

CASA & The Indian Child Welfare Act: Tips for Working With Native American Children



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Introduction

The purpose of this presentation is not to convert the CASA volunteer into an ICWA expert but rather to develop an understanding that Indian children must have advocates who zealously protect their rights as Indian children, not just as children. At every stage of the proceeding, special rules apply to Indian cases, and the CASA volunteer must see that those involved in the proceedings adhere to these rules so that the

Indian child's rights are not compromised. The CASA volunteer can play an essential role in securing those rights.



Family Structure

For Native Americans, the extended family is not limited to the mother and father, but may also includes aunts, uncles, grand parents, cousins, nieces and nephews, clan members, clan leaders, community elders, and all other blood and non-blood relations.

Other considerations:

- Many adults are often involved with decisions regarding children.

Family decisions about children can appear to the outsider to be handled slowly.

- Understanding the depth of family relationships can be an asset to a worker when it comes to seeking out family supports, and strengths and options for out-of-home placement.

Native Americans hold elders in the highest esteem. They are viewed as leaders and mentors. Their advice and wisdom are revered.

- Elders are viewed as wise, and thus influential.
- Their wisdom is especially sought making decisions about children.
- Elders play a very special role of passing on cultural values and beliefs, and aiding in the development of a young child's tribal identity.
- Elders exercise a great deal of influence in the decision-making processes of others and their involvement should be welcomed.
- Elders often play the important role of being the head of the family and clan.

It is important to contact the matriarch or patriarch of the family for guidance and assistance if possible.





Tribal Sovereignty Issues

It is the CASA volunteer's job to understand and ensure that the Indian child's special rights are acknowledged and secured. It can best be understood as a citizenship right. Congress in passing ICWA essentially acknowledged the premise that an Indian child's citizenship within the tribe is a valuable right to be protected for the child. According to the law, these tribes are considered domestic, dependent nations and as such have a special relationship with the federal government that transcends the relationship of states to other citizens of each state. Each Indian child has an interest in his or her tribe, and each tribe has an interest in each of its children. ICWA is designed to prevent inappropriate interference with this relationship.



What is ICWA?

Passed by Congress in 1978, the Indian Child Welfare Act (ICWA or the Act) requires that every state court dependency matter involving an Indian child must be resolved with reference to specific provisions. The Act is a clear indictment of state courts and social service agencies whose practices and abuses led to the unprecedented necessity of federal intervention. Within the Act, Indian children are afforded specific protections by Congress designed to insure that the pre-Act abuses of states are eliminated.



ICWA History

The historical tendency of institutional abuse directed at Native American families led Congress to pass this Act. Removal of Indian children from their homes resulted in the undermining of Indian families and had a devastating impact on tribes across the country.

At the national level the following results were compiled:

- Indian children were placed in foster care or were adopted at three times the rate of non-Indian children.
- Approximately 25-35% of all Indian children were removed from their homes and placed in non-Indian foster homes and adoptive homes or institutions.

It is important to note that Congress found that the removals often resulted from states failing to recognize the essential tribal relations of Indian people and the different cultural standards regarding extended families which prevail in Indian communities. The removals were not only removals from the nuclear family but from the tribal community and resulted in cultural alienation for the tribal children. The alienation frequently translated into serious adjustment problems during adolescence. Indian children were often not able to adjust to social and cultural environments that were significantly different from their home environments. The children grew up facing racism and exclusion in non-Indian communities and did not have the cultural skills to fit into a tribal environment.



ICWA

NATIVE CHILD.S RIGHTS

- To Tribal identity and entitlements;
- NOT to have family broken up;
- To be placed with a Native family;
- To have information regarding the child's Tribal identity protected and preserved.

PARENT OR INDIAN CUSTODIAN RIGHTS

- To designate an Indian custodian (who then has the same rights as the parent under ICWA)
- To a court appointed attorney in any removal, placement or termination of parental rights
- To notice of proceedings
- To have State make ACTIVE EFFORTS to provide remedial services to PREVENT the break-up of the family (*State must prove efforts were unsuccessful*)
- To a translator if needed

TRIBE.S RIGHTS

- To receive notice of a child custody proceeding involving an Indian child as defined by ICWA,
- To intervene at anytime until the case is dismissed
- To request transfer of jurisdiction to Tribal court from State court
- To get records
- To establish child welfare programs
- To petition the Secretary of Interior for resumption of jurisdiction
- To full faith and credit from Federal and state courts for any child custody proceeding in Tribal court





CASA Volunteer Commitment Top Ten List

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And Tips for ICWA Advocacy

1. Conduct an independent investigation by reviewing all pertinent documents and records and interviewing the child, parents, social workers, foster parents, teachers, therapists, daycare providers and other relevant persons to determine the facts and circumstances of the child's situation. To do this effectively, volunteers spend considerable time getting to know children and gaining their trust.

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- The CASA volunteer who is assigned an Indian child should immediately review the provisions of ICWA to determine whether or not the Act is being adhered to by the state court and the social services agency.
- The CASA volunteer should attempt to make contact with the child's tribe and determine what resources are available to the Indian child.
- The CASA volunteer should determine whether the child is enrolled in the tribe, as enrollment is the acknowledgment of citizenship and is a vital interest that must be protected. If the child is eligible but not enrolled, the CASA volunteer should do everything possible to facilitate that enrollment.



2. Determine the thoughts and feelings of the child about the situation, taking into account the child's age, maturity, culture and ethnicity and degree of attachment to family members, including siblings. Also to be considered are continuity, consistency and a sense of belonging and identity.

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- Spend time getting to know the child
- Interview parents, teachers, and others about the child
- The CASA volunteer can also seek out activities that connect the child with his or her native culture. Many services, and service providers, exist that are linked to Indian communities. The volunteer should advocate to have Indian children served by these providers. It is essential for proper development of Indian children's self-identity to have an advocate for their cultural identity and tribal citizenship.



3. Seek cooperative solutions by acting as a facilitator among conflicting parties to achieve resolution of problems and to foster positive steps toward achieving permanence for the child.

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- Understand that the communication style may be different in Native American families compared to the mainstream society's.
- It is possible under ICWA that a case be transferred to a tribal court. (In certain limited circumstances it would be mandatory.) If there is discussion of transfer of jurisdiction, the CASA volunteer can be a very good liaison between the parties and the tribe.



4. Provide written reports at every hearing which include findings and recommendations. The report documents the extent of the volunteer's investigation, lists each source of information and includes sufficient facts to justify the recommendations.

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- Advocate for the inclusion of cultural considerations, extended family's contributions, and tribal customs in court proceedings
- When working with an Indian child, the CASA volunteer has the opportunity to protect the child's rights by ensuring that the state agencies involved with the case are following the Indian Child Welfare Act.



5. Appear at all hearings to advocate for the child's best interests and provide testimony when necessary.

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- Advocate for the inclusion of family and extended family to be a part of the hearings if possible.
- ICWA imposes a federal standard on all states which decrees that the best interests of Indian children are served by protecting "the rights of the Indian child as an Indian and the rights of the Indian community and tribe in retaining its children in its society



6. Explain the court proceedings and the role of the CASA volunteer to the child in terms the child can understand.

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- Assure the child that you understand the cultural considerations of being Native American and that you will do your best to make sure the court considers them as well.



7. Make recommendations for specific, appropriate services for the child and the child's family and advocate for necessary services which may not be immediately available.

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- Research agencies, organizations, programs etc. that can be of assistance for the child and child's family.
- Make sure the child is receiving the Title IV services from the public school system he/she attends.
- If the child is placed in a non-Native foster home/group home – promote cultural opportunities for the child in the community.



8. Monitor implementation of case plans and court orders, checking to see that court-ordered services are implemented in a timely manner and that review hearings are held in accordance with the law.

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- Be aware of all orders and plans as they pertain to the Indian Child Welfare Act.
- The CASA volunteer must find a gentle but firm way of making sure this policy is the guiding force in any dependency action involving an Indian child.



9. Inform the court promptly of important developments including any agency's failure to provide services or the family's failure to participate. The CASA volunteer should ensure that appropriate motions are filed on behalf of the child in order that the court can be made aware of the changes in the child's circumstances and can take appropriate actions.

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- Address any ICWA non-compliance issues with the court or other interested individuals.
- The ICWA lays out the minimal Federal standards for nearly all Indian child custody proceedings, including adoption, voluntary and involuntary termination of parental rights, and removal and foster care placement of Indian children. Section 1903 defines Indian child as “any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.”



10. Advocate for the child's interests in the community by bringing concerns regarding the child's health, education and mental health, etc. to the appropriate professionals to assure that the child's needs in these areas are met.

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- Know that in most communities in Montana, there are Native American cultural events happening frequently.
- The CASA volunteer must advocate for the child's citizenship rights within their tribe while ensuring that the child's day-to-day needs for basic care are being met. It is a challenging task but one which is essential if the Indian children they work with are to reach their full potential.





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Tel# (406) 338-7521, Fax# 338-7530



Crow Indian Reservation
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Flathead Reservation
Confederated Salish & Kootenai Tribe
James Steele Jr., Chairman
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Fort Belknap Reservation
Fort Belknap Community Council
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Montana Reservations

Fort Peck Reservation
Fort Peck Tribal Executive Board
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P.O. Box 1027
Poplar, MT 59255
Tel# (406) 768-5155, Fax# 768-5478



Northern Cheyenne Reservation
Northern Cheyenne Tribal Council
Leroy Spang, President
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Rocky Boy's Reservation
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Box Elder, MT 59521
Tel# (406) 395-4282, Fax# 395-4497



Resources

National Indian Child Welfare Act Association

www.nicwa.org/Indian_Child_Welfare_Act/

American Indian Heritage Foundation

www.indians.org/Resource/FedTribes99/Region4/region4.html

Tribal CASA

www.casenet.org/program-services/tribal/index.htm

Montana-Wyoming Tribal Leaders Council

www.mtwytlc.com/tribes.htm

Native American Rights Fund

www.narf.org/

Contact Information

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