



Ho-Chunk Nation Legislature

Testimony of Representative Hinu Smith

Wisconsin State Adoption Task Force
July 25, 2019
Balsam Lake, WI

Thank you, Representative Barbara Dittrich for eliciting testimony from each of the tribes on this very important issue. We appreciate every opportunity to discuss potential state legislative matters that will have an effect on our tribes in a government-to-government manner. And should any of this Task Force wish to testify on these matters, the Ho-Chunk Nation Legislative Conference Room door and podium are open and ready.

One of the paramount purposes of the Indian Child Welfare Act (hereinafter ICWA) is to ensure “the placement of [] children in foster or adoptive homes or institutions which will reflect the unique values of the Indian culture.”¹ The ICWA’s mandate that an adoptive placement is preferred to be with members of the child’s extended family, other members of the same tribe, or other Indian families is “[t]he most important substantive requirement imposed on the state.”² Further, the ICWA permits Tribes that desire to have a different, more culturally appropriate order of preferences to adopt such preferences to take the place of the standard placement scheme found in the ICWA.³

It was the intent of Congress to ensure that “white, middle-class standards” not be utilized in determining whether preferred placements are suitable.⁴ “Discriminatory standards have made it virtually impossible for most Indian couples to qualify as foster or adoptive parents, since they are based on middle-class values.”⁵

The importance of unique Indian social and cultural standards cannot be overemphasized – the historical lack of understanding of such standards by state courts and agencies, and the resulting effects on the populations of Indian tribes and the self identification of Indian children, is precisely why the ICWA was enacted, as “there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children.”⁶

Thus, in determining the suitability of a potential home, the relevant standards must be “the

¹ H.R. Rep. No. 95-608, 95th Cong. 2nd Sess. 8 (1978); *see also* 25 U.S.C. § 1902.

² *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 36 (1989).

³ 25 U.S.C. § 1915(c).

⁴ H.R. Rep. No. 95-1386, 95th Cong. 2nd Sess. 24 (1978).

⁵ H.R. Rep. No. 95-608, 95th Cong. 2nd Sess. 11 (1978).

⁶ CALIFORNIA INDIAN LEGAL SERVICES, CALIFORNIA JUDGES BENCHGUIDE: THE INDIAN CHILD WELFARE ACT 46 (May 2010 ed.); *see also* 25 U.S.C. § 1901; *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 32-37 (1989).

prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.”⁷ This language illustrates that Congress intended agencies and state courts to look beyond just the reservation boundaries, and focus on social and cultural ties as well.

Some might question, why would this still be important of a newborn child placed for adoption at birth? They would not “know” they are even Indian, so why does it matter? Answer- it is of critical importance. Not only to the tribes fighting to maintain existence in the 21st Century and beyond, but to the children subjected to the negative effects brought on by removal from their communities. In fact, children adopted out of their tribal communities are highly affected by this removal- invoking trauma long after the adoption is finalized.

Negative Effects of Removal from Tribal Communities and Families

In a study of Indian adoptees, startling information was discovered. Information that shows just how deep the trauma can be for these children as they reach adolescence and adulthood. Dr. Carol Locust, of the Native American Research and Training Center at the University of Arizona College of Medicine, performed in-depth research on the disorder known as “Split Feather Syndrome.” What is that exactly?

[Dr. Locust] identified unique factors of Indian children placed in non-Indian homes that created damaging effects in these children’s lives. Locust found that: Native children placed in non-Native homes were at great risk for experiencing psychological trauma leading to long-term emotional and psychological problems as adults; that the same clusters of long-term psychological problems experienced by native adult adoptees were recognizable as a syndrome; and ‘split feather’ syndrome appears to be related to a reciprocal-possessive form of belongingness unique to survivors of cultures subjected to annihilation.⁸

These children grow up, looking in the mirror and within their hearts, knowing that there is something “different” about them- something special. However, without their tribal community there to support them as they go through life, they are simply going through the motions. They lack the tribal connection and cultural leaders to guide them as they transition through these formative years and develop their individual and tribal identity.⁹ They lack the guidance as to how they are supposed to act as a male or female of their particular tribe. They lack the support in how to combat the feelings of loss and disconnectedness. A piece of them is missing. And a piece of the tribe is missing too.

⁷ 25 U.S.C. § 1915(d).

⁸ *ICWA from the Inside Out: ‘Split Feather Syndrome,’* MINN. DEPT. OF HUMAN SERVS. (July 2005), available at http://www.dhs.state.mn.us/main/groups/children/documents/pub/dhs16_180049.pdf.

⁹ “Individual identify and one’s tribal identity are the driving forces to empowerment and realization, but cultural identity loss leads to grief, depression, anxiety and more serious mental health problems. It is well known that these problems lead to longer term health care issues and increases morbidity and mortality.” Dale Walker, MD, *Association of American Indian Physicians Disenrollment Background Paper*, available at <https://www.aaip.org/media/news/m.blog/76/disenrollment-background-papers-and-resolution> (last visited July 22, 2019).

In 2017, a group of researchers proceeded with a quantitative study of the mental health differences found within American Indian adoptee populations versus Non-Indian adoptee populations. While no difference was found between non-Indian (Caucasian) adoptees and American Indian adoptees on self-assessed depression or diagnosed depression, meaning adoptees in general experience depression, there were significant differences with regards to other areas of mental health.¹⁰ American Indian adoptees were found to be more vulnerable to mental health problems within the whole adoption system generally.¹¹ Specifically, American Indian adoptees were more likely to report alcohol addiction, alcohol recovery, drug addiction, drug recovery, self-assessed eating disorder, eating disorder diagnosis, self-injury, suicidal ideation, and suicide attempts.¹² The study highlights that historical trauma is inherited through one's ancestors, as such American Indian "adoptees experience trauma through their lived experiences of being separated from their families and culture, a phenomenon referred to as "blood memory."¹³

Best Interests of Indian Children is Statutorily Different

The Wisconsin Legislature took the necessary steps to assist in the prevention of these adoptee issues when it chose to codify the federal ICWA into state statute. Throughout the codification process it would have been hard to ignore the Wisconsin specific data that came from the federal adoption of the ICWA. During the late 1970's Congress found that 25 to 35% of all Indian children in the country had been removed from their families at a rate five times greater than non-Indian children. Here in Wisconsin, the risk of Indian children being separated from their parents was 1,600% greater. This very state legislature **unanimously declared that Wisconsin's policy is to "protect the best interests of Indian children and promote the stability and security of Indian tribes and families."**¹⁴

As stated in the opening of this testimony, part of this protection is the establishment of standards that require that Indian children be placed in foster care, pre-adoptive, or adoptive placements that reflect the unique values of the Indian child's tribal culture.¹⁵ It is not enough that a non-Indian couple takes a child to a pow wow. Pow wows are, more often than not, simply intertribal social gatherings. They are not necessarily a place in which to fully learn a particular tribe's culture- principally language and tribal roles. These types of learnings are only established through placement within one's tribal family, clan, or other tribal family. A placement that is "best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe and tribal community."¹⁶ That is what this state has deemed to be in the best interests of Indian children.

¹⁰ Ashley L. Landers, PhD et al., *American Indian and white Adoptees: Are there Mental Health Differences?* AMERICAN INDIAN AND ALASKA NATIVE MENTAL HEALTH RESEARCH (2017) at 69.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 70.

¹⁴ Wis. Stat. § 48.01(2)(b).

¹⁵ Wis. Stat. § 48.01(2)(b)1.

¹⁶ Wis. Stat. § 48.01(2)(b)2.

Invalidation of Adoptions- Do it Right from the Beginning

One consequence of failing to follow the ICWA/WICWA is that a case may be invalidated for failing to provide a number of protections provided in 25 §§ U.S.C. 1911, 1912, or 1913.¹⁷ Of particular significance is that 25 U.S.C. § 1913 addresses a guaranteed right for the parents to withdraw consent at any time prior to the entry of a final decree of termination or adoption, at which point the child shall be returned to the parent.¹⁸ And even after those final decrees are entered, the parent may withdraw consent when it is found that the “consent was obtained through fraud or duress” and request the court to vacate the decree.¹⁹ If the court makes such findings, then the court is mandated to vacate the adoption decree and return the child to the parent(s).²⁰

It is of utmost importance that child welfare agencies or adoption agencies follow the provisions of the ICWA/WICWA from the beginning. By increasing the speed of termination of parental rights and adoption cases, you inherently increase the opportunities for unintended consequences. All it takes is for one question to be overlooked for the triggering of a domino effect on a case. The most important question in an ICWA case is whether one knows or has reason to know if the child is an Indian child. If this were overlooked, it could mean the infliction of unnecessary trauma and devastation. This is because the case will not be treated as an ICWA case. The child will be placed with non-Indian individuals and the parents will be provided referral services (reasonable efforts) at best. Then, if a parent or tribe discovers that a case proceeded, they can come back and petition for invalidation at any point, essentially one of the only real remedies permitted under the ICWA/WICWA.

Unintended Consequences

The mainstream and dominant-culture driven media has unfairly portrayed tribes as mere entities stepping in at the 11th hour to cause havoc. What they fail to understand, and then portray to their followers, is that tribes are sovereign nations that care about their citizens. What a day time talk show host may be failing to tell the viewers is that the tribe never received notice because the mother lied about the father’s or her own Indian heritage. Or the mother may have purposefully given the wrong spelling of the father’s name and an incorrect birth date, which leads to an inability of a tribe to provide membership verification.

A newscaster may be failing to elaborate on the fact that not all tribes have the same amount of resources. Not every tribe has a steady stream of revenue funneling in. Some tribes simply cannot afford to have an attorney attend every hearing. So, they must conserve their resources until it looks like they may lose a child to adoption outside of the tribe.

A blogger may be reporting that the non-Indian couple that wishes to adopt an Indian child is far better situated to care for a child because they are from an upper-middle class status with a large house, stay at home mother, and access to private schools. What that blogger is failing to report is that the Indian family has enough resources that they can feed the child, clothe the child,

¹⁷ Wis. Stat. § 48.028(6).

¹⁸ 25 U.S.C. § 1913(c).

¹⁹ 25 U.S.C. § 1913(d).

²⁰ *Id.*

and house the child. However, that blogger is not looking at the family through the lens of an Indian child. They are not seeing that the child goes to stay with a cuuwi while the Indian placement family works. There the child may be learning stories of her family, language, or how to grow into her female role within the tribe and clan. And what those blog readers fail to see is that Indian child views this life as being rich. Cultural richness can carry more weight than gold for a native person.

The everyday American is not an expert on the child welfare system. This includes those reporting on it in the news. Most often what is failed to be said is that there are duties of confidentiality and other ethical obligations. The tribal social worker and the tribal attorneys have their hands tied. Unless there is a waiver by the parents, the social worker and attorney is not at liberty to go out and have a press conference to correct the misinformation being reported. So, while a non-Indian couple is out calling every news source that will listen and share their story, the tribal workers are sitting back unable to defend the mistruths put into the viral media world.

The tribal nations have no intention to cause harm, but instead seek and advocate for ICWA compliance at every opportunity in an effort to protect their children. This is because with knowledge comes compliance; and with compliance comes healthier and more positive outcomes. The child is saved from the long list of mental health issues addressed earlier in this testimony. The tribe does not lose one of its future leaders. The family and clan have their child safe within community. The parents are able to take the needed time to overcome whatever issues they have that either (a) led them to be involved in the child welfare system, or (b) led them to believe they would not be able to parent from the very beginning of that child's life. And ultimately the family and tribal ties are never severed.

Additional Efforts and Potential Solutions

We offer the following suggestions as potential solutions and efforts that can be made to help better the adoption system within the state of Wisconsin. We are cognizant of the fact that this list also includes executive functions. However, we cannot effectuate positive change without working together. This is by no means an exhaustive list.

- 1) Establish stricter sanctions and mandate appropriate oversight over private adoption agencies to ensure ICWA compliance.
- 2) Mandate frequent and ongoing training for private adoption agencies on WICWA, this should include training on historical/intergenerational trauma found within tribal communities.
- 3) Provide statutory protections for tribal customary adoptions, wherein a suspension of parental rights (rather than a termination of parental rights) will be explicitly recognized.
 - a. The state must be cognizant that many tribal nations do not support the termination of parental rights, as they do not believe in severing parental ties between a child and a parent.

- 4) Ensure and increase funding for subsidized guardianships and tribal customary adoptions.
 - a. Creation of a WICWA Subsidized Guardianship Cost Pool.
 - i. It would be beneficial to have a separate designated fund solely for subsidized guardianships involving Indian children, to be accessible by all tribes and counties. This way, counties that have larger ICWA caseloads will not have to worry as much about depleting their subsidized guardianship monies, and counties that rarely have ICWA caseloads would not be overcompensated when the funds are not needed there. All tribes should also have access through full faith and credit of a tribal guardianship order.
- 5) Make private voluntary adoptions easier to navigate and more affordable for members of tribes to adopt an Indian child.
- 6) Mandate education for foster parents on their role as a temporary assistance to a family in need- foster care is not meant to be a path to adoption. This education must be continuing and consistent throughout the licensure of the foster parents.
- 7) Increase funding for the hiring of the requisite number of social workers needed to maintain appropriate caseloads, this will hopefully result in the provision of true “active efforts.”
- 8) Increase funding for social workers to receive appropriate secondary trauma resources, the secondary trauma of the social workers negatively impacts the effective outcomes for families.

Additional Ideas Focused on Addressing Barriers to Parenting

- 9) Increase funding for state and tribal treatment courts- and specifically family treatment courts.
 - a. Family Treatment Courts (FTCs) are evidence-based systems. The data that comes from these programs shows that these courts lead to higher reunification rates, longer reunification rates, and lower re-entry rates.
- 10) Increase funding for prevention to allow for families to receive appropriate services that will alleviate the need for unnecessary removals and adoptions.
 - a. The sad truth is that once the child enters the system, it is no longer about just safety, but an additional standard of best interests of the child is required by the Court after a case has reach disposition and beyond.
- 11) Increase funding for the establishment of additional inpatient behavioral health treatment centers, and appropriate transitional housing for after treatment- particularly inpatient and transitional housing that allows families to stay united during treatment and recovery.

- 12) Increase job training programs, which take into account the historical trauma that leads tribal people to experience difficulty in obtaining and maintaining steady employment.
- 13) Incentivize safe and affordable child care programming within the ever growing child care deserts found across the state.

Conclusion

There is nothing more important to a tribe than its children. They are our future, and they will ultimately be the links to our past. It is likewise in their best interests to know and have the opportunity to learn about their Indian heritage and be connected with their tribal communities. We- Wisconsin and tribes- must work together to address the adoption system before we lose any more of our tribal children and before our tribal children lose us. Whatever legislative changes come from this Taskforce must comply with the federal protections afforded to Indian children and tribes. Working cooperatively to ensure these protections is of great importance. Great things happen when we work together- just look at WICWA. Thank you for your time.

APPENDIX A
(Selection of laws and regulations)

U.S. CODE

25 U.S.C. § 1913 - Parental rights; voluntary termination

(a) Consent; record; certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) Collateral attack; vacation of decree and return of custody; limitations

After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

25 U.S.C. § 1914- Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

U.S. FEDERAL REGULATIONS

25 CFR § 23.124 - What actions must a State court undertake in voluntary proceedings?

(a) The State court must require the participants in a voluntary proceeding to state on the record whether the child is an Indian child, or whether there is reason to believe the child is an Indian child, as provided in § 23.107.

(b) If there is reason to believe the child is an Indian child, the State court must ensure that the party seeking placement has taken all reasonable steps to verify the child's status. This may include contacting the Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) to verify the child's status. As described in § 23.107, where a consenting parent requests anonymity, a Tribe receiving such information must keep relevant documents and information confidential.

(c) State courts must ensure that the placement for the Indian child complies with §§ 23.129-23.132.

25 CFR § 23.125 How is consent obtained?

(a) A parent's or Indian custodian's consent to a voluntary termination of parental rights or to a foster-care, preadoptive, or adoptive placement must be executed in writing and recorded before a court of competent jurisdiction.

(b) Prior to accepting the consent, the court must explain to the parent or Indian custodian:

(1) The terms and consequences of the consent in detail; and

(2) The following limitations, applicable to the type of child-custody proceeding for which consent is given, on withdrawal of consent:

- (i) For consent to foster-care placement, the parent or Indian custodian may withdraw consent for any reason, at any time, and have the child returned; or
- (ii) For consent to termination of parental rights, the parent or Indian custodian may withdraw consent for any reason, at any time prior to the entry of the final decree of termination and have the child returned; or
- (iii) For consent to an adoptive placement, the parent or Indian custodian may withdraw consent for any reason, at any time prior to the entry of the final decree of adoption, and have the child returned.
- (c) The court must certify that the terms and consequences of the consent were explained on the record in detail in English (or the language of the parent or Indian custodian, if English is not the primary language) and were fully understood by the parent or Indian custodian.
- (d) Where confidentiality is requested or indicated, execution of consent need not be made in a session of court open to the public but still must be made before a court of competent jurisdiction in compliance with this section.
- (e) A consent given prior to, or within 10 days after, the birth of an Indian child is not valid.

WISCONSIN CHAPTER 48 CHILDREN'S CODE

Wis. Stat. § 48.028

(5) VOLUNTARY PROCEEDINGS; CONSENT; WITHDRAWAL.

(a) *Out-of-home care placement.* A voluntary consent by a parent or Indian custodian to an out-of-home care placement of an Indian child under s. 48.63 (1) (a) or (b) or (5) (b) or a delegation of powers by a parent regarding the care and custody of an Indian child under s. 48.979 is not valid unless the consent or delegation is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent or delegation were fully explained in detail to and were fully understood by the parent or Indian custodian. The judge shall also certify that the parent or Indian custodian fully understood the explanation in English or that the explanation was interpreted into a language that the parent or Indian custodian understood. Any consent or delegation of powers given under this paragraph prior to or within 10 days after the birth of the Indian child is not valid. A parent or Indian custodian who has executed a consent or delegation of powers under this paragraph may withdraw the consent or delegation for any reason at any time, and the Indian child shall be returned to the parent or Indian custodian. A parent or Indian custodian who has executed a consent or delegation of powers under this paragraph may also move to invalidate the out-of-home care placement or delegation of powers under sub. (6).

(b) *Termination of parental rights.* A voluntary consent by a parent to a termination of parental rights under s. 48.41 (2) (e) is not valid unless the consent is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent were fully explained in detail to and were fully understood by the parent. The judge shall also certify that the parent fully understood the explanation in English or that the explanation was interpreted into a language that the parent understood. Any consent given under this paragraph prior to or within 10 days after the birth of the Indian child is not valid. A parent who has executed a consent under this paragraph may withdraw the consent for any reason at any time prior to the entry of a final order terminating parental rights, and the Indian child shall be returned to his or her parent unless an order or agreement specified in s. 48.368 (1) or 938.368 (1) provides for a different placement. After the entry of a final order terminating parental rights, a parent who has executed a consent under this paragraph may withdraw that consent as provided in par. (c), move to invalidate the termination of parental rights under sub. (6), or move for relief from the judgment under s. 48.46 (2).

(c) *Withdrawal of consent after order granting adoption.* After the entry of a final order granting adoption of an Indian child, a parent who has consented to termination of parental rights under s. 48.41 (2) (e) may withdraw that consent and move the court for relief from the judgment on the grounds that the consent was obtained through fraud or duress. Any such motion shall be filed within 2 years after the entry of an order granting adoption of the Indian child. A motion under this subsection does not affect the finality or suspend the operation of the judgment or order terminating parental rights or granting adoption. If the court finds that the consent was obtained through fraud or duress, the court shall vacate the judgment or order terminating parental rights and, if applicable, the order granting adoption and return the Indian child to the custody of the parent, unless an order or agreement specified in s. 48.368 (1) or 938.368 (1) that was in effect prior to the termination of parental rights provides for a different placement.

(6) *INVALIDATION OF ACTION.* Any Indian child who is the subject of an out-of-home care placement, of a delegation of powers under s. 48.979, or of a termination of parental rights proceeding, any parent or Indian custodian from whose custody that Indian child was removed, or the Indian child's tribe may move the court to invalidate that out-of-home care placement, delegation of powers, or termination of parental rights on the grounds that the out-of-home care

placement or delegation of powers was made or the termination of parental rights was ordered in violation of 25 USC 1911, 1912, or 1913. If the court finds that those grounds exist, the court shall invalidate the out-of-home care placement, delegation of powers, or termination of parental rights.

(7) PLACEMENTS AND DELEGATIONS OF POWERS; PREFERENCES.

(a) *Adoptive placement or delegation of powers; preferences.* Subject to pars. (c) and (d), in placing an Indian child for adoption or in delegating powers, as described in sub. (2) (d) 5., regarding an Indian child, preference shall be given, in the absence of good cause, as described in par. (e), to the contrary, to a placement with or delegation to one of the following, in the order of preference listed:

1. An extended family member of the Indian child.
2. Another member of the Indian child's tribe.
3. Another Indian family.

DCF 50

FACILITATING PUBLIC ADOPTIONS AND ADOPTION ASSISTANCE

WI DCF § 50.08 Placement for the purpose of a public adoption.

(1) Best interest of the child.

(a) The public adoption agency that is responsible for placing a child for adoption or, if the child is at legal risk, the placing agency, shall determine if placement with specific prospective adoptive parents whose home study has been approved is in the best interest of the child.

(b) A public adoption agency shall consider the availability of a placement for adoption with a relative of the child who is identified in the child's permanency plan or is otherwise known to the public adoption agency, as required under s. 48.834 (1), Stats.

(c) If a child has one or more siblings who have been adopted or have been placed for adoption, the public adoption agency shall make reasonable efforts to place the child with an adoptive parent or proposed adoptive parent of such a sibling who is identified in the child's permanency plan or otherwise known to the public adoption agency, unless the public adoption agency determines that a joint placement would be contrary to the safety or well-being of the child or the sibling, as required under s. 48.834 (2), Stats.

(d) If the child is an Indian child, the public adoption agency **shall** comply with the order of placement preference under s. 48.028 (7), Stats., unless there is good cause as described in s. 48.028 (7) (e), Stats., for departing from that order.

(2) Removal from foster home. Before the adoption is final, an agency appointed as guardian of the child under s. 48.427 (3m) (a) 1. to 4., (am), or (b), Stats., may remove the child from the child's placement under s. 48.437, Stats.

(3) Placement not guaranteed. Prospective adoptive parents whose home study has been approved are not guaranteed placement or continued placement of a child.

WISCONSIN DCF 54

CHILD-PLACING AGENCIES

WI DCF § 54.05 Indian children.

(1) Determination that a child is or may be an Indian child. If an agency has obtained information at intake or through other means that the child or at least one of the child's biological parents is or may be of American Indian descent, the child's case manager shall:

(a) Carry out and document in the child's case record diligent efforts, including but not limited to contacting the potential tribe or tribes' membership or enrollment offices and child welfare offices, and the U.S. department of interior's bureau of Indian affairs where contacts with individual tribes do not document the child's Indian descent, to verify that the child is an Indian child and to identify the child's Indian tribe;

(b) Inform the court of a determination that the child is an Indian child and of the factual basis for that determination and document and date in the child's case record that determination; and

(c) Comply with 25 USC 1912 (a).

(2) Compliance with Indian child welfare act. If the agency determines under sub. (1) that a child is an Indian child, the agency shall comply with all provisions of the Indian Child Welfare Act, 25 USC 1901 to 1963, and s. 48.028, Stats.

(3) Services for Indian child and family.

(a) Before providing services to an Indian child and the Indian child's family, the agency shall inform the child's tribe, if known, and ask for the tribe's participation in efforts to provide services to the Indian child and the Indian child's family. The child's case manager shall document and date in the child's case record agency efforts to inform the tribe and seek its participation.

(b) The Indian child's case manager shall undertake active efforts to prevent breakup of the child's family by providing remedial services and rehabilitative programs to the Indian child and the child's family in accordance with 25 USC 1912 (d). The child's case manager shall document and date those efforts in the child's case record.

(4) Termination of parental rights. An agency seeking the termination of parental rights to an Indian child shall notify the parents and tribe in accordance with 25 USC 1912 (a) of their rights of intervention and shall provide the court of jurisdiction with information on agency efforts described under sub. (3). The information shall include the reasons why those efforts proved unsuccessful. The agency shall record in the Indian child's case record the date the information was given to the court.

(5) Placement of an Indian child.

(a) Adoptive placement.

1. For the adoptive placement of an Indian child, 25 USC 1915 (a) requires that preference be given, in the absence of good cause to the contrary, to placement with, in order of priority, a member of the Indian child's extended family, another member of the Indian child's tribe or another Indian family. The Indian child's case manager shall investigate the availability of a placement in the order of priority indicated.

2. After completing the adoption of the Indian child, the child's case manager shall request in writing that the court that ordered the adoption notify the secretary of the U.S. department of the interior of the following enrollment information:

a. The name and tribal affiliation of the Indian child;

b. The name and address of the adoptive parents; and

c. The name and address of any agency having files or information on the child's adoptive placement.

3. The Indian child's case manager shall file a copy of the written request under subd. 2. in the child's case record.

(b) Foster care or preadoptive placement.

1. For foster care or preadoptive placement of an Indian child, 25 USC 1915 (b) requires that the child be placed in the least restrictive setting which most approximates a family and in which any special needs of the child may be met, within reasonable proximity to the child's home. Preference is to be given, in the absence of good cause to the contrary, to placement, in order of priority:

a. With a member of the Indian child's extended family;

b. In a foster home licensed, approved or specified by the Indian child's tribe;

c. In an Indian foster home licensed by the department, a county social services or human services department or a child-placing agency; or

d. In an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

2. For foster care or preadoptive placement of an Indian child, except for an emergency placement under 25 USC 1922, the child's case manager shall investigate to determine the availability of a placement under subd. 1. in the order of priority indicated. The Indian child's case manager shall document in the child's case record the investigative efforts and results, as well as any emergency placement and the reason for it.

3. An agency seeking to place an Indian child in foster care shall notify the parents and tribe in accordance with 25 USC 1912 (a) of their right of intervention and shall provide the court of jurisdiction with information on agency efforts described under sub. (3). The information shall include the reasons why those efforts proved unsuccessful. The agency shall record in the Indian child's case record the date the information was given to the court.

(c) Preference of tribe, child or parent. In the case of a placement under par. (a) or (b), if the Indian child's tribe establishes a different order of preference by resolution, the agency shall follow that order so long as the placement is the least restrictive setting appropriate to the particular needs of the child as provided in par. (b). Where appropriate, the preference of the Indian child or the child's parent shall be considered provided that where a consenting parent evidences a desire for anonymity, the agency shall give weight to that desire in applying the preference.

(d) Informing the court. Prior to the court ordering termination of parental rights, foster care placement, adoptive placement or adoption of an Indian child, the agency shall inform the court in writing of agency investigative efforts and results to determine the availability of a placement in order of priority under par. (a) or (b) including when there is an emergency placement or when a different order of preference is expressed under par. (c).

(e) Record of placement. When an agency places an Indian child under par. (a) or (b), the agency shall forward a record of the placement to the department. The record shall provide evidence of efforts to comply with the order of

preference under par. (a) 1. or (b) 1., as appropriate. The department, pursuant to 25 USC 1915 (e), shall maintain the record and shall make it available at any time upon request of the secretary of the U.S. department of the interior or of the Indian child's tribe.

Note: Send records of placement to the Bureau of Permanence and Out-of-Home Care, Division of Safety and Permanence, P.O. Box 8916, Madison, WI 53708-8916.

(6) Sanctions for not complying with the Indian child welfare act. A child-placing agency which fails to follow the provisions of the Indian Child Welfare Act (ICWA), 25 USC 1901 to 1963, concerning child custody proceedings involving an Indian child shall be subject to the following department sanctions:

(a) If the child-placing agency knowingly and intentionally disregards a requirement of the ICWA, the department shall by letter of notification order the child-placing agency to stop accepting for service all Indian children referred for service to the agency. The agency shall ensure that no child accepted for service is an Indian child;

(b) If the child-placing agency knowingly and intentionally disregards the department's letter of notification under par. (a), the department shall revoke or not renew, as appropriate, the child-placing agency's license;

(c) If the child-placing agency is informed or discovers that it has unknowingly or negligently violated a requirement of the ICWA, the child-placing agency shall do the following:

1. Notify the court and the department upon being informed of or discovery of the violation of the ICWA;

2. Notify the parent Indian custodian, tribe and child upon being informed of or discovery of the violation of the ICWA; and

3. Cooperate with all parties in promptly correcting any inappropriate placements; and

(d) If the child-placing agency under par. (c) does not comply with par. (c) 1. to 3., the child-placing agency shall be subject to the sanctions under pars. (a) and (b).

APPENDIX B
(List of Resources on ICWA/WICWA)

- 1) "Missing Threads: The Story of the Wisconsin Indian Child Welfare Act"
<https://www.youtube.com/watch?v=ZCLUbS4PxW0> (film on youtube)
http://missingthreadswicwa.blogspot.com/2015/11/why-we-produced-this-documentary_20.html
- 2) This Land (podcast) – Episode 8 "The Next Battleground"
<https://crooked.com/podcast/this-land-episode-8-the-next-battleground/>
- 3) Indian Child Welfare Act Proceedings- 2016 Regulations
<https://www.gpo.gov/fdsys/pkg/FR-2016-06-14/pdf/2016-13686.pdf>
- 4) BIA ICWA Rule Training Module
<https://www.indianaffairs.gov/cs/groups/webteam/documents/document/idc2-041802.pdf>
- 5) BIA Indian Child Welfare Act; Designated Tribal Agents for Service of Notice
<https://www.federalregister.gov/documents/2018/06/04/2018-11924/indian-child-welfare-act-designated-tribal-agents-for-service-of-notice>
- 6) Guidelines for Implementing the Indian Child Welfare Act- 2016 Guidelines
<https://www.indianaffairs.gov/cs/groups/public/documents/text/idc2-056831.pdf>
- 7) BIA's Quick Reference Sheet for State Court Personnel
<https://www.indianaffairs.gov/cs/groups/xois/documents/document/idc2-041404.pdf>
- 8) BIA's Webpage on the Indian Child Welfare Act
<https://www.indianaffairs.gov/WhoWeAre/BIA/OIS/HumanServices/IndianChildWelfareAct/index.htm>
- 9) Wisconsin's Children's Court Improvement Program's WICWA E-Learning Activity
http://www.wicciptraining.com/Content/wicwa_latest/player.html
- 10) Judicial Checklist - Wisconsin Indian Child Welfare Act
<https://www.wicourts.gov/courts/programs/docs/ccipwicwa.pdf>
- 11) WICWA Active Efforts Guide
<https://dcf.wisconsin.gov/files/publications/pdf/464.pdf>
- 12) WICWA Circuit Court Forms
<https://www.wicourts.gov/forms1/circuit/formcategory.jsp?Category=21>
- 13) Wisconsin's Department of Children and Families' WICWA Page
<https://dcf.wisconsin.gov/wicwa>
- 14) National Indian Child Welfare Association
<http://www.nicwa.org/>