

12. **Los Angeles County American Indian Child Abuse
Protocol**

The purpose of this section is to increase awareness concerning the issues that affect American Indian children in Los Angeles County. This section will assist professionals working with American Indian families to recognize the special government-to-government relationship among members of tribes and the federal government. It is important that County workers are knowledgeable, understand, and implement the Indian Child Welfare Act (ICWA) when working with American Indian children and their families. The Indian Child Welfare Act of 1978 was designed to help ensure that Indian children were placed in Indian homes where they could learn more about their cultural heritage and community. The following are some frequently asked questions concerning ICWA.

What is the Indian Child Welfare Act?

The Indian Child Welfare Act (ICWA) is a federal law, which regulates placement proceedings involving Indian children. If a child is a member of a tribe or eligible for membership in a tribe, that family has the right to protection under the ICWA. These rights apply to any child protective cases, adoption, guardianships, termination of parental rights action, foster care proceedings, runaway/truancy matter, or voluntary placement of children.

When was this law passed?

The ICWA was created in 1978 by the federal government in order to reestablish tribal authority over the welfare and placement of American Indian children. The goal of the act when it was passed in 1978 was to strengthen and preserve American Indian families and culture.

Why was this law passed?

Before the ICWA was passed, a very high percentage of Indian families were broken up because non-tribal agencies removed children from their homes. One reason for the high removal rate was because state officials did not understand or accept Indian culture. Today, the ICWA sets minimum standards for the removal of Indian children from their homes.

Who does it apply to?

The law applies to American Indian children who are unmarried and under age eighteen. The child must be either a member of a federally recognized Indian tribe or must be eligible for membership in a federally recognized Indian tribe. ICWA does not apply to non-federally recognized tribes, and they are not entitled to notice of proceedings. However, under state Indian child law, the court *may* permit the child's non-federally recognized tribe to participate in the child custody proceeding upon request of the tribe. This is limited to one tribe that the child has the most significant contact with.

What does the law do?

The ICWA specifies that placement cases involving reservation based Indian children be heard in tribal courts, allows for transfer of other placement cases

involving Indian children from state to tribal court if the parents agree, and permits a child's tribe to be involved in proceedings that remain in state court. It requires testimony from expert witnesses who are familiar with Indian culture before a child can be removed from his/her home and establishes a high burden of proof for findings that result in termination of parental rights. If a child is removed, either for foster care or adoption, the law establishes a preference that Indian children be placed with extended family members, other tribal members, or other Indian families. These requirements are for federally recognized cases only.

Although ICWA does not apply to non-federally recognized tribes, California law does permit the court discretion to allow them to be present at the hearing, address the court, request and receive notice of hearings, request to examine court documents relating to the proceeding, present relevant information to the court, submit written reports and recommendations, and perform other duties and responsibilities as requested and approved by the court.

What if the child is not living on the reservation does the ICWA still apply?

Yes. The ICWA has a notice requirement. This means that if a state takes a child into custody, it must give notice to the child's tribe, whenever the child may be in the U.S. The tribe may choose to intervene in the state court proceeding or seek a transfer of the case from state to tribal court. If the case remains in state court, ICWA's procedural requirements and preferences will apply.

Who decides who is a member of a tribe?

The law does not require a specific blood quantum as the criteria for membership; it leaves it up to each American Indian tribe to make such determinations on their own.

A variety of issues and problems are identified with delivering ICWA services in Los Angeles. Indian children are not always identified as Indian by child welfare workers and courts. This has led to recent court cases on the subject, and the development of relatively unfavorable "existing Indian family" doctrine by California courts. The courts hold that ICWA applies only if there is an Indian family enrolled in a tribe; those who are not enrolled, even though eligible and having enrolled relatives are not subject to ICWA provisions that direct that such children should be placed with Indian relatives, or tribal relations, or in an Indian home. Emerging out of California case law, the existing family doctrine dictates that the ICWA be triggered only when the children come from an existing Indian family, meaning that the family must be found to have significant social, cultural, or political relationship with the tribe. This is to be decided by the state court. The use of this type of standard clearly undermines the purpose of the Indian Child Welfare Act and is a serious threat to urban American Indian children. To clarify the situation, in 1999 the California State Legislature passed Assembly Bill 65, which stated that when the tribe determines that the person is over 18 and eligible for membership this shall constitute significant political affiliation with the tribe. This returns the power of determining who is Indian to the tribes.

Many social workers, lawyers, and judges have little experience or understanding of ICWA or of federal and tribal government relations based on treaties, legislation, and legal precedent. Consequently, judges, social workers, and lawyers sometimes see ICWA as a violation of individual rights, as discriminatory, and possibly as a violation of constitutional law.

In 1995, over 3 million children were reported victims of child abuse and neglect nationwide. Tribes reported over 8,000 cases of child abuse, 19,000 cases of child neglect, and 4,000 cases of sexual abuse. The data on urban American Indian children in Los Angeles County are difficult to obtain. However, the American Indian Unit reports that:

- 8 Indian children and families are in the system
- 134 Indian children are placed in the homes of Indian relatives (32%)
- 79 Indian children placed in the homes of non-Indian relatives (19%)
- 24 Indian children are in Indian foster homes (6%)
- 123 are in non-Indian foster homes or group homes (29%)
- 58 Indian children are with their parents (14%)

When a charge is made about abuse or neglect of a child, the Department of Children and Family Services sends social workers to investigate. If the family self-declares that they are American Indian, the case is forwarded to the American Indian Unit, a division of the Department. If allegations are proven true they provide services, through contract agencies, to ameliorate the situation. If the child is imminent danger he/she is placed in a foster home, and services are provided through contract agencies in an attempt to reunify the family. If a case goes to court, it is primarily transferred to one judge with an understanding of ICWA. The family must self-declare American Indian heritage to be considered as an ICWA case. The tribe is notified and may choose to intervene at this time. American Indian cases are generally treated the same as other cases in the county court system, except 1) the tribe is notified and 2) the burden of proof is different. To take an American Indian child away from the biological parents, abuse must be proved beyond a reasonable doubt, whereas in general cases the burden of proof is a preponderance of the evidence. If the parents do not receive services or if the situation does not improve, the cases move to the Adoptions Department, and the children are placed in an adoptive home. The following problems have been identified by advocates for the American Indian community:

- County agencies are culturally insensitive to the needs of American Indian families. There needs to be ongoing training particularly since there is a high turnover.
- There is misidentification or lack of identification of American Indian children. It is critical that American Indian children be identified as early as possible. Any professional who may come into contact with the family should ask if either parent is American Indian. One should not assume their ethnicity nor assume that the previous worker took responsibility because the family and/or child has been identified as a particular ethnic group. Not every worker who

comes into contact with the child and family may know about ICWA and as a result, may not understand the importance of identifying Indian children.

- The County is unaware of the legal nature of the relationship with Indian children. The special legal status is ignored. American Indians are members of sovereign nations and have a unique
- There is a lack of Indian foster homes.

The County system must implement ICWA to protect and preserve American Indian families. The County system must also continue to provide ongoing cultural competency trainings and utilize Los Angeles County's existing American Indian service delivery system to meet the needs of American Indian children and families.