



Permanency for Children
The State and Federal Indian Child Welfare Act
Practice Bulletin
November 2008



State data indicates that while Native American Children make up only .04% of Iowa's population, they account for 3% of our adoptive placements. 1,2, 3

"...there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe".

Indian Child Welfare Act [ICWA], P.L. 95-608 passed in 1978, http://www.nicwa.org/policy/law/icwa/ICWA.pdf

"ICWA" stands for the Indian Child Welfare Act, which is a federal law passed in 1978. ICWA intended to limit the historical [and sometimes unwarranted] practice of removing Native American children from their tribe and family and placing them in a non-Indian families or institution. (25 U.S.C.A. §§ 1901-1963) The intent of Congress under ICWA was to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families" (25 U.S.C. § 1902). ICWA sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe.

"Best Interest" refers to the ICWA requirement that the placement, to the greatest extent possible, reflect the unique values of the child's tribal culture and is best able to assist the child in establishing, developing and maintaining a political, cultural and social relationship with the child's Indian tribe and community. [232B.3]

The ICWA act seeks to achieve the goal of keeping Indian children with their family or tribe with three principle methods: 1] minimum federal standards for when Indian children can be removed; 2] placing children with Indian families when they are removed; and 3] providing assistance to family services programs operated by Indian tribes.

Indian children have a unique political status as members of sovereign tribal governments. Congress, through the Constitution, statutes, treaties, and the general course of dealing with Indian tribes, is charged with the responsibility for the protection and preservation of Indian tribes and their resources, including Indian children.

Sovereignty: Having the status of being a distinct political society, separated from others, capable of managing its own affairs and governing itself. (American Indian tribes have sovereignty and are considered sovereign nations by the United States.)

The special political status of Indian tribes, as well as the history of biased treatment of Indian children and families under public and non-Indian private child welfare systems, is the basis for the enactment of ICWA (25 U.S.C. § 1901). The Indian Child Welfare Act is designed to protect Indian families, and thus the integrity of Indian culture.

1 State Data Center (2008) Annual Total Number of Children in Foster Care in Iowa's Counties
2 State Fiscal Years 2000-2007; Profile of Demographic Information, American Indian Areas
3 Iowa Department of Human Services (2007) Adoption Subsidy Data



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It sets up requirements and standards for child-placing agencies to follow in the placement of Indian children. It requires providing, culturally appropriate services for Indian families to remedy the issues that would otherwise lead to prlacement, before a placement occurs; notifying tribes regarding the placement of Indian children; and when placement must occur, it sets out preferences for the placement of these children. The placement preferences start with members of the child's family, Indian or non-Indian, then other members of the child's tribe and lastly other Indian families. Both tribes and state courts have the ability to place Indian children with non-Indian families and often do when appropriate.

Family is more broadly defined within Indian culture and often includes non-blood related community members. Family may include extended family, clan or community members, and anyone within the tribe.

The Act also provides tribes with the ability to intervene in child custody proceedings, which results in greater participation from extended family members in many cases. Additionally, the Act recognized existing Indian tribal authority on the reservation and extended that authority to non-reservation Indian children when state courts transfer jurisdiction to tribal courts. A result of the Act has been the development and implementation of tribal juvenile codes, juvenile courts tribal standards, and child welfare services. Today, almost every Indian tribe provides a range of child welfare services to their member children.

Active Efforts involves a vigorous and concerted level of casework that extends beyond the typical level of reasonable efforts. [See Practice Tips]

Caseworkers must make several considerations when handling an ICWA case, including:

- 1) providing **active efforts** to keep the family together
- 2) identifying a placement that fits under the ICWA preference provisions;
- 3) notifying the child's tribe and the child's parents of the child custody proceeding; and
- 4) working actively to involve the child's tribe and the child's parents in the proceedings.

Caseworkers should be able to explain a family's rights under ICWA and any other case actions in a manner that is easy for the family to understand.

Expectations:

ICWA provides minimum Federal standards for the removal of Indian children from their families and placement of these children in foster care or in adoptive homes that reflect Indian culture. **CFSR** sets requirements for Federal funding through Title IV-E and Title IV-B.

ONLY THE TRIBE can make the determination that the child is or is not a member of, or eligible for membership based on their unique tribal criteria. **ALWAYS** inquire if there is Native American Heritage. **ALWAYS** notify if there is the possibility of eligibility or membership..

The CFSR reflects ICWA requirements:

Item 14: Concerted efforts must be made to maintain the child's connections to his or her neighborhood, community, faith, extended family, tribe, school and friends.

1. Sufficient inquiry must be conducted with the parent, child, custodian, or other interested parties to determine whether the child may be a member of, or eligible for membership in, an Indian tribe.
2. If the child **may** be a member of, or eligible for membership in, an Indian tribe, timely notification of the tribe's right to intervene in any State court proceedings seeking an involuntary foster care placement or termination of parental rights must be documented.
3. If the child is a member of, or **eligible for** membership in, an Indian tribe, the child must be placed in foster care in accordance with the ICWA placement preferences or concerted efforts must be made and documented.

Placement preference is in this order unless another order is specified by tribal resolution:
FIRST: With a member of the child's extended family.
SECOND: In a foster home licensed, approved, or specified by the Native American child's tribe.
THIRD: In another Native American foster home placement.
FORTH: In an institution approved by a tribe or operated by a Native American organization



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"Obviously, as a tribe we want to keep our children within our reach. The children need to be close by and have access to the tribal community to pick up on the language, the culture, and other tribal traditions that make up being Meskwaki or Native American Indian. Studies have shown that social issues such as substance abuse, domestic violence, suicide, and other negative outcomes result from a loss of or a sense of loss of cultural identity." Allison Lasley, CFS ICWA Specialist

Culturally Competent Practice

ICWA requires child welfare practices that are culturally competent in the use of child protection strategies.

- ❑ The need to consider cultural conditions and way of life of the child's tribe and/or Indian community in making judgments about the family.
- ❑ The need to intervene only when supported by relevant, prevailing Indian social and cultural standards regarding intervention in familial relationships by non-family.
- ❑ The need to develop a case plan with assistance of parent/custodian that involves use of tribal Indian community resources.
- ❑ The need to assist parents or custodian and child to maintain ongoing familial and tribal relationships.
- ❑ All Indian Tribes and Alaska Native Tribes are unique and have their own culture and community context. The individual culture and community context must be considered to provide culturally competent social work practice.

The Iowa ICWA

The Iowa Legislature adopted the Iowa ICWA in Chapter 232B in 2003, and the requirements listed below are in lieu of or in addition to those required by the federal ICWA.

- ❑ If a proceeding is going to be held involving a child's placement, and there is reason to believe that a child may be identified by an Indian tribe as a child of the tribe's community, special requirements apply so that the tribe and extended family members are notified of the proceeding⁴
- ❑ Requires "active efforts" to provide services and programs that go beyond reasonable efforts.
- ❑ If a court is considering whether to place a child for foster care or adoption, testimony is required from

tribally recognized qualified expert witnesses with specific knowledge of the child's tribe.

- ❑ Placement preferences are specified for the Indian child's adoptive placement and for temporary placements. A priority order for the placements begins with the Indian child's extended family and continues through non-Indian families who are committed to enabling the child to maintain contact with the child's Indian family and tribe.
- ❑ The Iowa ICWA does not include the "good cause" language from the Federal ICWA for not following placement preferences- making exceptions extremely rare. 4

The Department of Human Services (DHS) is required to make efforts to enter into agreements with Indian tribes regarding jurisdiction over Indian child custody proceedings and child welfare placement of Indian children. *Currently DHS has an agreement with the Sac and Fox (Meskwaki Tribe).*

Provide **active efforts** to the family to prevent removal of the child.

Active Efforts involves a vigorous and concerted level of case work that extends beyond the typical level of reasonable efforts.

Active Efforts utilizes resources within the Indian child's family, Tribe, and Indian social service agency.

Active Efforts are satisfied by taking particular actions:

- Request the tribe to convene traditional and customary support and resolution actions or services
- Identification and participation of tribally designated representatives at the earliest point
- Consult with extended family members to identify family structure and support services that may be provided by extended family members
- Frequent visitation in the Indian child's home and homes of extended family members
- Exhaust all tribally appropriate family preservation alternatives

Identify and provide information to the child's family concerning community resources and actively assist the family in accessing those resources.

⁴ Supreme Court of Iowa (2007) In the Interests of A.W. and S.W., Supreme Court of Iowa (2008) In the Interests of N.N.E.



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ICWA Technical Assistance

Currently, DHS has a contract with Meskwaki Family Services (MFS) for consultation, technical assistance, and training for the entire state on ICWA matters with the stated intention of improving outcomes for Native American Children.

Services available to the field include:

- ✓ Provides expert witness for Meskwaki cases. Making referrals for expert witnesses for other tribes when possible. **MFS cannot provide expert witnesses or secure witnesses for non-Meskwaki tribes, due to the unique nature of each tribe.** Maintains a directory of expert witnesses for tribes in bordering states.
- ✓ Technical assistance on ICWA matters, including meeting the specific training needs of localities with greater numbers of Native Americans.
- ✓ Written communications and presentations to DHS staff on the availability of culturally competent services, including from near-by tribes.

Funding and Services

The State of Iowa, DHS, and the Meskwaki have an agreement regarding foster care placements and child welfare services.

- ✓ **Allows the tribe to access federal IV-E funding** for foster care expenses of children in tribal court
- ✓ **DHS works cooperatively with the Meskwaki Family Services (MFS)** to provide child welfare services, and allows MFS to contact DHS for appropriate services. DHS will provide MFS with information regarding known or suspected abuse, and MFS will report the same information to DHS. DHS will share child abuse assessments when legally permissible with MFS in order to ensure the safety and welfare of the children.
- ✓ **DHS will work collaboratively with MFS to develop case plans.** If tribe has jurisdiction, case management will be provided by MFS.
- ✓ **The tribe may develop home licensing standard to license foster care families.** MFS is in the initial stages of developing this program.



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WHAT WE NEED TO DO ³	HOW TO INCORPORATE INTO PRACTICE
DHS will make diligent efforts to identify every child who is subject to ICWA	<ul style="list-style-type: none"> • Inquire at Intake in ALL cases whether the child has Native American heritage. If the child is not properly identified early, "active efforts" may not be met. • Inquire at ALL stages of the case following Intake, including every court hearing and any potential custody change.
When there is an emergency removal, the DHS worker has specific responsibilities if the child is of Native American Heritage	<ul style="list-style-type: none"> • Inquire as to whether the child has Native American heritage and identify the tribal affiliation. If you are seeking placement, you are required by 232B to contact the Indian tribe, the child's parent, any person who has custody of the child or with whom the child resides, and any other person that reasonable can be expected to have information regarding the child's possible membership or eligibility; including, but not limited to the United States department of the interior. • Contact the tribe immediately when receiving custody of a Indian Child and maintain continuous contact with them through the proceeding. • Concerted efforts must be made and activities documented to follow ICWA placement preferences. The Native American child's tribe has the right to establish a different order of placement preferences, as long as it is the least restrictive setting appropriate to the particular needs of the child. Extended family members have the right to intervene and be considered as a preferred placement for the child. • Recommend termination of the placement immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and expeditiously initiate a child custody proceeding subject to the provisions of Chapter 232B. • Develop a specific plan of action describing the "active" reunification efforts that have been undertaken and planned to restore the child to the parents or Native American custodian. • In an involuntary foster care placement proceeding, clear and convincing evidence is required.
DHS must send notice to the tribe(s), the parents, and the Native American custodian whenever a child custody proceeding is initiated.	<ul style="list-style-type: none"> • No foster care placement or termination of parental rights proceeding may be held until the tribe, parents, or custodian have received proper notification and ICWA timelines have been followed.
DHS must determine which court has jurisdiction in any case involving a Native American child.	<ul style="list-style-type: none"> • Ask the child's tribe whether the child is a ward of the tribal court. • The tribal court has exclusive jurisdiction over a proceeding involving a child who



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lives on the reservation or settlement and concurrent jurisdiction between the tribal and state courts for a child living off the reservation or settlement who is not a ward of the tribal court.

- Work closely with the Assistant Attorney General and the Tribal Attorney to clarify jurisdiction.
- Work with the tribal social worker even when the tribe declines transfer of a case. They can play a significant role in the concurrent planning process for the long-term well being of the child.

DHS must undertake active efforts to provide services to the Native American Family subsequent to an investigation and before a decision is made to place the child out of the home.

- To reduce the potential for cultural bias when evaluating home and family conditions and making decisions, the DHS worker should involve the tribe at the earliest possible point.
- In order to demonstrate that "active efforts" have been made, the DHS worker must assure that due consideration has been given to the cultural needs and values of the family and that resources have been diligently sought to provide family services.

DHS must recognize the unique nature of termination proceedings when Native American children are involved.

- Evidence presented for termination of parental rights must be **beyond a reasonable doubt**.
- The testimony of a qualified expert witness is required by ICWA.
- When the ICWA termination standard cannot be met, the permanency plan will need to provide for a different option like a long-term guardianship or continued reunification efforts.
- Any permanency plan developed for a Native American Child that provides for out-of-home placement must comply with ICWA placement preferences.



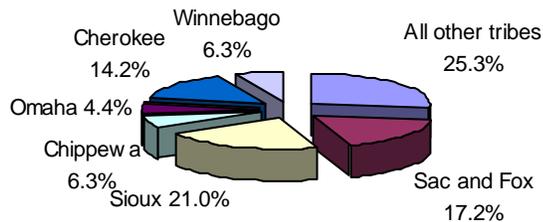


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Recent Supreme Court Rulings^{6,7}

Table with 2 columns: 'Recent Iowa Supreme Court rulings have handed down opinions on parts of the Iowa ICWA' and 'What does this mean for practice?'. It contains two rows of text detailing court rulings on the definition of 'Indian child' and parental rights.

American Indians in Iowa by Selected Tribe: 2000



60.8% of the growth in Iowa's Native American population occurred in three counties: Polk, Linn, and Woodbury.

36.7% of Iowa's American Indian population lives in 5 cities: Sioux City, Des Moines, Davenport, Cedar Rapids and Council Bluffs.

Just some of the tribes with historic and current links to Iowa include: Chippewa, Dakota, Foxes, Illinois, Iowa, Missouri, Moingwena, Omaha, Oto, Ottawa, Peoria, Ponca, Potawatomi, Sauk, and Winnebago.



6,7 Supreme Court of Iowa (2007) In the Interests of A.W. and S.W., 7 Supreme Court of Iowa (2008) In the Interests of N.N.E.

http://www.iowadatabase.org/Publications/aian2006
http://www.native-languages.org/iowa.htm
http://www.meskwaki.org/