custodian) can be made without (1) active efforts to preserve the family through remedial and rehabilitative services designed to "prevent the breakup of the Indian family"; and (2) clear and convincing evidence that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. A "qualified expert witness" is required to establish the "clear and convincing" standard.

Foster Placement Preferences (when the above standards have been met):

1. With a member of the child's extended family;
2. In a foster home licensed, approved or specified by the child's Tribe;
3. In an Indian foster home licensed or approved by an authorized non-Indian licensing authority (such as the state or a private licensing agency);
4. In 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.

Adoptive Preference Placements (when parental rights have been terminated or relinquished)

1. With a member of the child's extended family;
2. With other members of the child's Tribe; or
3. With another Indian family.

***A Tribe may change the order of preference placements by resolution.

D. Criteria for Termination of Parental Rights

In proceedings to terminate parental rights to an Indian child, there must be: (1) evidence "beyond a reasonable doubt" that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical harm to the child; (2) a qualified expert witness.

Where a parent or Indian custodian voluntarily consents to termination of parental rights, the consent must be signed before a judge and the judge must certify that the consequences of the consent were fully understood by the parent or Indian custodian.

E. CONSEQUENCES FOR FAILING TO FOLLOW ICWA: *If any of the requirements are not met, the violations of ICWA may be grounds for a tribe, parent, Indian custodian or a child to ask the court to vacate court orders and require new proceedings.*

NATIVE CHILD'S RIGHTS

- To Tribal identity and entitlements;
- NOT to have family broken up;
- To be placed with a Native family;
- To have information regarding the child's Tribal identity protected and preserved.

TRIBE'S RIGHTS

- To receive notice of a child custody proceeding involving an "Indian child" as defined by ICWA;
- To intervene at anytime until the case is dismissed;
- To request transfer of jurisdiction to Tribal court from State court;
- To get records;
- To establish child welfare programs;
- To petition the Secretary of Interior for resumption of jurisdiction.

(Federal and state courts must give full faith and credit to any child custody proceeding in Tribal court.)

NOTE: An important U.S. Supreme Court case in support of ICWA, In Re Holloway, determined that it is necessary to protect the tribal interest in the child which is distinct from, but on parity with, the interest of the parents.

PARENT OR INDIAN CUSTODIAN RIGHTS

- To designate an Indian custodian (who then has the same rights as the parent under ICWA);
- To a court appointed attorney in any removal, placement or termination of parental rights;
- To notice of proceedings;
- To have State make ACTIVE EFFORTS to provide remedial services to PREVENT the break-up of the family (*State must prove efforts were unsuccessful*);
- To a translator.

RIGHTS OF ADOPTED INDIAN CHILDREN

An Indian child has a right to apply to the court where the adoption order was entered for information regarding the child's tribal relationships. (Adoption proceedings are otherwise sealed unless all parties consent to open them.)



The long-term well being of Native children is undeniably related to their sense of identity as Natives. Childhood paves the way to adult identity...NATIVE CHILDREN are Natives forever. Thus, it is critical that a determination of what is in "the best interest" of Native children address their needs as children as well as development of positive relationships with Native individuals and communities that will inevitably be a part of their future lifeways. The following ideas are collected from several workshop presentations we have done, but they are not exhaustive. Hopefully, these will provide guidance as you seek to advocate for a Native child.

SOME SUGGESTIONS FOR KEEPING NATIVE CHILDREN CONNECTED....

- Develop a relationship with the child's parents: learn about their foods, religious beliefs and practices, about family cultural activity;
- Develop relationships with other adult Native people who can provide information about Native culture generally and, preferably, about the child's culture;
- Socialize with Native families - most cultural and social activities in Native communities are intended for family participation (all ages are welcome);
- Ask Tribal workers to assist with the child's needs, whether it be services or social interactions;
- Learn about the child's family and community history and make information available to the child's caretakers, service providers, and keep important information for the child to have when older (i.e. Tribal newsletters, articles about elders, family members and Tribal issues);
- Learn about child's cultural practices and belief systems through videos or articles recommended by the National Indian Child Welfare Association and Tribal workers (do not assume all "historical" information is accurate - check with a reputable source recommended by Tribe or Tribal organizations);
- Make an effort to become connected to the child's Tribe - get on mailing list for events, ask for appropriate event to become acquainted, meet with Tribal workers coming through town, etc. (in-person contact is always the best!);
- Learn about child's entitlements through the Tribe, i.e. make sure child gets enrolled or listed as a Tribal member; gather information about the child's ancestry, etc.;

- Develop resources for child within the community - school programs for Natives (Indian Education & JOM), dance/drum groups, Native Youth Olympics, Native church, Native basketball team, culture camps, Native youth leadership events, Native Head Start, etc.
- Use Tribal Court to handle adoptions.

Additions made at the National CASA conference in San Diego, April 2002:

- See if there is a Tribal college in your area and find out what is offered regarding Tribal culture and history; see what instructors are used at the local college on these issues and invite them to do a presentation at your CASA or Foster Parent training sessions.
- Ask the Tribe for, or contact a local museum or historical society for videos on Tribal history and language.
- Contact the local museum (near the child's Tribe) about artists, storytellers and other culture-bearers that you could put in touch with the child. Encourage foster parents to bring child to see these people at performances or exhibits.
- Tribal Head Start and Infant Learning Programs often have cultural information and teaching tools that they will share with foster parents and CASAs.
- High Schools often have "culture clubs" where you may locate a "big brother or big sister" for the Native child, or you may find out about events that it would benefit the child to attend.
- Indian Health Service funded clinics and hospitals have information about the Tribal heritage of beneficiaries.
- To identify appropriate cultural events for the child and foster parents to attend, ask if there is a Tribal non-profit agency in the area that provides job training, social services, elder services or other consumer-type programs and get on their mailing list.
- Make sure court orders preserve the child's right to receive per capita payments, inherit land or other Tribal benefits.

OTHER IDEAS SUGGESTED BY GROUP

ALASKA FOSTER PARENT TRAINING CENTER INFORMATION PACKET QUESTIONNAIRE

NAME: _____

PHONE NO.: _____

Only one person per questionnaire. Feel free to make additional copies if needed.

ADDRESS: _____

Street or Post Office

City/State

Zip

Are you a foster parent? YES NO If YES, what is your Foster Home License #: _____

If NO, please check one: Pending Foster Parent DFYS Birth Parent Adoptive Parent

Residential Treatment Facility (License #: _____) Agency: _____

Other (*please specify*): _____

Name of Packet: _____

Please read the information packet. Then fill out this questionnaire and RETURN TO: AFPTC, 815 Second Avenue Suite 101, Fairbanks, AK 99701. You will be credited with 1.0 hour for completion of this worksheet.

1. This packet presents concepts and ideas that may be useful to your foster parenting experience. Please list two (2) specific ideas or concepts which you learned or reaffirmed from reading this packet. Write a short sentence or two describing how you can use them in your family.

a)

b)

Please see reverse side

INFORMATION PACKET QUESTIONNAIRE con't

2. List the title of each article in this packet. In a few sentences for each article, summarize the main purpose or key points for each article in this packet.