

# Native Servicemembers, Veterans, and Indian Child Welfare

Kathryn E. Fort

MICHIGAN STATE UNIVERSITY **COLLEGE OF LAW**



INDIGENOUS LAW AND POLICY CENTER

## **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 Children of Color in Foster Care

(Fiscal Year 2013)



Technical Assistance Bulletin

June 2015

# Disproportionality Rates for Native Children in States with High Military Populations

State	2013 Disproportionality Rate
Nebraska	8.8
Washington	4.5
Alaska	2.6
California	2.1
North Carolina	2.0
Michigan	1.5

# 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 . . . .”

# SCRA—Federal Law

- ❖ 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

THE OFFICE OF THE DEPUTY ASSISTANT SECRETARY OF DEFENSE

## 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



**NICWA**  
National Indian Child Welfare Association  
Protecting Our Children • Preserving Our Culture

### 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.
- Almost 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



#### Tribal Policy Considerations:

How can a tribal child welfare code incorporate cultural values?

- Add cultural elements and values to preamble and purpose statements.
- Provide cultural values in each section of the child welfare code.
- Customize mainstream provisions to be consistent with cultural values (e.g., define the extended family according to cultural norms, rather than state code definitions).
- Craft provisions designed to ensure culturally relevant outcomes (e.g., tribal code does not allow termination of parental rights).

#### Discrete use of culture in broad child welfare definitions.

Should segments indicate percentage of codes incorporating culture or culture in more than one area.



#### REMOVAL

Efforts to Prevent Removal of Child from Home in Tribal Law



#### Tribal Policy Considerations:

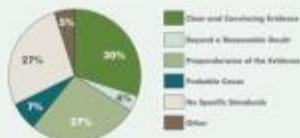
How can tribal law help keep families together?

- Culturally-relevant rehabilitative measures can decrease the number of unnecessary removals.
- States are required to provide "active efforts" to preserve families before removing Native American children. Should tribal law require higher or lower levels of effort to preserve families?

#### What burden of proof should be required to protect the child's safety?

- For Native American children in state court, clear and convincing evidence is the standard for removing a child from an unsafe situation. Should tribal law should require higher or lower burden of proof to remove a child from the home?
- A higher burden of proof can decrease the number of unnecessary removals.

Burden of Proof for Removal of Child from Home in Tribal Law



#### TERMINATION OF PARENTAL RIGHTS (TPR)

#### Alternatives to TPR

Suspension, modification, and creation of parental rights were the most common TPR alternatives.



#### Tribal Policy Considerations:

Is it culturally appropriate to terminate a parent's rights?

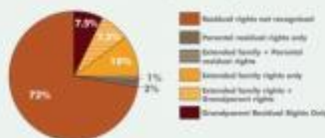
- Should tribal law include a more culturally-appropriate alternative?

#### What individual rights, if any, should parents retain after their general right to parent has been terminated?

- Tribes can define how culturally-appropriate relationships continue after parents' rights have been terminated.
- Should grandparents' rights also be protected?

#### Residual Rights of Parents or Grandparents After TPR

Shaded areas indicate codes incorporating more than one set of family-residual rights.



#### ADOPTIONS

#### Mainstream and Customary Adoptions

The shaded area indicates codes that include both mainstream adoption methods and customary adoptions (adoption process unique to the tribe).



#### Tribal Policy Considerations:

What tribal traditions guide placement of a child?

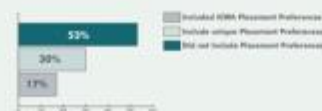
- Tribal customary adoption allows tribes to place children permanently without severing the child's relationship to their parent, family, clan, or community.

#### With whom should children be placed when their parents can no longer care for them?

- Creating placement preferences can ensure children are placed with their family and community.
- States must follow ICWA placement preferences unless the tribe has written its own placement preferences. Should tribal law include unique placement preferences?

#### Tribal Adoption Placement Preferences

- ICWA placement preferences:
  - A member of the child's extended family.
  - Other members of the Indian child's tribe.
  - Other Indian families.



#### 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 invaluable experts on 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 and practice. Further, because state courts are required to defer to tribal child welfare law in 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.



**Rachel Rose Starks, MA (Zuni/Navajo)**  
Senior Researcher  
Native Nations Institute, University of Arizona  
rstarks@naini.arizona.edu

**Adrian (Adelie) Tobin Smith, JD, MSW**  
Government Affairs Associate  
National Indian Child Welfare Association  
atobin@nicwa.org

**Mary Beth Jäger, MSW (Citizen Potawatomi)**  
Research Analyst  
Native Nations Institute, University of Arizona  
mjaeger@naini.arizona.edu

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# 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?