



# Re-examining child welfare's response to ICWA: Collaborating with community-based agencies to reduce disparities for American Indian/Alaska Native children

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## ABSTRACT

Many state and county child protection systems (CPS) are attempting to reduce the documented disproportionality in out of home placement rates for American Indian/Alaska Native children. This article presents a case example of collaboration between Colorado CPS and an urban American Indian family services agency that was intended to impact this disproportionality. The Denver Indian Family Resource Center created and evaluated a family preservation model that includes both direct services to Native families and CPS-level systemic interventions designed to reduce out-of-home placement. Direct services addressed family stressors and caregiver substance abuse and mental health issues, and incorporated Native cultural values. Systemic interventions focused on collaborative partnerships and provided CPS with practical ways to comply with the Indian Child Welfare Act. Agency data showed an increase in the number of children remaining at home or with extended family. Statewide data showed a decrease in the disparity ratio for placement of Native children compared to White children.

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## 1. Introduction

American Indian children continue to be disproportionately represented in public child welfare systems across the United States despite the passage of the Indian Child Welfare Act (ICWA) more than 30 years ago. The ICWA's intention at the time of its passage was to prevent the breakup of Native families (the terms “American Indian” and “Native” are used here to refer collectively to peoples of the tribal groups in the United States and Alaska Natives) and to preserve children's connections to family, tribe, and culture. Three specific aspects of the Act held promise in achieving this end—(a) higher standards for the removal of Indian children; (b) a requirement for public child welfare systems to actively engage in remedial and rehabilitative efforts to prevent removal or support reunification; and (c) first consideration be given to family and other tribal members when out-of-home placement is required (Public Law 95-608, 1978). Many child protective services (CPS) systems across the U.S., however, continue to struggle to comply with these (and other) provisions of the ICWA (Mannes, 1993; Waszak, 2010), and CPS departments are frequently frustrated in their attempts to reduce the number of Native children in their systems (Lucero, 2007).

Reducing the disproportionate representation of Native children, as well as addressing disparities at decision-making points such as

removal or out-of-home placement, requires a reexamination on the part of CPS of its response to the three ICWA provisions identified above. It also requires a commitment to developing new practices in alignment with these provisions. Collaborative partnerships between CPS systems and community-based programs serving urban American Indians, and culturally responsive practice models cognizant of the characteristics of urban Native families, show promise in impacting disproportionality and disparities (Limb, Chance, & Brown, 2004) in three areas: (a) reducing the number of Native children and families in adjudicated and active cases; (b) developing casework efforts meeting the active efforts requirement of the ICWA; and (c) reducing the number of American Indian children in non-kinship foster care or other out-of-home placements.

The Denver Indian Family Resource Center's (DIFRC) partnerships with CPS departments in the 7-county Denver metropolitan area are examples of the disproportionality impacting collaborations suggested above. DIFRC, a private non-profit and community-based agency, has teamed with these public child welfare systems for the past 12 years to reduce the number of American Indian children on their caseloads. This collaboration developed due to intersecting interests: County CPS departments statewide were under increasing pressure from the Colorado Department of Human Services (CDHS) to improve ICWA compliance due in large part to findings of its federal Child and Family Services Review. DIFRC had a charge from the Denver American Indian community to address the loss of its children to non-Indian foster care and adoptive placements. In 2000, DIFRC and CPS stakeholders formed the Colorado ICWA Task Force. The group recommended ICWA protocols for implementation in county departments, supported departments

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to address practice-level issues, and was responsible for the passage of Colorado's 2001 state ICWA law.

Coinciding with the ICWA-related work CDHS was supporting, the department created a Minority Over-Representation (MOR) in Child Welfare Services Advisory Group. The MOR began an evaluation in 2001 of CDHS case information and placement data for the five-year period 1995–1999. When this evaluation documented overrepresentation, particularly of Native children (Bussey & Potter, 2003; also see section this paper on disparities in Colorado), the State began to work on strategies to address the problem. MOR Advisory Board findings for Native children gave further impetus to the need to engage in the ICWA partnership efforts of CDHS, county CPS departments, and DIFRC.

The literature on ICWA and child welfare services for American Indian children outlines their disproportionate representation in CPS systems across the U.S., and also points to a need for more community-based and culturally-focused services. The DIFRC Family Preservation Model (DIFRC FPM) for urban-based American Indian families (families residing in cities located outside the boundaries of a reservation or tribal community) includes culturally-responsive strategies for child welfare practice aimed at reducing disproportionality (Lucero, 2007); this model forms the basis for the approach put forth in this article. The authors are aware many communities lack community-based agencies specifically dedicated to providing Indian Child Welfare services. We contend, however, that CPS departments can implement internally many of the recommendations put forth herein. Departments can also create collaborative partnerships with community-based providers serving Native children and families (such as substance abuse or domestic violence programs) to further meet the intents of the ICWA.

## 2. Literature review

### 2.1. The historical context of Indian Child Welfare

Due to the unique history and legal status of American Indian tribes, the overrepresentation of American Indian and Alaska Native children in CPS (and particularly the use of out-of-home placement) has roots different from the overrepresentation of other minority children. Beginning in the early 1800s, children became a specific target of the U.S. government's efforts to assimilate American Indians. Through forced removals from family, displacement from tribal homelands, and mandatory boarding school attendance, official policies sought to sever children's cultural ties and disrupt their kinship networks (Adams, 1995; Hoxie, 1989). Native children continued to be sent to boarding schools well into the twentieth century. Many children experienced physical and sexual abuse in these church and government-run institutions and did not experience the care, nurturance, and protection of traditional tribal child rearing practices (Cross, 1986; Goodluck, 1980). Personal trauma histories, lack of parenting role models, and poverty, combined with prevailing stereotypes of American Indians as alcoholic and indolent, left many generations of Indian parents vulnerable to child welfare involvement (Carter, 2009; Ishisaka, 1978; Trocme, Knoke, & Blackstock, 2004).

Furthermore, adoption of American Indian children by non-Indians was widespread. The practice began in the early 1900s and eventually came to be systematically executed. In 1959, the Indian Adoption Project, a cooperative venture between the Child Welfare League of America (CWLA) and the Bureau of Indian Affairs (BIA) officially sanctioned private adoptions of Indian children by White families. Removals of Indian children from their families to make them available for adoption quickly became standard public child welfare practice (Cross, Earle, & Simmons, 2000; George, 1997).

Studies in the 1970s pointed to an alarming statistic: one third of all American Indian children born since 1900 had been removed from their Native families and adopted into non-Indian families (Fischler, 1980; Mannes, 1995). Continuing loss of their member children prompted

tribal officials in the early 1970s to begin calling for federal legislation; their efforts resulted in the 1978 passage of the Indian Child Welfare Act (Johnson, 1981; Matheson, 1996).

The ICWA applies to the American Indian/Alaska Native child who is a member of, or eligible for membership in a federally-recognized tribe, lives outside the geographical boundaries of his/her tribal nation, and becomes the subject of a child welfare case at a state or county level or an adoption proceeding (Native American Rights Fund, 2007). The Act calls for a higher burden of proof for the removal of an Indian child and remedial and rehabilitative services to prevent the breakup of the Indian family. Preferences for out-of-home placements that keep children connected to family and culture are also outlined in the legislation. Despite the requirements of the ICWA, Indian children continue to be removed and placed with non-Indian families at high rates in many U.S. communities (Crofoot & Harris, 2012; Mannes, 1993).

### 2.2. Child welfare disparities for American Indian children

A long history exists in U.S. child welfare systems of using out-of-home placement more frequently for children of color, particularly American Indian and African American children (Crane & Ellis, 2004; Roberts, 2002; Westermeyer, 1977). Recent research on overrepresentation (Farrow, Notkin, Derezotes, & Miller, 2010; Fluke, Harden, Jenkins, & Ruehrdanz, 2010; Hill, 2006) shows continuing disparities in out-of-home placement for these two groups.

Native children had the highest rates of out-of-home placement, according to a 2009 analysis of national data (Farrow et al., 2010). In this study, Native children had a placement disparity ratio of 3.17 compared to White children. Several recent state-level analyses also include specific figures for American Indian children. Magruder and Shaw's (2008) analysis of disproportionality in California, for example, examined the cumulative likelihood a child would be referred to CPS, have a substantiated case, and be placed outside the home, for the cohort of children born in 1999. These authors found African American and American Indian children were more likely to be referred, substantiated, and removed from their homes than the other three ethnic groups (White, Hispanic, and Asian American). Substantiation rates by age seven were 14.8% for American Indian children and 14.4% for African American children, compared to 6.7% for White children and 5.8% for Hispanic children. Placement rates were 9.5% for African American and 9.0% for American Indian children, compared to 3.5% for White children and 2.8% for Hispanic children.

Analysis by Johnson, Clark, Donald, Pedersen, and Pichotta (2007) on 2001 data from CPS in Minnesota found race/ethnicity remained predictive of placement, even when controlling for maltreatment variables such as type of abuse, family variables such as poverty, and presence of domestic violence and substance abuse. American Indian children were 1.7 times more likely to be placed out-of-home compared to White children from families with similar background variables. Additionally, analysis of data from King County, Washington, found disparities for American Indian children increased, rather than diminished, at each stage of child welfare service provision (Harris & Hackett, 2008).

### 2.3. Reducing disproportionality for American Indian children

Several published studies of work by CPS systems to reduce disproportionality can be found in the literature. Derezotes, Richardson, King, Kleinschmit-Rembert, and Pratt (2008) documented the extremely high levels of out-of-home placement for Native youth in one Iowa County. In this locale, one out of every seven American Indian children was in placement, compared to one out of 45 for White children. This disparity was reduced by a series of policy changes and strengths-based training (Richardson, 2008), providing evidence of the gains possible for American Indian children through increased implementation of ICWA principles. A demonstration program to collaborate with and

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