

Effective Leadership for Tribal Child Welfare



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Effective Leadership for Tribal Child Welfare

An Overview for Tribal Leaders

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Executive Summary

Tribal leaders set the tone, hold the vision, pass the laws, and empower the systems that protect American Indian and Alaska Native (AI/AN) children. Child abuse and neglect are topics that most people wish they did not have to think about, but tribal leaders must have the knowledge, skills, and courage to confront these difficult issues. There is no aspect of sovereignty more important or more demanding than the protection and well-being of AI/AN children.

This guide provides some basic information on how to establish effective tribal governance and the role of tribal leadership in tribal child welfare systems. This includes:

Heritage of Child Protection

- Until recently, natural helping systems were the primary approach to protecting tribal children that relied upon tribal culture, traditions, and extended family networks. The existence of extensive family networks meant that children were never left without care or orphaned after losing a parent.

Breakdown of Customary Child Protections

- Federal policy contributed to the breakdown in the natural helping system that protected AI/AN children creating a need to develop more formal child welfare systems for tribes.

Removal of AI/AN Children from Tribal Culture

- Federal attempts to assimilate AI/AN people have resulted in the removal of AI/AN children from their families in large numbers starting in the 1700s and extending into the 1970s.
- As many as 25%–35% of all AI/AN children were placed in out-of-home care prior to the passage of the ICWA, and 85% of those children were placed in non-Indian homes.

Sovereignty and AI/AN Children

- Traditionally, tribes exercised full sovereignty in protecting their children, but this was diminished through forced dependence and destruction of traditional governance structures.
- Today, tribal governments are increasingly exercising their inherent sovereign right to protect their children and almost every tribe in the nation operates some form of child welfare services.
- Federal laws, such as ICWA, are increasingly recognizing tribal inherent sovereign rights in child welfare.

Is Child Abuse and Neglect Really a Problem?

- Child abuse and neglect is a problem in every tribal community—one that has been exacerbated by lack of resources and the failure of larger systems outside of Indian Country to empower tribes.
- National data on child abuse and neglect in Indian Country is very limited, but local tribal data can be very helpful in developing child welfare priorities.



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Key Features of ICWA

- ICWA has three major components: (1) codifies requirements for states and private agencies serving AI/AN children and families, (2) reaffirms tribes' inherent right to take jurisdiction over child welfare matters, and (3) provides resources to support tribal operation of child welfare systems and exercise of tribal jurisdiction.
- Many tribes and states are establishing agreements that improve exercise of tribal jurisdiction and improve services to AI/AN children and families as authorized under ICWA.

Tribal Child Welfare Services

- There are three primary child welfare service categories—supportive services, supplemental services, and substitute care services.
- One of the key challenges is creating a child welfare system that is balanced between the protection of children and the preservation of families, while being based in tribal community values and culture.
- Key infrastructure in tribal child welfare includes: updated codes, practice models, descriptions of services, program policies and procedures, and standards for out-of-home placements.

Tribal Leader Roles

- Tribal leaders assume the role of stewards of their children's best interests, lawmakers, establishing an effective tribal court system, ensuring quality child welfare practice standards, establishing a qualified workforce, securing and allocating resources, overseeing government-to-government relations between tribes and states in child welfare, and advocating for resources to support tribal child welfare systems.
- Effective governance requires an understanding of the basics of a tribe's child welfare system, the challenges facing the tribe's programs, and how to address those challenges effectively.

A Heritage of Child Protection

Using formal child welfare services to safeguard children is a relatively new development in the history of the world. Providing protection to children, however, is as old as culture itself. The roots of the current Indian child welfare system reach back to the earliest history of Indian peoples (Cross, 2004). Historically, the safety of AI/AN children was ensured through a natural system of child protection designed by the culture to ensure its future. AI/AN parenting was not just a matter of doing what came naturally but was based on a philosophy and set of values that preserved the integrity of the tribal society (Cross, 2004).

Children were protected from abuse and neglect by the very nature of tribal society. Children were not merely the children of one individual or couple but belonged to and were cared for by the entire community. Child rearing and discipline were never separated from the spiritual belief system (Cross, 2004). In many tribes, children were perceived as gifts from the Creator, having entered this world in perfect harmony. Since they had so recently come from the Creator, children embodied innate wisdom, and their opinions and thoughts were regarded as having special significance. The maltreatment of a child might result in the return of the child's spirit to the Creator. These cultural traditions and spiritual belief systems provided a natural mechanism for child protection (Cross, 2004).

Before colonization, life could often be harsh and sometimes left AI/AN parents, through illness or death, unable to care for their biological children. It was common for a family member or designated tribal elder to take in children who had lost their parents (Cross, 2004). The existence of extended family networks meant that children were never left without care and could hardly be called "orphans" after losing a parent. In fact, foster care, guardianship, and adoption are modern terms for ancient practices.



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Breakdown of Customary Child Protections

Due to colonization, many factors contributed to the breakdown of traditional child welfare systems (Mannes, 1995). They vary from tribe to tribe and within geographical regions. One of the most significant factors was probably the introduction of alcohol, which had a devastating effect. It created a set of behaviors and problems not previously encountered. In addition, the loss of tribal land and economies significantly impeded traditional society and lifestyle. AI/AN people were unable to continue their culture as it had existed prior to colonization. Efforts to assimilate tribal people led to the displacement of traditional belief systems with non-Indian spiritual beliefs. Because child rearing was so closely tied to the spiritual belief systems, much of the traditional child-rearing practice suffered as a result.

The federal government continued the pursuit of policies and efforts designed to assimilate AI/AN people well into the 1970s. Efforts to relocate AI/AN people to urban centers—leaving them without the benefits of their extended families, language, and oral tradition—contributed to the breakdown of tribal traditions and child rearing. Government oppression, as well as policies related to land allotments, housing, and lack of resources also contributed to the decline of the extended family, clan systems, and customary protections for children.

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This breakdown of the natural system made it necessary to implement a formal child welfare system. The federal response was to invite non-Indians, through the Bureau of Indian Affairs (BIA) and state social service systems, to take over the responsibility for the protection of Indian children. It is only since the passage of the Indian Child Welfare Act (ICWA) in 1978 that this responsibility has been reclaimed by tribal authorities (Cross, 2004).

Removal of Indian Children from Indian Culture

A pattern of assaults on AI/AN culture through the removal of children, began as early as the 1700s. The Virginia Company and the Catholic Church authorized the kidnapping of American Indian children to protect settlements and missions against attack. In 1819, Congress authorized the Civilization Fund which helped finance mission schools to “save and civilize” the AI/AN child (Mannes, 1995). In the 1850s, the “Outing System” removed American Indian children from tribes throughout the Midwest to place them on farms as wards and free labor (Mannes, 1995). The forced removal of children from their families and communities to off-reservation boarding schools began in the 1870s and was the norm throughout the early 1900s.

In the 1950s the BIA and the Child Welfare League of America (CWLA) entered into a partnership to conduct an effort known as the Indian Adoption Project. This project removed AI/AN children from their families for no other reason than poverty and placed them for adoption in cities in the east, never to be seen again. The work of the BIA and CWLA was just the beginning (Mannes, 1995). In the early 1970s a study by the Association on American Indian Affairs revealed that state and federal child welfare agencies were removing one in every four AI/AN children from their home (Jones, Tilden, and Gaines-Stoner, 2008). The majority of these children, 85–90%, were placed in non-Indian homes and institutions (Jones, Tilden, and Gaines-Stoner, 2008). As tribes began to operate their own social services under the Indian Self-Determination Act, they began to understand the devastating implications of these practices. In 1978, ICWA was passed as a result of intense lobbying by tribes seeking to put an end to the destruction of AI/AN families. In 2001, the executive director of CWLA publicly apologized for CWLA’s role in the adoption project and pledged to partner with tribal nations to improve resources and policies for AI/AN children (Bilchik, 2001).



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Sovereignty and Children

There is no sovereign right or responsibility more important than the protection of children. Child protection and child custody are matters that governments have authority over under the legal doctrine of *parens patriae*. *Parens patriae* is a Latin term that means “parent of the nation.” It provides the legal authority necessary for a government to intervene in the relationship between a parent and child to protect the child’s best interest and general welfare. Tribes, like states, are sovereign governments that are legally considered the “parent of the nation.” Therefore, tribes, like states, have the right and the responsibility to regulate the relationships between parents and their children in order to protect citizen children. It is this doctrine, and the sacred teachings of tribes about children, that form the basis for tribal operation of child welfare services in today’s day and age.



There is no sovereign right or responsibility more important than the protection of children.

Historically, by the nature of our customs, tribes exercised full sovereignty in child welfare. Tribal elders acted as judges. Traditional chiefs were the protectors of family well-being. Our clan and kinship systems functioned as social service providers. Then the ability to exercise sovereignty was diminished by forced dependence and destruction of traditional governmental structures. However, our responsibility to our children was never diminished. Whether or not a tribe can fulfill its obligations to its children, a sovereign government is responsible for child safety and well-being. Beginning with the Indian Self Determination Act of 1975 and then with ICWA in 1978, tribes began in earnest to reclaim the responsibility for the protection of tribal children. Today, almost every tribe in the nation provides some form of child welfare services.

Is Child Abuse and Neglect Really a Problem?

As hard as it seems to believe, child abuse and neglect a problem in every AI/AN community. While there is little available data on child abuse in tribal communities, we do know that many risk factors associated with increased chances of child abuse and neglect are present in many tribal communities. Some risk factors are structural, like poverty and community safety, meaning they are part of larger problems of structural inequity that are beyond the control of parents or caretakers (Administration of Children and Families, 2003). Lack of resources and the failure of larger systems outside of Indian Country to empower tribal nations perpetuates these structural inequities. Other risk factors are more within the control of parents or caretakers, such as family violence and substance abuse (Administration of Children and Families, 2003). These parental risk factors are often influenced by trauma, both historic and current day, that family members have experienced and were often left untreated and/or unresolved.



The limited data on AI/AN child abuse indicates is that AI/AN children are slightly more likely to face abuse or neglect, and that neglect is the most prevalent type of child maltreatment experienced by AI/AN children. The federal government's National Child Abuse and Neglect Data System, which includes reports of child abuse and neglect against AI/AN children on tribal lands when the state or county is the primary responder to these reports, indicates the following:

- AI/AN children experienced a rate of child abuse and neglect of 11.4 per 1,000 AI/AN children. This rate compares to the national rates of victimization of 9.2 per 1,000 (U.S. Department of Health and Human Services, 2013a)
- AI/AN children are more likely to be confirmed as victims of neglect (59.7%) and are least likely to be confirmed as victims of physical abuse (6.4%) (U.S. Department of Health and Human Services, 2010)



The actual data trends in your tribal community may differ and fluctuate, so reviewing the available data in your community is important to understand how to most effectively respond and design your tribal child welfare programs. These statistics demonstrate the critical need and serious threats that many of our tribal children face.

Key Features of ICWA

Soon after the passage of the ICWA tribes began intervening in state custody proceedings as well as developing their own child welfare programs. ICWA applies to AI/AN children who are members of their tribe, or whose parents are members of their tribe and are eligible for membership. ICWA contains three major components. First, it sets forth several requirements that states must follow when serving AI/AN children and families. Second, it reaffirms the inherent right of tribes to take jurisdiction over their own child welfare matters. Lastly, it encourages the exercise of this jurisdiction with grants to tribes which support juvenile courts, codes, and child welfare services.

Several provisions of ICWA (25 U.S.C. § 1901 et seq.) have fostered the development of tribal services which monitor or supplement state services. These include requirements that

- Tribes be given notice of any custody proceeding involving one of their children
- States must use AI/AN expert witnesses
- Tribal children should be placed in Indian homes
- Tribes be allowed to intervene in the state court proceedings (intervention can include just monitoring a case all the way to active participation in agency case planning and court hearings, including facilitating a transfer of jurisdiction to tribal court)

Other provisions of ICWA have fostered independent tribally operated child welfare services. These include provisions that

- Allow for transfer of jurisdiction from state to tribal court
- Allow tribes and states to enter into agreements on child custody and services
- Empower and encourage tribes to establish courts, codes, and programs



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Indian Child Welfare Services

Tribal capacity to provide child welfare services has expanded steadily since the passage of the ICWA. Child welfare practice skills have successfully been adapted by tribes and urban Indian organizations to match tribal culture. When tribes provide child welfare services, tribal children tend to be placed outside their homes less often. When they are placed, they remain in out-of-home care for shorter periods of time and are more likely to be with relatives. Tribes also contract to provide services for AI/AN children and families in some states.

Slowly, the federal government and states are recognizing the value of turning more child welfare responsibility over to tribal governments (GAO, 2005). Tribal knowledge of how to provide effective services grows with experience. Given the opportunity to redefine and develop Indian child welfare programs, tribes can revitalize some of the traditional practices and blend them in with the new.

Tribal Child Welfare Services

The philosophy of formal tribal child welfare systems and the range of services they provide are similar to those that were provided in more traditional systems during the past. The formal system is based on the belief that every child has the right to be safe, to grow up in a family, and, whenever possible, to be with his or her own family in his or her own culture. The tribal leader has the responsibility to ensure the tribe's future. In child welfare, this means implementing codes, policies, and services that constitute a tribal child welfare program. Tribal child welfare workers are charged, by tribal leadership, with the authority to safeguard the needs of their children and families.

Simply put, there are three broad types of service that may be provided by a tribal child welfare program: (1) supportive services, (2) supplemental services, and (3) substitute care services (Cross, 1995). Which services your tribe provides and to what extent is largely a resource issue. It may also depend on the type of relationships that exist with other service providers, such as state, county, or BIA service providers, and tribal community or governmental support for expanding services.

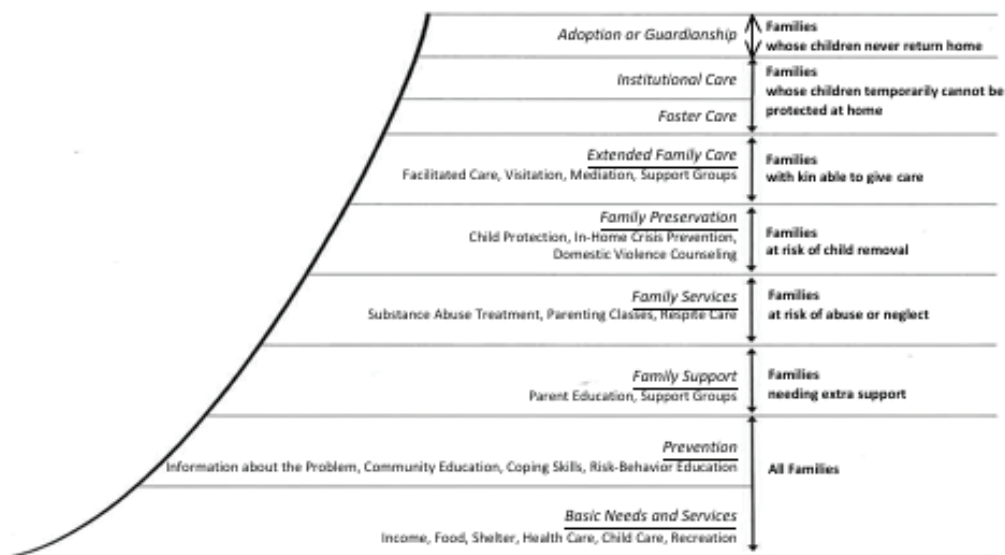
Supportive services help parents maintain or improve their ability to parent. Examples of supportive services include prevention of problems, parent training, financial support, and counseling (Cross, 1995). Supplemental services are provided when a family needs more assistance to meet the needs of their children and stay together as a unit. Examples of these services include in-home services, childcare or respite care, protective services, mental health, and family preservation services (Cross, 1995). Substitute care services are provided when parents are unable to fulfill their child-caring roles or when children cannot be kept safely at home. The tribal child welfare agency must then arrange for a temporary or permanent placement in relative care, foster care, guardianship, group home, institution, or adoption. In making decisions about substitute care options for tribal children, careful consideration should be given to providing all children with the most family-like placement in the least restrictive setting possible (Cross, 1995). All of these services should be developed according to the prevailing values of the tribal community, especially as it applies to keeping children safe, supporting extended family relationships, and keeping children connected to their culture.



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One of the key challenges in child welfare is developing a system that provides a balanced approach to the protection of children and preserving and supporting families. In some situations, the threat of harm to a child necessitates the removal of the child from the home, but even this act of protection can be traumatic for a child. In many instances, children can be safely maintained in their home with the provision of effective in-home services and other support or treatment services for the parents or caregivers. Below is a diagram that illustrates the approximate proportions of funding that should be allocated for different categories of child welfare services in order to have a balanced system. A system that can respond effectively to the needs of families, protect children, and reduce the need for removal of those children from their homes.

(Cross, 1995)



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To be effective, the leader must ensure the independence of the court and shelter child protection and custody decisions from political influences.

Because child welfare is a dynamic and emotionally demanding service, and turnover in staff can be expected, tribal governments need to have clear guidelines to ensure continuity and the highest level of care. Not all tribes will have the resources to provide a comprehensive array of child welfare services, but having key

infrastructure in place for the tribal child welfare system you do have will help ensure your programs are meeting the expectations set for them. Examples of key tribal child welfare infrastructure include

- Updated juvenile code that provides clear authority and guidance on fundamental child welfare activities (child abuse and neglect definitions, reporting protocols, investigation guidelines, criteria for removal of a child, placement preferences, modification/suspension of parental rights, grievance/appeal process, etc.)
- Practice model that provides explanations, definitions, and expectations for how your tribal child welfare agency will operate and partner with others
- Description of services that identifies the formal and informal child welfare services and supports in your community for children and families
- Program policies and procedures that identify the policy, authority, and steps for performing various child welfare program activities and services
- Foster care, guardianship, adoptive, and group home (if applicable) standards that describe your communities standards for the recruitment, retention, approval, and licensing of care providers in your community



Tribal Leader Roles

The Great Law of the Iroquois describes the role of leader as the person who is responsible for the well-being of the children. Sitting Bull is quoted as saying, “Let us put our minds together and see what we can make for the children.” Chief Joseph spoke of the need to look to the needs of the children. While these teachings were from traditional chiefs, today our elected officials must play these essential roles.

First and foremost is the role of stewardship. Stewardship is defined as assuming responsibility for the well-being of the people, especially those who are the most vulnerable. As elected officials, tribal leaders assume duties of office, including the responsibility for child protection as described earlier.

As lawmakers, the tribal council is responsible for setting and maintaining the tribal children’s code (also known as juvenile or family code). It is in the tribal code that leaders define child abuse and neglect, set criteria for intervention, define who in the tribe is responsible for investigation, and describe the role of the tribal court. Tribal leaders should at a minimum read and understand existing tribal code. They should also seek to ensure that the code is responsive to the needs of children, families, and their communities and incorporates tribal custom, tradition, and child-rearing practices.

In some communities the tribal council is also responsible for judging. Under ICWA, a tribal court can be an administrative body recognized by the council as having decision-making authority over child custody proceedings. At the very least, the tribal council will oversee the court in whatever form it takes. To be effective, the leader must ensure the independence of the court and shelter child protection and custody decisions from political influences.

Tribal leaders also have a role in setting standards for child welfare practice. Practice standards are set in the form of policies and procedures, practice models, complaint procedures, job descriptions, job qualifications, and sometimes by licensing the professionals that work with children.

Child welfare funding is complex and is often dependent on intergovernmental agreements and or contracts. Negotiation of these agreements is a government-to-government interaction and requires the full participation of elected tribal officials.

Under ICWA, tribes have the right to set their own foster care, guardianship, group care, and adoptive home standards. Tribal councils may set these standards or appoint a special body to do so. The role of the leader is to clearly state what level of care children in their community should receive. Ideally, leaders should be familiar with any existing standards and fully participate in standard development or revisions.

One of the most consistent and routine roles of the tribal leader is resource allocation. In other words, elected officials must work to ensure there are ample resources to protect tribal children. During the budget process, the council should use information about the needs in their community to determine the priority given to funding child welfare activities. Because child welfare funding comes from a variety of complex sources, tribal leaders should work with their child welfare administrators to maximize the resources available to the tribe. This can include tribal, state, county, and federal funds. Understanding how to target the use of tribal funds, given the availability and nature of other funds, is a critical role in developing a balanced child welfare system.





Child welfare proceedings under ICWA often involve government-to-government interaction and communication. Tribal leaders must be available to deal with state or county government officials on difficult cases and difficult issues that affect many cases. Child welfare funding is complex and is often dependent on intergovernmental agreements and or contracts. Negotiation of these agreements is a government-to-government interaction and requires the full participation of elected tribal officials.

Tribal leaders also have a key role in advocacy. Tribal leaders should strive to understand and advocate for legislation and other policies that will increase tribal

access to funding for child welfare. At appropriations

time, tribal leaders can advocate for adequate levels of funding for child welfare and provide important data to policy makers. In addition, tribal child welfare workers often encounter serious violations of ICWA and need the full backing of their tribal leaders to advocate for appropriate resolution of these situations.

In general, effective leadership has to be familiar with what services are available to tribal families. Each tribe develops its response to the needs of its children in different ways. Some tribes share the responsibilities with the states or counties around them. Others provide all or most of the services themselves. Most address a broad range of services.

Finally, the effective tribal leader must exhibit integrity in the treatment of tribal families. Modeling trustworthiness in child welfare is essential if the tribe's services are to be seen as legitimate by tribal members and as credible by the outside world.

The National Indian Child Welfare Association

NICWA provides expert technical assistance and training in support of tribal leaders and the programs they govern. In this endeavor, NICWA provides services to

- Assess tribal child welfare programs and provide effective policy and best practice recommendations
- Provide intensive training and technical assistance to improve child welfare workforce capacity, service provision, collaboration with tribal courts and state or county agencies
- Juvenile code writing, policy and procedure creation, and practice model design
- Identification of strategies to maximize existing and new funding sources
- Ensure the creation of a highly qualified workforce through NICWA's tribal child welfare certification program

As Indian child welfare experts, NICWA is here to help tribal leaders and tribal social service agencies ensure that their child welfare services are effective and reflect your community's priorities.



For more information or assistance with your tribal child welfare program, please contact the senior director of programs at the National Indian Child Welfare Association at 503-222-4044 or email info@nicwa.org.

Resources

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