



## **ASSOCIATION ON AMERICAN INDIAN AFFAIRS**

Protecting Sovereignty ◦ Preserving Culture

Educating Youth ◦ Building Capacity

SINCE 1922

### **INDIAN CHILD WELFARE ACT RESOURCES**

Resources, news and events concerning ICWA:

<https://icwa.narf.org/>

Legislative History:

<https://www.narf.org/nill/documents/icwa/federal/lh.html>

Talking Points (from NICWA, NCAI, NARF and AAIA):

#### **TOPLINES**

1. The Indian Child Welfare Act (ICWA) is a long-standing federal law protecting the well-being of Native children by upholding family integrity and stability.
2. Opposing ICWA ignores the long-standing government-to-government relationship between tribal nations and the federal government.
3. Tribal nations, tribal organizations, and non-tribal partners are taking action to protect ICWA and end the threat of forced removal of Native children from their families, tribes, and communities.

#### **CORE MESSAGES**

Topline 1: The Indian Child Welfare Act (ICWA) is a long-standing federal law protecting the well-being of American Indian and Alaska Native (AI/AN) children by upholding family integrity and stability.

ICWA is the “gold standard” of child welfare policy.

- ICWA has been labeled the “gold standard” in child welfare policy and practice by a coalition of 18 non-Native national child advocacy organizations.
- ICWA ensures that children and families receive the services they deserve.
- ICWA helps ensure that Native children are protected from abuse and neglect while being treated fairly.
- ICWA prevents Native children from suffering the trauma of unnecessary removal from their families.

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- ICWA requires agencies and courts take into account not just the immediate needs of Native children, but also their long-term needs as they grow older and move into adulthood.
- Child welfare best practices nationally show that *all* children fare better when placed with family.
- At least 26 states have agreements or policies in place that support ICWA.

Studies show that being connected to culture is a proven protective factor for Native children.

- Cultural identity and ethnic pride result in greater school success, lower alcohol and drug use, and higher social functioning in Native children, adolescents, and young adults.
- Native children, adolescents, and young adults involved in their tribal communities and cultural activities have lower rates of depression, alcohol use, and antisocial behavior.
- Tribal language, ceremonies, and traditions are linked to a reduced risk of delinquent behavior for Native children, adolescents, and young adults.

Knowing who they are and being connected to their families and tribal communities is in the long-term best interest of Native children.

- Research shows that there are important long-term benefits to being raised with a distinct cultural identity as a Native person.
- Identification with a specific cultural background and a secure sense of cultural identity is linked to higher self-esteem higher educational attainment, and lower rates of mental health problems and substance abuse in adolescents and adults.

Topline 2: Opposing ICWA ignores the long-standing government-to-government relationships between tribal nations and the federal government.

ICWA is based on citizenship, not on race.

- Today, there are 573 sovereign tribal nations within the United States, which predate the formation of the federal and state governments.
- The U.S. Constitution recognizes the unique political status of tribal nations.
- The federal government has a federal trust responsibility to uphold ICWA in its entirety.
- ICWA reaffirms the inherent rights of tribal nations acknowledged through hundreds of years of federal law and policy.
- Opposing ICWA deprives Native children of advocacy and support from their tribal nations.
- As governments, tribal nations have a role protecting Native children from abuse and neglect; helping families receive the support services they need; and ensuring children stay connected to their families, culture, and communities. Tribal nations have resources dedicated to helping their children, often know children's extended families, and can advocate for the best interest of their member children.

ICWA defines important jurisdiction and child protection responsibilities through political relationships between federal, state, and tribal governments.

- The U.S. Constitution affirms the unique political status of tribal nations and Native people.
- ICWA applies to children who are citizens (referred to as "members" in ICWA) of a federally recognized tribe. The U.S. Supreme Court has repeatedly found federal laws that specifically govern tribal citizens constitutional.

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- Citizenship requirements vary from tribe to tribe, just as citizenship requirements vary from country to country. ICWA does not apply to individuals who merely self-identify as American Indian or Alaska Native.

Today states and tribal nations are doing more than ever to use ICWA to protect Native children.

- Seven states filed an amicus brief in this *Brackeen (Texas) v. Zinke* in support of ICWA. These states, which are home to over 70% of tribal nations, know that ICWA helps them better serve American Indian/Alaska Native children and families.
- States increasingly depend upon tribal nations to help them create effective case plans that reflect Native children and family needs, locate culturally appropriate services, identify and engage extended family members, and locate placements when necessary.
- Tribal nations often have critical information regarding Native families that state or private agencies don't. This information is critical to guide state agencies and state courts as they make important decisions.

ICWA protections are vital.

- ICWA was borne out of the forced removal of one out of every three children from their homes in the late 1970s. This issue is far from ancient history.
- Statistics show that tribal families in crisis are not treated fairly in the courts and child welfare systems.
- Native children are removed from their families and placed in foster care at a rate four times more often than their White counterparts even when both families have the same presenting problems.
- Our children are overrepresented in the foster care system at a rate 2.1 times greater than their proportion of the population.

Topline 3: Tribal nations, tribal organizations, and non-tribal partners are taking action to protect ICWA and end the threat of forced removal of Native children from their families, tribes, and communities.

- On Monday, October 8, 2018, 32 organizations signed onto a joint statement condemning the *Brackeen v. Zinke* ruling, calling the decision 'disturbing' and 'vehemently' opposing the ruling of ICWA as unconstitutional.
- Pledge to defend ICWA by being vocal about your support of ICWA, Native children, and the tribal families and tribal nations ICWA protects

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**TRIBAL-STATE ICWA RELATIONSHIPS**

| <b>States</b>  | <b>Federally Recognized Tribes<sup>i</sup></b> | <b>Tribal-State ICWA Agreement<sup>ii</sup></b> | <b>Title IV-E Agreements<sup>iii</sup></b> | <b>State ICWA<sup>iv</sup><br/>v</b> | <b>Amicus Brief<sup>vi</sup></b> |
|----------------|--|---|--|--------------------------------------|----------------------------------|
| Alabama        | 1  |   |  | X                                    |                                  |
| Alaska         | 229  | 18 <sup>vii</sup>                               | 11   | X                                    | X                                |
| Arizona        | 20   | 1   | 1  | X                                    |                                  |
| Arkansas       | 0  |   |  | X                                    |                                  |
| California     | 106  |   | 2  | X                                    | X                                |
| Colorado       | 2  | 1   |  | X                                    |                                  |
| Connecticut    | 2  | 1   |  | X                                    |                                  |
| Delaware       | 0  |   |  | X                                    |                                  |
| Florida        | 2  |   |  | X                                    |                                  |
| Georgia        | 0  |   |  |                                      |                                  |
| Hawaii         | 0  |   |  |                                      |                                  |
| Idaho          | 4  |   | 2  | X                                    |                                  |
| Illinois       | 0  |   |  |                                      |                                  |
| Indiana        | 0  |   |  | X                                    |                                  |
| Iowa           | 1  |   | 1  | X                                    |                                  |
| Kansas         | 4  |   |  | X                                    |                                  |
| Kentucky       | 0  |   |  |                                      |                                  |
| Louisiana      | 4  |   |  | X                                    |                                  |
| Maine          | 5  | 2   |  | X                                    |                                  |
| Maryland       | 0  |   |  |                                      |                                  |
| Massachusetts  | 2  |   |  | X                                    |                                  |
| Michigan       | 12   | 1   | 6  | X                                    |                                  |
| Minnesota      | 6  | 11  | 4  | X                                    |                                  |
| Mississippi    | 1  |   |  | X                                    |                                  |
| Missouri       | 1  |   |  | X                                    |                                  |
| Montana        | 7  |   | 6  | X                                    | X                                |
| Nebraska       | 4  |   | 3  | X                                    |                                  |
| Nevada         | 17   |   |  | X                                    |                                  |
| New Hampshire  | 0  |   |  |                                      |                                  |
| New Jersey     | 0  |   |  |                                      |                                  |
| New Mexico     | 22   | 2   | 11   | X                                    | X                                |
| New York       | 8  |   | 1  | X                                    |                                  |
| North Carolina | 1  |   |  | X                                    |                                  |
| North Dakota   | 4  |   | 4  | X                                    |                                  |
| Ohio           | 0  |   |  |                                      |                                  |

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|                |     |    |     |   |   |
|----------------|-----|----|-----|---|---|
| Oklahoma       | 37  |    | 34  | X |   |
| Oregon         | 9   |    | 6   | X | X |
| Pennsylvania   | 0   |    |     |   |   |
| Rhode Island   | 1   |    |     |   |   |
| South Carolina | 1   |    |     | X |   |
| South Dakota   | 8   |    | 4   | X |   |
| Tennessee      | 0   |    |     | X |   |
| Texas          | 3   | 2  |     |   |   |
| Utah           | 5   | 5  |     | X | X |
| Vermont        | 0   |    |     | X |   |
| Virginia       | 7   |    |     |   |   |
| Washington     | 29  | 13 | 3   | X | X |
| West Virginia  | 0   |    |     |   |   |
| Wisconsin      | 11  |    | 1   | X |   |
| Wyoming        | 2   |    | 2   | X |   |
| Totals         | 577 | 39 | 102 |   |   |

<sup>i</sup> DEP'T. OF INTERIOR, BUREAU OF INDIAN AFFAIRS, TRIBAL LEADERS DIRECTORY, [https://www.bia.gov/sites/bia.gov/libraries/maps/tld\\_map.html](https://www.bia.gov/sites/bia.gov/libraries/maps/tld_map.html).

<sup>ii</sup> SHANNON KELLER O'LOUGHLIN, ASSOCIATION ON AMERICAN INDIAN AFFAIRS, A SURVEY AND ANALYSIS OF TRIBAL-STATE INDIAN CHILD WELFARE ACT AGREEMENTS INCLUDING PROMISING PRACTICES (June 2017), [https://www.indian-affairs.org/uploads/8/7/3/8/87380358/icwa\\_tribal-state\\_agreements\\_report.pdf](https://www.indian-affairs.org/uploads/8/7/3/8/87380358/icwa_tribal-state_agreements_report.pdf).

<sup>iii</sup> JACK TROPE AND SHANNON KELLER O'LOUGHLIN, ASSOCIATION ON AMERICAN INDIAN AFFAIRS, A SURVEY AND ANALYSIS OF SELECT TITLE IV-E TRIBAL-STATE AGREEMENTS INCLUDING TEMPLATE OF PROMISING PRACTICES (March 2014), <https://www.indian-affairs.org/uploads/5/4/7/6/54761515/fulltitleiv-ereport.pdf>.

<sup>iv</sup> ASSOCIATION ON AMERICAN INDIAN AFFAIRS, OVERVIEW OF U.S. ADOPTION STATUTES REPORT (Feb. 2016).

<sup>v</sup> STONER, TILDEN, TROPE, *THE INDIAN CHILD WELFARE ACT HANDBOOK*, 3<sup>RD</sup> ED. (AMERICAN BAR ASSOCIATION, 2018), APPENDIX D (Pages 305-310).

<sup>vi</sup> Amicus Brief of the States of California, et al. in support of Defendants, *Brackeen v. Zinke*, Case 4:17-cv-00868-O (N.D. Texas May 25, 2018).

<sup>vii</sup> In late 2017, 18 Tribes and Tribal Organizations, collectively known as "Co-Signers," signed the Alaska Tribal Child Welfare Compact with the State of Alaska. These 18 Co-Signers represent 161 of Alaska's 229 Tribes. ALASKA TRIBAL CHILD WELFARE COMPACT (Dec. 2017), <http://www.dhss.alaska.gov/ocs/Documents/Publications/pdf/TribalCompact.pdf>.