Native Servicemembers, Veterans, and Indian Child Welfare

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American Indian and Alaska Native Servicemembers and Veterans

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American Indians in the Armed Forces

- American Indians serve at a higher rate, per capita, than other non-white groups.

- As of 2012, there were 31,155 Active Duty American Indian/Alaska Native Servicemembers (AI/AN).

- More Native women than women of other groups serve.

- AI/AN Servicemembers are more likely to be younger than other Servicemembers.

- AI/AN Servicemembers are 2.5 times less likely to be officers.

- 70% of AI/AN Servicemembers serve 5 years or less.

- In 2012, half of Native service members were 24 years old or younger, compared with 35 percent of all other service members.
Veterans with Minor Children

- Recent Survey of Treatment Court Veterans with Minor Children
- More likely to have served in Iraq and received fire in a combat zone than those without minor children.
- More likely to be diagnosed with PTSD than those without minor children.
Disproportionality Rates for Native Children in States with High Military Populations

<table>
<thead>
<tr>
<th>State</th>
<th>2013 Disproportionality Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nebraska</td>
<td>8.8</td>
</tr>
<tr>
<td>Washington</td>
<td>4.5</td>
</tr>
<tr>
<td>Alaska</td>
<td>2.6</td>
</tr>
<tr>
<td>California</td>
<td>2.1</td>
</tr>
<tr>
<td>North Carolina</td>
<td>2.0</td>
</tr>
<tr>
<td>Michigan</td>
<td>1.5</td>
</tr>
</tbody>
</table>
Indian Child Welfare Act

- ICWA, 25 U.S.C 1901 et al, a federal law applying in state courts.

- ICWA is a remedial statute, to make up for years of federal and state policy removing Indian children from their homes.

- Protects American Indian families from unnecessary removal of Indian children.

- Applies to both involuntary removals and termination of parental rights 19 U.S.C. 1903 (1) & 1913, and voluntary adoptions
Additional Provisions of ICWA

- Definition of Indian child, 25 U.S.C. 1903(4)
  - A child who is a tribal member, OR
  - A child who is eligible for enrollment in a tribe AND the biological child of a tribal member.

- Jurisdictional Provisions
  - 25 U.S.C. 1911 (a) & (b)
  - Tribe has exclusive jurisdiction over children on the reservation
  - Tribe and State have concurrent jurisdiction otherwise
ICWA: Active Efforts

- 19 U.S.C. 1912(d)

“Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the break up of the Indian family . . .”
Servicemember’s Civil Relief Act amended in 2008 to include child custody proceedings.

If the Servicemember applies for a stay and meets the requirements of the law, the state court “shall” stay an action for a period of not less than 90 days.

Additional stays are at the discretion of the court.
Potential Issues Facing Servicemembers and Veterans in Child Welfare Cases

- Adoptions
  - One parent voluntary, but servicemember is involuntary

- Child Welfare Cases
  - May occur while servicemember is abroad and child is with other parent
  - May occur to veterans suffering from the results of their deployment
Military Community and Family Policy

Quick Reference Guide for Family Court Judges

Updated April 2014
PROTECTING OUR CHILDREN THROUGH TRIBAL LAW
A Review of 100+ Tribal Child Welfare Codes
Native Nations Institute and the National Indian Child Welfare Association
Rachel Starks, Adrian Tobin Smith, Mary Beth Jäger

HOW ARE TRIBES ASSERTING THEIR SOVEREIGNTY TO PROTECT THEIR CHILDREN?

This study analyzes how tribes are asserting their authority over child welfare and what lessons can be learned from enacted child welfare codes.

- Researchers reviewed 107 tribal child welfare codes.
- Codes came from tribes in every BIA service region (including Alaska).
- Approximately half of the codes were from Native Nations with a population over 1,000 citizens.
- About half the codes reviewed were amended after 2000.
- Codes were retrieved from the National Indian Law Library collection and other on-line sources.

The study analyzed over 50 variables on 8 child welfare topics: culture, jurisdiction, tribal-state relationships, child abuse reporting, paternity, foster care, termination of parental rights (TPR), and adoption.

This poster highlights key findings from 4 of these topics.

CULTURE

Key places to find culture in tribal child welfare codes:
- Customary Law
- Customary Adoption
- Definition of the child
- Termination of parental rights
- Placement

REMOVAL

Efforts to Prevent Removal of Child from Home in Tribal Law

TERMINATION OF PARENTAL RIGHTS (TPR)

Alternatives to TPR: Suspension, modification, and cessation of parental rights were the most common TPR alternatives.

ADoptions

Mainstream and Customary Adoptions:
- The shaded area indicates codes that include both mainstream adoption methods and customary adoptions (adoptions unique to the tribe).

CONCLUSION

Tribal leaders have many local experts (e.g., tribal judges, lawyers, social workers) who understand the current tribal child welfare policies and practices. They know what works, the challenges, and the financial considerations. Their expertise will assist in creating strong and meaningful child welfare codes.

The citizens of Native Nations are also involved in child welfare. Through a community engagement process, expertise on community values, traditional culture, and current needs can be gathered. Citizen engagement is essential to the success of the child welfare code process.

This analysis of tribal child welfare codes captured innovative tribal policies and practices, and highlighted unique opportunities to insert tribal culture and priorities into the tribal child welfare codes. Further, because state courts are required to defer to tribal child welfare law, it is certain circumstances, tribal codes have the power to direct state action involving Native American children. The study contributes to the information needed to foster continued conversations about how tribes can assert their sovereignty to protect their children.
Role of Tribal Courts

- Does your tribal law allow for a stay of custody proceedings if a parent is serving?
- If your tribe is near a military base, is there an MOU that discusses jurisdiction in child welfare issues?
- Does your healing-to-wellness court support the families of the individual in front of you?
- Do you always ask if the state has investigated or become involved with the family of the person in front you?
- How can the court provide the type of wrap around treatment to keep families together during a crisis when a parent is in a healing-to-wellness court?
- Can the development of a tribal court veterans treatment dockets provide additional resources through the Veteran Justice Outreach Specialists (VJOs) program?
- Are there ways to identify veterans in your court, and ensure they are receiving the services due to them?
Tribal Codes and Child Welfare

- Model Tribal Child Welfare Code?
  - What would be useful?
  - Are there ways to incorporate the components of a healing to wellness model?

- Model Code for a Veterans Docket or Dedicated Court?
  - What courts have them? Where have they been developed? How do they incorporate family welfare?