



Tribal Child Welfare Issues

ACTION

- Pass the Indian and Alaska Native Foster Care and Adoption Services Amendments (S. 331/H.R. 443) to provide direct tribal access to foster care and adoption assistance funding and services to Indian children in tribal areas.
- Pass the Indian Child Welfare Act Amendments (H.R. 2750) to strengthen the Indian Child Welfare Act of 1978.

HISTORY

In 1978, Congress passed the Indian Child Welfare Act (ICWA, P.L. 95-608) to preserve cultural and family ties among Indian 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 to 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. ICWA also sets out a two-part requirement for states before they remove an Indian child that involves efforts to prevent the breakup of the Indian family and standards for court findings.

Congressional hearings that began in 1974 and led to the passage of ICWA in 1978 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%–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.¹

Although ICWA established procedures and protections for placing Indian children in out-of-home care, adequate funding to provide these services did not follow. Tribal nations do not have the option of receiving Title IV-E federal foster care and adoption assistance funds directly. In a few instances, some tribes have negotiated agreements with states that allow them to access these 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 2001, and again in the current congressional session, which began in 2003, legislation has been introduced in the Senate and House of Representatives to allow tribes to apply directly for funding for eligible children in foster care and adoptive homes. The Indian and Alaska Native Foster Care and Adoption Services Amendments of 2003 (S.331/H.R. 443), sponsored by Senator Tom Daschle (D-SD) and Representative David Camp (R-MI), respectively, would allow a federally recognized tribe or consortium of tribes to submit an application to the U.S. Department of Health and Human Services 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 states must meet. HHS would have some flexibility in applying these requirements. Similar to current state requirements, a tribe would have to submit a plan. As part of that plan, the tribe would have to indicate 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 would apply to tribal plans.

Representative Don Young (R-AK) introduced the Indian Child Welfare Act Amendments of 2004 (H.R. 2750) in July 2003. This proposal responds to many loopholes and interpretation problems that have occurred in implementing the original act. The legislation attempts 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 requires that current notice provisions be provided to extended family members, defines the circumstances under which federal courts could review state ICWA violations, and establishes a federal review process for compliance with ICWA.

KEY FACTS

- 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 of this population.²
- Of the 903,089 substantiated cases of child abuse in 2001, 2%, or 18,072, involved American Indian or Alaskan Native children.³
- In Alaska and South Dakota, more than 45% 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/Alaskan Native children.⁴
- As of September 30, 2000, 11,359 children in out-of-home care were American Indian or Alaskan Native.⁵
- As of September 30, 2000, 2,409 American Indian or Alaskan Native children were waiting to be adopted, and 743 were adopted through public agencies.⁶

SOURCES

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6. Ibid.

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