

# Tribal Child Welfare Issues



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## ACTION

- Pass legislation to provide Native American tribes with direct access to federal funding for foster care and adoption assistance through the Title IV-E program and also provide tribes with greater access to funding provided through the Title IV-B programs.
- Pass legislation to clarify and strengthen implementation of the Indian Child Welfare Act.

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## HISTORY

In 1978, Congress passed the Indian Child Welfare Act (ICWA, P.L. 95-608) to preserve cultural and family ties among Native American children and families and to ensure respect for tribal authority in decisions concerning the placement of Indian children in out-of-home care.

ICWA requires states identify Indian children and notify the child's parents and tribe of their rights to intervene in a custody proceeding. ICWA also requires certain procedures regarding the use of tribal courts, child custody proceedings, tribal intervention standards, and placement preferences. The act establishes a two-part requirement for states before they remove an Indian child, which involves efforts to prevent the breakup of the Indian family and standards for court findings.

Congressional hearings, beginning in 1974, led to the passage of ICWA in 1978 and focused on child welfare issues of Native American children in out-of-home placement, with particular attention on placing Indian children in non-Indian settings or families. Studies preceding these hearings showed that between 1969 and 1974, 25% to 35% of all Native American children in some states were

removed from their homes and placed in foster care or adoptive homes. In some states, Native American children were 13 times more likely to be removed from their families than were non-Indian children.

In 2005, Congress directed the U.S. Government Accountability Office (GAO) to study the impact of ICWA and, in particular, to determine if the ICWA requirements were causing delays in the placement of Native American children. The GAO study concluded that the ICWA requirements did not result in poorer outcomes for children. Few states researched by the GAO kept detailed information, but those that could provided more data that there was no clear link or evidence ICWA was harmful in its impact. In its recommendations to the U.S. Department of Health and Human Services (HHS), the GAO proposed that HHS review information made available by states through their Child and Family Service Reviews (CFSRs). The study found 10 of 51 state reports did not mention ICWA implementation. GAO also proposed that states be required to include in their annual progress and services reports any significant ICWA issues not addressed in the Program Improvement Plans (PIPs) that result from the CFSRs.

Although ICWA established procedures and protections for placing Indian children in out-of-home care, adequate funding to provide these services did not follow. Comments submitted to GAO during their study indicated that, at times, a lack of resources for tribes hindered placements.

Most federal funds that might address the children that come into contact with the child welfare system are not provided directly to tribal governments. Tribes do not receive funding through Title IV-B part 1, the Child Welfare Services funding, and receive only a limited set-aside of

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Title IV-B part 2, the Promoting Safe and Stable Families (PSSF). Tribes receive no direct funding from the Social Services Block Grant (SSBG) and do not have the option of receiving federal Title IV-E Foster Care and Adoption Assistance funds. As a result, most Native American children placed in out-of-home and adoptive settings through tribal courts are not eligible for federal foster care maintenance or adoption assistance payments. In a few instances, some tribes have negotiated agreements with states that allow them to access Title IV-E funds.

Senator Gordon Smith (R-OR) introduced bipartisan legislation, the Indian and Alaska Native Foster Care and Adoption Services Amendments (S. 672), in 2005. This legislation, now pending before the Senate, would allow tribes to apply directly to HHS for Title IV-E funding for eligible children in foster care and adoptive homes. Similar language was included and passed by the Senate Finance Committee as part of the reauthorization legislation for the Temporary Assistance for Needy Families (TANF) program (S. 667). This legislation will allow a federally recognized tribe or consortium of tribes to submit an application to HHS to receive federal funds for foster care and adoption assistance.

The legislation would require applying tribes to meet most of the same requirements and standards that states must meet. HHS would have some flexibility applying these requirements. Similar to current state requirements, a tribe would have to submit a plan indicating its area of service, which may not coincide with such geographic lines as city, county, or state borders. The tribal plan would also differ from a state plan in that a tribe could receive a different reimbursement rate, since the income in the service area may be lower than the particular state in which the tribal land is located. Most of the other requirements that apply to state plans will also apply to tribal plans.

Representative Don Young (R-AK) introduced the Indian Child Welfare Act Amendments of 2004 in response to many loopholes and interpretation problems that have occurred in implementing the original Indian Child Welfare Act. Similar legislation may be introduced again in 2006. The legislation sought to strengthen ICWA by clarifying how it applies to Indian children in custody proceedings, and by further defining minimum

efforts before the breakup of a family. The bill also would have required that current notice provisions afforded to extended family members, would have defined the circumstances under which federal courts could review state ICWA violations, and would have established a federal review process for compliance with ICWA.

## KEY FACTS

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- There are approximately 565 federally recognized American Indian and Alaskan Native tribes and about 2.5 million American Indian and Alaskan Natives. The largest population of Native Americans is concentrated in 13 states and includes more than 646,000 people.
- Of the 926,741 substantiated cases of child abuse in 2003, 13,350 involved American Indian or Alaskan Native children.
- In Alaska and South Dakota, more than 50% of substantiated cases of child abuse were among American Indian or Alaskan Native children. In Montana and North Dakota, more than 20% of substantiated cases of child abuse were among American Indian children.
- As of September 30, 2003, 10,260 children in out-of-home care were American Indian or Alaskan Native.
- As of September 30, 2003, 2,190 American Indian or Alaskan Native children were waiting to be adopted, and 700 were adopted through public agencies.

Sources for statistical information are provided in the online version of this fact sheet. See [www.cwla.org/advocacy/2006legagenda.htm](http://www.cwla.org/advocacy/2006legagenda.htm).

## CWLA CONTACT

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