

Closing the Circle: Bringing the Promises of the Indian Child Welfare Act Home

In the generation since Congress passed the Indian Child Welfare Act (ICWA), outcomes for Native children have improved. Yet, Native children remain overrepresented in foster care in the United States: approximately 3 percent of all foster children are Native children even though Native children make up only 1.8 percent of all children in the United States.¹ In this presentation, we will focus on how state and tribal practitioners can collaborate to fully implement ICWA's requirements and protect the best interests of Native children, families and tribes.

While most state court judges and practitioners are aware of ICWA, many are uncertain about how to implement its requirements and accomplish the best outcomes for Native children. Our presentation will explain the mechanisms ICWA uses to protect Native children, families, and tribes (jurisdiction, notice, transfer, intervention, heightened burdens of proof, requirements for expert testimony, and placement preferences, among other things) and consider case law that has furthered or hindered ICWA's goals (such as the "existing Indian-family" doctrine). Throughout this discussion, we will describe tools that states and tribes have used to best implement ICWA's provisions (joint powers agreements and other jointly developed protocols, the exercise of concurrent jurisdiction using combined hearings, inclusion of tribes in states' Child and Family Service Reviews and development of Program Improvement Plans, and automated data collection) and address the role of tribes and tribal courts in child welfare cases involving Native children. Finally, we will address the role of lawyers and others in realizing the purposes of ICWA, describing how lawyers can (indeed, must) use the systems, procedures and information that tribes and states develop collaboratively to better advocate for the needs of Native children.

¹ U.S. Government Accountability Office, Indian Child Welfare Act. Existing Information on Implementation Issues Could be Used to Target Guidance and Assistance to States. (April 2005)