



Time for Reform:

A MATTER OF JUSTICE FOR
AMERICAN INDIAN AND
ALASKAN NATIVE CHILDREN



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The report was designed by Freedom by Design, Inc. Unless explicitly provided otherwise, the majority of photographs of American Indian and Alaskan Native children and families used on the cover and throughout the report are not affiliated with the foster care system and were provided by NICWA. Other photographs are used with the permission of the individuals represented.

The more than 500 federally-recognized tribes in the United States currently receive limited federal assistance to provide child welfare services to thousands of American Indian and Alaskan Native (AI/AN) children and families. Although some tribes receive limited support for child welfare services through the Indian Child Welfare Act and other federal programs, tribes cannot directly access the largest source of federal child welfare funding: Title IV-E of the Social Security Act, which authorizes federal foster care and adoption assistance. This has resulted in large numbers of AI/AN children under tribal jurisdiction not having the same access to child welfare resources as other children. AI/AN children living in urban areas could be better served if their tribal government had direct access to federal child welfare funds.

In certain cases, tribes have been able to develop intergovernmental agreements with states that provide for the “pass through” of federal Title IV-E dollars to tribes, but the majority of tribes do not have this access. Tribes and states agree that the challenges in negotiating and administering these discretionary agreements make them a poor second choice to direct federal support of tribes through Title IV-E.

Direct Title IV-E funding to tribes and more flexible use of Title IV-E dollars would significantly benefit AI/AN children and families. The data on AI/AN children are limited, but suggest that:

- AI/AN children are disproportionately reported to state child protection authorities. They are more likely than other children to experience neglect, but less likely to experience abuse.
- AI/AN children are disproportionately represented in many state foster care

systems. The over representation of AI/AN children can be two to three times the rate of other populations in some states.

- Tribal governments provide foster care to 30 to 40 percent of all AI/AN children in care. Other AI/AN children are served by state and local governments.

When tribal governments have direct access to Title IV-E and the flexibility to design services to meet community needs, they are more able to support community-based practices that can improve outcomes for AI/AN children. In order to keep AI/AN children with safe, permanent families, tribal governments need:

- Direct access to Title IV-E funding so that tribes can provide AI/AN children in foster care with the services and supports they need.
- More flexible federal funding so that tribes and states have the resources to keep children safely with their families and help ensure that children leave foster care more quickly through reunification, adoption or guardianship with a relative or a new family.
- Federal support for subsidized guardianship to help children leave foster care to live permanently with relatives when adoption and termination of parental rights are not consistent with cultural traditions. Subsidized guardianship reduces state oversight in the lives of children and families.

Reform is needed now so that tribes have access to the federal resources that are vital to their ability to effectively serve and support AI/AN children and families. It’s a simple matter of justice.

Time for Reform:

A MATTER OF JUSTICE FOR AMERICAN INDIAN AND ALASKAN NATIVE CHILDREN

This briefing paper provides information on federal financing for tribal child welfare services, critical issues in accessing this funding for tribal governments, and implications for tribal service delivery, and a discussion of the Pew Commission on Children in Foster Care recommendations for tribal child welfare financing. Inherent in this discussion is the acknowledgement of tribal governments' legal authority and jurisdiction to provide child welfare services and the recognition that they are in the best position to understand and effectively respond to the needs of their American Indian and Alaskan Native (AI/AN) children and families. Tribal governments' ability to provide lasting and permanent families for children who enter the child welfare system is greatly dependent upon the funding resources available to them.

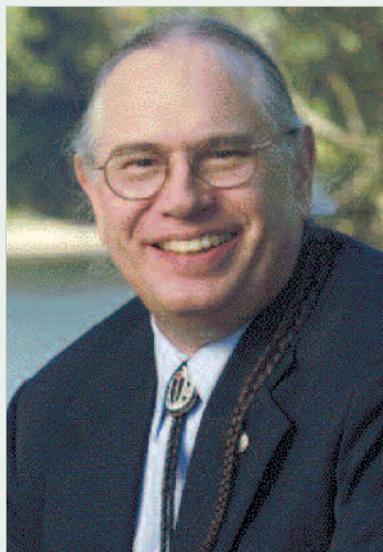
BACKGROUND

Prior to the passage of the Indian Child Welfare Act (ICWA) (P.L. 95-608), which was enacted in 1978, very few of the over 500 federally-recognized tribes received any federal child welfare funding other than small amounts of Bureau of Indian Affairs (BIA) social service funding. Many tribes were not eligible to receive even these funds. Beginning in 1979, ICWA authorized a small annual grant program for tribes that was competitive until 1993 and funded at between \$8 and \$12 million annually. Only half of the tribes that applied were awarded grants, and many times, a tribe would be funded in one grant cycle and not the next. Before 1975 and the enactment of the Indian Self Determination and Education Assistance Act (P.L. 93-638), even fewer tribes received any federal funding to provide child welfare services. During this time period, federal BIA staff for tribes mainly provided child welfare services, and only a few tribes ever directly received any federal funds to support child welfare services. The Indian Self Determination and Education Assistance Act allowed tribal governments for the first time to contract with the BIA to operate their own social services. Coupled with the grant program under ICWA, this change allowed many more tribes to begin to develop their own child welfare programs.

In the early 1980s, Congress embarked upon child welfare reform that established a new federal policy direction. In 1980, Congress enacted the Adoption Assistance and Child Welfare Act through which Title IV-E of the Social Security Act was created. Title IV-E incorporated the former Aid to Families

“Our tribal communities are in the best position to effectively serve their children and families and ensure that all tribal children have permanent homes. That is why providing access to federal programs, such as Title IV-E, is the most important thing that the federal government can do to help improve the well-being of American Indian and Alaskan Native children and families.”

TERRY CROSS, Executive Director, National Indian Child Welfare Association



TERRY CROSS, Executive Director, National Indian Child Welfare Association

with Dependent Children (AFDC) Foster Care program and a new federally-funded adoption assistance program. In 1981, Congress combined several social service related federal programs into the Title XX Social Service Block Grant. Unfortunately, tribal governments were not made eligible for the new federal programs under Title IV-E and Title XX, two of the largest sources of federal revenue to support child welfare services. Two decades later, Congress still has not amended these laws to allow tribal governments the ability to directly apply for these funds. Although legislation has been introduced to allow tribes to administer the Title IV-E program since the mid 1990's – by Senators Tom Daschle (D-SD) and Gordon Smith (R-OR) and by Representatives Dave Camp (R-MI) and Bill Richardson (D-NM) – none has been enacted.

A 1994 report by the Department of Health and Human Services, Office of Inspector General (OIG), *Opportunities for Administration for Children and Families to Improve Child Welfare Services and Protections for Native American Children*, provided a picture of the situation for tribal access to Title IV-E and other federal social service and child welfare funds. The report documented that tribes receive little benefit or funding from federal Social Security Act programs, specifically Title IV-E Foster Care and Adoption Assistance, the Title XX Social Services Block Grant, and Title IV-B Child Welfare Services and Family Preservation and Support Services monies. Although tribes receive a small amount of direct funding under both Title IV-B programs, there is no direct funding available to tribes under the much larger Title IV-E and Title XX programs. The report revealed that a handful of states allowed tribal governments to access some of the state's allocation from these programs, typically through intergovernmental agreements and contracts. These arrangements, however, were discretionary on the part of the states, and the amounts made available were typically small. In listing options for improving service to tribes, the OIG study stated that the surest way to guarantee that AI/AN people receive benefits from Social Security Act programs is to amend the authorizing statutes to provide direct allocations to tribes. State representatives interviewed for the study described the difficulty of developing agreements and the burden to states in administering them, and they supported direct funding to tribal governments. The direct method of tribal access for Title IV-E funding also has been endorsed by several national organizations, including the Child Welfare League of America, the American Public Human Services Association and the National Congress of American Indians, as well as the Pew Commission on Children in Foster Care.

Since the 1990s, tribes and tribal organizations have made some progress in directly accessing new federal human service program funding. Examples are the Title IV-B Promoting Safe and Stable Families program and the Temporary Assistance to Needy Families block grant. However, the amendment of laws that were enacted before the 1990s that failed to contain provisions for tribal eligibility (such as Title IV-E) has proven to be very difficult. The primary barriers have been states' perceptions that they will lose funding



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and federal policymakers' concerns that bringing tribes into these program will increase costs. As a short-term solution, tribes have increased their efforts to access state allocations of federal child welfare program funding through agreements and contracts and have realized some measure of success. Currently, there are approximately 70 tribal/state Title IV-E agreements in 13 states; only four states pass through Title XX funding to tribes. A small handful of states also provide tribes with state general fund revenue. As helpful as these inter-governmental agreements and contracts are, they are discretionary and subject to political and resource issues beyond the control or influence of tribal governments.

DATA ON INDIAN CHILDREN IN THE FOSTER CARE SYSTEM

Data on American Indian/Alaskan Native children who experience child abuse and neglect and who are in the foster care system are limited. Current data, however, provide some understanding of the experiences of American Indian/Alaskan Native children and their families.

CHILD ABUSE AND NEGLECT. The National Child Abuse and Neglect Data System (NCANDS) provides information on only those American Indian/Alaskan Native families and children who are reported to state child protection authorities, whose cases are investigated by state child protective service systems, and who self-identify as American Indian/Alaskan Native. NCANDS does not include American Indian/Alaskan Native children who come to the attention of and who are served by tribal social service systems. It is estimated that 40% of all cases of child abuse and neglect among AI/AN children are not reported to the NCANDS (Earle & Cross, 2001). In addition, the definitional and cultural aspects of child abuse and neglect among AI/AN people are complex, leading to serious questions regarding the true rates of child abuse and neglect in AI/AN country (Earle & Cross, 2001).

The limited data indicate that nationally, in FY 2005, American Indian/Alaskan Native children experienced a rate of child abuse and neglect of 16.5 per 1,000 American Indian/Alaskan Native children. This rate compares to 19.5 for African American children, 16.1 for Pacific Islander children, 10.8 for White children, and 10.7 for Hispanic children (US Department of Health and Human Services, 2007a). American Indian/Alaskan Native children were more likely than children of other races/ethnicities to be confirmed as victims of neglect (65.5%) and were least likely to be confirmed as victims of physical abuse (7.3%) (US Department of Health and Human Services, 2007a). American Indian/Alaskan Native children are over-represented in the population of child maltreatment victims, at more than 1.6 times the expected level, with the highest rates of overrepresentation in states that have larger American Indian/Alaskan Native populations (Maple & Hay, 2004). Appendix A provides state by state data on American Indian/Alaskan Native children who experience child abuse and neglect (US Department of Health and Human Services, 2007a).

"Tribes do not have access to a stable source of non-discretionary funding, such as Title IV-E, to support vulnerable children that need foster care or adoption assistance. Because tribes do not receive direct funding, tribal children often must go into the care of state agencies, reducing the chance that they and their families will receive services that are specifically geared to their needs."

CONNIE BEAR KING, *National Indian Child Welfare Association*



CONNIE BEAR KING, *National Indian Child Welfare Association*

FOSTER CARE. The Adoption and Foster Care Analysis and Reporting System (AFCARS) provides information only on those American Indian/Alaskan Native children who self-identify as American Indian/Alaskan Native and are placed by state child welfare agencies in foster care. AFCARS data do not include American Indian/Alaskan Native children who receive foster care services from tribal children's programs. It is estimated that approximately two-thirds of AI/AN children in foster care are placed by state child welfare agencies and one-third to 40 percent are placed in foster care by tribal authorities (Earle, 2000). The limited data show that nationally:

- There are 10,498 American Indian/Alaskan Native children in state foster care systems.
- 2 percent of the children who entered state foster care in FY 2005 (7,036) were American Indian/Alaskan Native.
- 2 percent of the children who exited state foster care in FY 2005 (5,857) were American Indian/Alaskan Native.
- 2 percent of the children waiting to be adopted in state foster care systems on September 30, 2005 (2,120) were American Indian/Alaskan Native.
- 1 percent of the children adopted with public child welfare agency involvement were American Indian/Alaskan Native (US Department of Health and Human Services, 2007b).

Nationally, American Indian/Alaskan Native children are overrepresented in foster care – at more than 1.6 times the expected level – and are overrepresented among the children in foster care who are awaiting adoption – at two to four times the expected level (Maple & Hay, 2004). American Indian/Alaskan Native children are even more significantly overrepresented in foster care in a number of states. Appendix B provides state by state data on the number and percentage of children in the state and in state foster care who are American Indian/Alaskan Native. Appendix C provides FY 2005 data on the states with the highest percentage and number of children served in state foster care who are American Indian/Alaskan Native. Appendix D provides information on the states with the greatest overrepresentation of American Indian/Alaskan Native children in state foster care.

FEDERAL CHILD WELFARE FUNDING FOR TRIBES

Federal funding for child welfare services in tribal communities is currently a patchwork of funding streams, most of which are discretionary and have very limited funding available. Tribal governments are excluded from receiving direct funding from some of the largest sources of federal child welfare funding, such as Title IV-E and Title XX. Other federal child welfare programs, such as Title IV-B, Subparts 1 and 2, provide direct funding, but the amounts are very limited, or eligibility only extends to a limited number of tribes.

The lack of access to entitlement-based funding has been a barrier to tribes as they seek to respond to the needs of their children and families. Access to enti-

"A child coming into a family is like coming into a warm house after life out in the cold for a long time—the love and support of a family is like the warmth of a fire. But without foster care reform, tens of thousands of Indian children—our children—will be left out in the cold."

TRACEY KING, Fort Belknap
Tribal Council, Montana

tlement funding provides stability to programs and ensures that as need increases, the resources needed to address these needs likewise increase. A comparison of the funding streams to which states have access and those to which tribal governments have access illustrates the significant differences. State governments have access to a number of federal entitlement based programs, such as Title XX, Title IV-E and Medicaid services for children in the child welfare system; by contrast, most tribal governments do not have access to operate more than one of these federal programs in their communities and many do not have access to any. Downturns in discretionary funding are significant for both governments, but states are much more likely to be able to absorb the impact of these funding decreases because states have continued access to entitlement funding. General revenues, which comprise a significant portion of state child welfare funding, are largely unavailable to tribal child welfare programs. As a result of wide-spread poverty and limited economic development opportunities, it is not feasible to collect tax revenue in most tribal communities.

Because of these financial and policy barriers, most tribes have few choices in providing services to children and families. Having less flexibility and fewer resources, tribes find themselves in a situation where they can only "manage" crises and cannot respond effectively to the core issues that put children at risk of harm and families at risk of having their children removed from their care.

FEDERAL PROGRAMS THAT SUPPORT TRIBAL CHILD WELFARE SERVICES

Although tribal child welfare funding levels vary from tribe to tribe based upon a wide variety of factors (including population size and availability of tribal, and state and federal funds), tribal access to federal funds, in general, is very limited. A tribe with a population of 2,000 members or less, which includes over half of the federally-recognized tribes, will typically have access to less than \$75,000 a year in federal child welfare funding (with the primary sources being ICWA, tribal general revenue, and Title IV-B Child Welfare Services). This level of funding, which is barely enough to hire one full-time social worker, severely limits the tribe's ability to address all but the most serious and immediate needs. The ability to engage in primary prevention and systems change activities, which help children and families remain safely together, are extremely limited, and many times, these efforts are not possible under the current funding scenario. Below is a description of the current federal programs to which tribes have access, the allocations to tribes, and the services that each program typically funds.

■ **CHILD WELFARE SERVICES.** (Title IV-B, Subpart 1 of the Social Security Act). The Child Welfare Services program, administered through DHHS, provides formula funds to states and many tribes for family preservation and reunification services. Funding for this program is discretionary. The FY2006 appropriation was \$286 million, of which tribes received \$5.6 million.

"While I was in foster care, I wasn't able to participate in the cultural events that I had looked so forward to, because I was placed in state foster care, far away from my community. As a result, I often feel like an outsider in my own Lakota Sioux tribe. During my time in foster care, I read books about ceremonies and events that I should have been experiencing first hand. Today, at events like pow wows, I feel like a spectator, not a participant."

DARYLE CONQUERING BEAR,
former foster youth, Colorado



DARYLE CONQUERING BEAR,
former foster youth, Colorado

Although the federal regulations were revised in 1996 to expand eligibility to all tribes, previously fewer than half of all tribes were eligible for this program. Funding levels for tribes are low: 477 out of the 558 eligible tribal governments receive less than \$10,000 per fiscal year. At least half of the eligible tribes receive amounts under \$5,000 per fiscal year.

■ **PROMOTING SAFE AND STABLE FAMILIES.** (Title IV-B, Subpart 2 of the Social Security Act). The Promoting Safe and Stable Families (PSSF) program provides funds to states and tribes for family preservation services, family support services, time-limited reunification services, and adoption promotion and support services. The program has both a discretionary and an entitlement stream of funding. In FY 2006, there was a total appropriation of \$435 million, a \$40 million increase over the previous year. Tribes received \$4.8 million of this overall appropriation. In addition to the \$435 million was \$20 million for grants to states to improve juvenile courts, for which tribes are ineligible. As a result of Congressional reauthorization of the program in late 2006, tribal governments will receive in FY 2007 an increased statutory allocation of three percent from the mandatory and discretionary funds. The total allocation for tribes in FY 2007 is approximately \$12 million. The statutory formula, however, retains limits on the number of tribes who are eligible to apply for the program. The number of eligible tribal grantees will increase from approximately 93 in FY 2006 to about 134 in FY 2007.

Tribes are eligible for two competitive grant programs under Title IV-B, Subpart 2: the Mentoring Children of Prisoners program and a program designed to address the needs of families affected by methamphetamine abuse whose children are in foster care. Funding for the Mentoring Children of Prisoners program is discretionary, with an appropriations level of \$50 million in FY 2006. The methamphetamine grant program is funded at \$40 million in FY 2007 with funding levels decreasing over the next five years. In FY 2007, six tribal grantees received grants through this program, for a combined total of \$3 million.

■ **INDIAN CHILD WELFARE ACT.** ICWA, among other things, recognizes exclusive tribal jurisdiction over American Indian and Alaska Native children resident or domiciled on reservations (except that jurisdiction is concurrent between the tribe and state in some instances in Public Law 280 states); provides for the transfer of off-reservation court proceedings to tribal court, absent parental objection or good cause to the contrary; recognizes the right of American Indian and Alaska Native tribes to intervene in state court; and requires state courts to accord full faith and credit to tribal public acts, records, and court judgments.

The BIA, under the authority of ICWA, provides discretionary funding of approximately \$18 million annually (\$10 million in Tribal Priority Allocations and \$8 million under Self-Governance). All federally-recognized tribes are eligible for this funding and the amounts available to tribes are established through a population-based formula. Most of the annual ICWA tribal grants

are below \$55,000. The funds may be used for a wide variety of child welfare purposes. Tribes utilize the funds for programs to protect AI/AN children and, at tribal discretion, to intervene in state child welfare proceedings involving AI/AN children. ICWA funds help support social workers to provide counseling to families, facilitate temporary custody of children when appropriate, and report and respond to reports of child abuse and neglect.

■ **BUREAU OF INDIAN AFFAIRS CHILD ASSISTANCE.** Discretionary funding is provided through the BIA for Child Assistance, which helps care for abandoned or neglected children. Many tribal governments are not eligible for this funding. Eligible tribes may use these funds for foster care, adoption services, and institutional care. The funds cover child placement costs, but unlike Title IV-E, they do not include support for administrative or training expenses related to the care of the child. Child Assistance is part of a broader program called Welfare Assistance, which includes General Assistance (financial assistance for persons not eligible for TANF), Non-Medical Institutional or Custodial Care of Adults, the Tribal Work Experience Program, and Miscellaneous Assistance (burial, disaster, and emergency services). The current appropriation for Welfare Assistance is \$92.5 million (\$85 million under Tribal Priority Allocations and \$7.5 million under Self-Governance). Congress does not specify how funding is to be used for each of the activities. The BIA estimates that \$30 million of the funds are spent on Child Assistance.

■ **TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT (TANF).** The TANF program, enacted as part of the 1996 welfare reform law, is a capped entitlement program (\$16.5 billion annually) that provides cash and employment-related assistance to needy families with minor children. TANF replaced the Aid to Families with Dependent Children Program (AFDC). Although tribes were not authorized to administer the AFDC program, the 1996 welfare reform law authorized tribes to design and administer their own TANF programs.

In addition to cash assistance and employment-related services, states and tribes may also use TANF funds for child welfare services. The Urban Institute reports that states spent at least \$2.3 billion in TANF funds for child welfare services in FY 2003 (Urban Institute, 2004). In addition, states transferred another \$1.3 billion in TANF funds to the Title XX Social Services Block Grant, funds that also were used for child welfare services. There are no comparable figures available for tribally-administered TANF programs. Some tribal TANF grantees, however, have reported that they use a portion of their TANF funds for child welfare purposes, such as relative care placements.

The Department of Health and Human Services reports that as of June 2005, there were 50 tribal TANF grantees administering the program to 234 Tribes and Alaska Native Villages, non-reservation Indian populations in over 104 counties, several near-reservation towns, and the city of Anchorage. Tribes currently administer \$157 million in TANF funds, and the number of tribes administering the TANF program is expected to increase.

"Tribes need enhanced capacity and direct access to Title IV-E to address the needs of Native American children. ... When the Title IV-E statute was written in 1980, tribal governments and children placed by tribal courts were not eligible for this open-ended federal entitlement program. Currently, tribes can only gain access to funding through agreements with state agencies."

AMERICAN PUBLIC HUMAN SERVICES ASSOCIATION (2005)



CREDIT: NICWA

FEDERAL CHILD WELFARE PROGRAMS FOR WHICH TRIBAL GOVERNMENTS ARE NOT ELIGIBLE

■ **TITLE IV-E FOSTER CARE AND ADOPTION ASSISTANCE.** In 1980, Congress enacted the Adoption Assistance and Child Welfare Act, creating Title IV-E of the Social Security Act. Title IV-E provides entitlement funding for foster care and adoption assistance services for income-eligible children who are placed by state agencies or public agencies with which the state has an agreement. Funding also is provided to states to administer these programs and provide training. Left out from the Title IV-E program were children under the jurisdiction of their tribe and placed by tribal courts and agencies. States will receive approximately \$7 billion under Title IV-E in FY 2006, an amount that represents 50 percent of the federal child welfare funds provided to states (The Urban Institute, 2004).

US Department of Health and Human Services regulations allow tribes to enter into agreements with states regarding the Title IV-E program. There currently are approximately 70 tribal-state agreements that serve less than half of the over 560 federally-recognized tribes. Tribes that enter into these agreements with states receive some benefits of the program, notably foster care maintenance payments. These agreements, however, do not always provide funding for the full array of Title IV-E services to tribes that states receive. Under some agreements, tribes do not receive administrative funding, training for social workers and foster/adoptive parents, and/or data collection funds. In Alaska, where the majority of tribes with Title IV-E agreements reside, the agreements do not provide maintenance payments for children placed by tribal courts. The development of these intergovernmental agreements can be very difficult for tribes and states, sometimes taking years to accomplish.

■ **INDEPENDENT LIVING SERVICES.** Also authorized under Title IV-E of the Social Security Act is the John H. Chafee Foster Care Independence Program (created by the Foster Care Independence Act of 1999). This independent living program provides funding to states (\$140 million in FY 2006) to assist youth who are aging out of foster care. Under the law, states are to provide assistance to AI/AN youth, but very few states provide these funds to tribal governments who have jurisdiction over these youth. In fact, AI/AN youth, while over-represented in state foster care, are under-represented in state independent living programs (Crofoot Graham, et al., 2001).

■ **SOCIAL SERVICES BLOCK GRANT** (Title XX of the Social Security Act). Like Title IV-E, the statute authorizing the Social Services Block Grant does not allow for direct tribal administration of the program. There is little evidence of states passing through Title XX funds to tribes with the exception of four states mentioned in a 1994 survey by the Office of Inspector General (DHHS, 1994). In most cases, the funding passed through to tribes is very small given tribal need and population. The Social Services Block Grant is a very flexible funding source for states, and states opt to use much of the funding for child welfare services. The Social Services Block Grant is a capped entitlement program with fiscal year 2006 funding of \$1.7 billion.



CREDIT: NICWA

MEETING THE NEEDS OF AMERICAN INDIAN/ALASKAN NATIVE CHILDREN AND THEIR FAMILIES

GUARDIANSHIP

Traditionally and today, the extended family system is the core of the natural helping network in tribal communities that protects children and participates in their upbringing. Tribal children's services routinely look first to relatives when a child needs foster care placement. Going outside the child's extended family system is uncommon and risks alienating the child, the family, and other community members in the healing process. When subsidized guardianships have been available for tribal children and their relatives, all have significantly benefited: relatives who could not otherwise afford to care for additional children in their families receive needed support and American Indian/Alaskan Native children have the opportunity to retain and nurture important family connections. Title IV-E support for subsidized guardianship is seen as vital to providing relative caregivers with ongoing and reliable support. Tribal governments welcome the opportunity to offer subsidized guardianships to their community caregivers.

CUSTOMARY ADOPTION

The National Indian Child Welfare Association's "Reclaiming Customary Adoption" expands and improves adoption services provided by 20 rural reservation-based American Indian tribes by assisting them to reclaim adoption as a culturally relevant practice. A customary adoption is a practice, ceremony, or process conducted in a manner which is long-established, continued, reasonable, and certain and is considered by the people of a tribe to be binding or found by the tribal court to be authentic. Customary adoption gives a child a legally recognized permanent parent-child relationship with a person other than the child's biological parent without termination of parental rights. This culturally based model for adoption aligns tribal values and custom with adoption laws and procedures and results in adoptions that are eligible for Title IV-E adoption assistance.

“Tribal governments have the authority to provide child welfare services yet, unlike states, they are excluded from receiving direct federal funding to operate their child welfare programs. Realistically, this limits their ability to protect and serve abused and neglected children, and restricts the scope of services they can provide. Tribes’ efforts to provide needed services to children and youth in foster, adoptive and guardianship placements are hampered, and vulnerable Native American children and families suffer as a result.”

WILLIAM THORNE, *Utah Court of Appeals Judge, Pomo/Coast Miwok Indian, and member of the Pew Commission on Children in Foster Care*



JUDGE WILLIAM THORNE

FEDERAL CHILD WELFARE FINANCING REFORM FOR TRIBES: A BLUEPRINT FROM THE PEW COMMISSION ON CHILDREN IN FOSTER CARE

Tribal governments’ ability to keep children safely with their families and provide permanent families for children who enter the child welfare system is greatly dependent upon the funding resources available to them. Integral to this effort is establishing tribal access to stable funding sources, such as Title IV-E, to meet the basic needs of children in tribal foster care. Providing a safety net for tribal children who need foster care will ensure that these children’s needs are met and that tribal governments do not encounter debilitating funding and services shortages that can decrease their ability to ensure that tribal children in care have permanent families. Reducing the overall number of tribal children in foster care is an equally important goal – one that requires access to funding that is flexible and that can support efforts to support and strengthen families and keep children and families safely together. As recommended by the Pew Commission on Children in Foster Care, this goal can be achieved by creating greater balance in funding between federal programs that provide financial support for services only after children are removed from their families and those programs that provide support for services to help prevent families’ involvement with the child welfare system, such as family support and family preservation services. By more directly involving and funding tribal governments, the disproportionate number of tribal children in foster care can be reduced and more effective services for tribal children can be developed.

Another critical reason for investing in tribal governments is that many states need assistance from tribes to effectively serve tribal children in state foster care. States see tribal governments as important resources in their efforts to find appropriate services and placements for tribal children, and they express the desire for tribes to be funded directly by the federal government (GAO, 2005 and DHHS, 1994). As the number of tribal/state intergovernmental agreements has increased, states have seen the benefits of working cooperatively with tribes on child welfare matters. Federal child welfare program requirements under Title IV-B that require tribes and states to collaborate also have been an important catalyst in promoting collaboration and tribal capacity building.

The Pew Commission on Children in Foster Care recommendations have acknowledged the important relationship that tribal governments have with their children and families, their expertise in developing effective solutions for tribal children affected by child abuse and neglect, and the need for more direct funding to tribal governments to support child welfare efforts. When tribes have gained increased access to Title IV-E and other federal child welfare programs, even short term, and when they have had the flexibility and support to develop services that reflect community values, tribes have been able to improve outcomes for their children, including reducing the number of tribal children in foster care (Red Horse et al., 2001).

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APPENDIX A

AMERICAN INDIAN/ALASKAN NATIVE VICTIMS OF CHILD MALTREATMENT REPORTED TO STATE AUTHORITIES, 2005*

STATE	NUMBER	RATE PER 1000 AI/AN CHILDREN	PERCENT	STATE	NUMBER	RATE PER 1000 AI/AN CHILDREN	PERCENT
Alabama	7	1.6	0.1	Nebraska	381	70.8	5.7
Alaska	1,338	34.9	49.7	Nevada	22	3.3	0.4
Arizona	247	2.5	4.0	New Hampshire	0	0.0	0.0
Arkansas	8	1.8	0.1	New Jersey	17	5.9	0.2
California	700	15.8	0.7	New Mexico	477	7.8	6.5
Colorado	58	7.4	0.6	New York	274	18.2	0.4
Connecticut	14	6.7	0.1	North Carolina	626	21.1	1.9
Delaware	7	14.8	0.4	North Dakota	368	29.7	23.8
D. of Columbia	2	12.3	0.1	Ohio	127	29.2	0.3
Florida	198	17.9	0.2	Oklahoma	1,267	14.7	9.1
Georgia	8	1.9	0.0	Oregon	968	86.3	7.8
Hawaii	7	11.6	0.3	Pennsylvania	Not reported	Not reported	Not reported
Idaho	86	16.5	4.5	Puerto Rico	Not reported	Not reported	Not reported
Illinois	24	5.7	0.1	Rhode Island	25	15.9	0.7
Indiana	16	5.3	0.1	South Carolina	23	7.2	0.2
Iowa	127	50.7	0.9	South Dakota	710	25.4	49.2
Kansas	24	4.1	0.9	Tennessee	31	11.0	0.2
Kentucky	11	7.4	0.1	Texas	68	4.0	0.1
Louisiana	22	3.2	0.2	Utah	297	30.8	2.3
Maine	37	19.4	1.1	Vermont	0	0.0	0.0
Maryland	18	5.9	0.1	Virginia	1	0.3	0.0
Massachusetts	43	15.4	0.1	Washington	595	22.9	7.5
Michigan	204	14.9	0.8	West Virginia	2	3.9	0.0
Minnesota	555	29.6	6.5	Wisconsin	337	22.8	3.5
Mississippi	7	1.7	0.1	Wyoming	11	2.9	1.3
Missouri	28	5.6	0.3				
Montana	496	23.9	23.7	TOTAL	10,919		

Source: US Department of Health and Human Services. (2007). Child Maltreatment 2005. Available at: http://www.acf.hhs.gov/programs/cb/pubs/cm05/figure3_4.htm (accessed August 13, 2007).

* These data are taken from the National Child Abuse and Neglect Data System (NCANDS) which provides information on only those American Indian/Alaskan Native families and children who are reported to state child protection authorities, whose cases are investigated by state child protective service systems, and who self-identify as American Indian/Alaskan Native. NCANDS does not include American Indian/Alaskan Native children who come to the attention of and who are served by tribal social service systems. It is estimated that 40% of all cases of child abuse and neglect among Indian children are not reported to the NCANDS (Earle & Cross, 2001).

APPENDIX B AMERICAN INDIAN/ALASKAN NATIVE CHILDREN: REPRESENTATION IN THE STATE POPULATION AND IN THE STATE FOSTER CARE SYSTEM*

STATE	NUMBER OF AI/AN CHILDREN IN STATE	PERCENT OF CHILD POPULATION THAT IS AI/AN	NUMBER OF AI/AN CHILDREN IN FOSTER CARE	PERCENT OF CHILDREN IN FOSTER CARE WHO ARE AI/AN	STATE	NUMBER OF AI/AN CHILDREN IN STATE	PERCENT OF CHILD POPULATION THAT IS AI/AN	NUMBER OF AI/AN CHILDREN IN FOSTER CARE	PERCENT OF CHILDREN IN FOSTER CARE WHO ARE AI/AN
Alabama	14,921	<1%	14	0.2%	Nebraska	9,962	1%	561	9.0%
Alaska	52,107	20%	912	50.9%	Nevada	14,746	1%	21	0.4%
Arizona	125,041	6%	233	2.4%	New Hampshire	2,629	<1%	2	0.2%
Arkansas	12,829	1%	0	0.0%	New Jersey	15,538	<1%	22	0.2%
California	219,866	<1%	672	0.8%	New Mexico	78,840	12%	135	5.8%
Colorado	29,534	1%	91	1.1%	New York	58,951	<1%	83	0.3%
Connecticut	8,301	<1%	9	0.1%	North Carolina	45,960	1%	161	1.5%
Delaware	1,173	<1%	3	0.3%	North Dakota	14,203	9%	360	26.4%
Florida	36,833	<1%	43	0.1%	Ohio	27,741	<1%	28	0.2%
Georgia	16,875	<1%	6	0.0%	Oklahoma	156,504	10%	1250	11.0%
Hawaii	10,481	<1%	10	0.4%	Oregon	32,382	1%	1245	11.3%
Idaho	10,822	1%	120	6.6%	Pennsylvania	19,498	<1%	30	0.1%
Illinois	25,872	<1%	14	0.1%	Rhode Island	1,571	1%	39	1.6%
Indiana	15,040	<1%	21	0.2%	South Carolina	9,217	<1%	6	0.1%
Iowa	7,474	<1%	112	1.6%	South Dakota	29,923	15%	894	52.2%
Kansas	18,419	1%	68	1.2%	Tennessee	11,742	<1%	6	0.1%
Kentucky	7,570	<1%	4	0.1%	Texas	70,831	<1%	42	0.1%
Louisiana	16,475	1%	15	0.3%	Utah	17,995	1%	130	5.7%
Maine	5,272	1%	31	1.3%	Vermont	2,412	<1%	3	0.2%
Maryland	13,409	<1%	22	0.2%	Virginia	18,251	<1%	3	0.0%
Massachusetts	13,044	<1%	27	0.2%	Washington	62,472	2%	847	8.4%
Michigan	48,309	1%	230	1.1%	West Virginia	3,322	<1%	1	0.0%
Minnesota	35,702	2%	850	12.2%	Wisconsin	30,987	1%	305	3.8%
Mississippi	7,332	1%	4	0.1%	Wyoming	4,612	3%	14	1.1%
Missouri	20,678	<1%	53	0.5%	NATIONAL	513,663		10,498	
Montana	30,740	10%	746	33.6%					

Sources: The National Indian Child Welfare Association. State Fact Sheets (using 2000 US Census Bureau data). Available on-line at: <http://www.nicwa.org/states/> (accessed September 20, 2007); The Annie E. Casey Foundation. Kids Count 2005. Available on-line: http://www.kidscount.org/sld/compare_results.jsp?i=710 (accessed August 24, 2007); US Department of Health and Human Services. (2007). Child Maltreatment 2005. Available at: http://www.acf.hhs.gov/programs/cb/pubs/cm05/figure3_4.htm (accessed August 13, 2007); National Data Archive on Child Abuse and Neglect. (2006). Available at: http://www.ndacan.cornell.edu/NDACAN/Datasets/Abstracts/DatasetAbstract_General.html

*These data are drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS) which provides information only on those American Indian/Alaskan Native children who self-identify as American Indian/Alaskan Native and are placed by state child welfare agencies in foster care. AFCARS data do not include American Indian/Alaskan Native children who receive foster care services from tribal children’s programs. It is estimated that that approximately two-thirds of Native American children in foster care are placed by state child welfare agencies and one-third to 40 percent are placed in foster care by tribal authorities.

APPENDIX C

STATES WITH THE **(1)** HIGHEST PERCENTAGE OF CHILDREN SERVED IN FOSTER CARE WHO ARE AMERICAN INDIAN/ALASKAN NATIVE AND **(2)** LARGEST NUMBER OF AMERICAN INDIAN/ALASKAN NATIVE CHILDREN IN FOSTER CARE (2005)*

HIGHEST PERCENTAGE OF CHILDREN SERVED IN FOSTER CARE WHO WERE AI/AN		LARGEST NUMBER OF AI/AN CHILDREN SERVED IN FOSTER CARE	
STATE	PERCENTAGE	STATE	NUMBER
South Dakota	52.2	Oklahoma	1250
Alaska	50.9	Oregon	1245
Montana	33.6	Alaska	912
North Dakota	26.4	South Dakota	894
Minnesota	12.2	Minnesota	850
Oregon	11.3	Washington	847
Oklahoma	11.0	Montana	746
Nebraska	9.0	California	672
Washington	8.4	Nebraska	561
Idaho	6.6	North Dakota	360
New Mexico	5.8	Wisconsin	305
Wisconsin	3.8		

Source: National Data Archive on Child Abuse and Neglect. (2006). Available at: http://www.ndacan.cornell.edu/NDACAN/Datasets/Abstracts/DatasetAbstract_General.html

* These data are drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS) which provides information only on those American Indian/Alaskan Native children who self-identify as American Indian/Alaskan Native and are placed by state child welfare agencies in foster care. AFCARS data do not include American Indian/Alaskan Native children who receive foster care services from tribal children's programs. It is estimated that that approximately two-thirds of Native American children in foster care are placed by state child welfare agencies and one-third to 40 percent are placed in foster care by tribal authorities.

APPENDIX D

STATES WITH GREATEST DISPROPORTIONALITY IN REPRESENTATION OF AMERICAN INDIAN/ALASKAN NATIVE CHILDREN IN FOSTER CARE (PLACED BY STATE CHILD WELFARE AGENCIES)*

STATE	PERCENT OF TOTAL CHILD POPULATION WHO ARE AI/AN	PERCENT OF CHILDREN IN FOSTER CARE WHO ARE AI/AN
Alaska	20%	50.9%
Minnesota	2%	12.2%
Montana	10%	33.6%
Nebraska	1%	9.0%
North Dakota	9%	26.4%
Oregon	1%	11.3%
South Dakota	15%	52.2%
Utah	1%	5.7%
Washington	2%	8.4%

Sources: The National Indian Child Welfare Association. State Fact Sheets (using 2000 US Census Bureau data). Available on-line at: <http://www.nicwa.org/states/> (accessed September 20, 2007); The Annie E. Casey Foundation. Kids Count 2005. Available on-line: http://www.kidscount.org/sld/compare_results.jsp?i=710 (accessed August 24, 2007). National Data Archive on Child Abuse and Neglect. (2006). Available at: http://www.ndacan.cornell.edu/NDACAN/Datasets/Abstracts/DatasetAbstract_General.html

* These data are drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS) which provides information only on those American Indian/Alaskan Native children who self-identify as American Indian/Alaskan Native and are placed by state child welfare agencies in foster care. AFCARS data do not include American Indian/Alaskan Native children who receive foster care services from tribal children's programs. It is estimated that that approximately two-thirds of Native American children in foster care are placed by state child welfare agencies and one-third to 40 percent are placed in foster care by tribal authorities.

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About the National Indian Child Welfare Association

The National Indian Child Welfare Association (NICWA) is a private, non-profit organization dedicated to improving the lives of Indian children and their families. NICWA accomplishes this goal by offering training and technical assistance related to Indian child welfare services; making available information regarding the needs and problems of Indian children; helping to improve community-based services; and working to promote improved public policies for Indian children.

For additional information about this report or other NICWA projects, please contact:



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