



**TESTIMONY REGARDING FY 2014 BIA PROGRAMS SERVING
AMERICAN INDIAN AND ALASKA NATIVE CHILDREN AND FAMILIES**

**HOUSE APPROPRIATIONS SUBCOMMITTEE ON INTERIOR, ENVIRONMENT,
AND RELATED AGENCIES**

APRIL 24, 2013

**SUBMITTED BY;
AURENE MARTIN, MEMBER, NICWA BOARD OF DIRECTORS**

The National Indian Child Welfare Association (NICWA) is a national American Indian/Alaska Native (AI/AN) organization with over 25 years of experience in providing leadership in support of and analysis of public policy that affects AI/AN children and families. NICWA regularly provides community and program development technical assistance to tribal communities regarding the development of effective services for this population. Our primary focus will be on Bureau of Indian Affairs (BIA) programs serving AI/AN children and families. We thank the Subcommittee for its efforts to honor the federal trust responsibility and provide necessary resources to meet the unique needs of tribal children and families.

The Indian Child Welfare Act (ICWA) was enacted over 35 years ago in 1978 in response to the troubling practices of public and private child welfare agencies that were systematically removing large numbers of AI/AN children from their homes, communities, and cultures, and placing them in non-Indian foster and adoptive homes (25–35% of all tribal children). In spite of ICWA's mandates, AI/AN families in the child welfare system are still removed from their homes, communities, and cultures at rates higher than other children in America. Where abuse or neglect has been reported, AI/AN children in state child welfare systems are two times more likely to be investigated, two times more likely to have allegations of abuse substantiated, and four times more likely to be placed in foster care than White children.ⁱ This has led to the overrepresentation of AI/AN children in state foster care (AI/AN children are overrepresented in foster care at a rate 2.2 times greater than their rate in the general population.)ⁱⁱ In several states, the rate of tribal children in state foster care is even higher, as much as 10 times their proportion in the general population.

The surest ways to reduce the number of AI/AN children in state child welfare systems is to ensure that tribes have the ability to effectively partner with states as Congress intended under ICWA by increasing tribal service capacity, funding off-reservation Indian child welfare programs to assist tribal governments and states, and fund tribal child abuse prevention and treatment programs to prevent abuse and possible removal of children and treat the trauma of victims of child abuse that, left untreated, can increase the risk of further abuse in the future.

Although ICWA recognizes tribes' inherent sovereign right to intervene in state child welfare proceedings and provide services for their member children and families, tribal child welfare programs remain underfunded and therefore unable to fully exercise this right and

responsibility. Tribes have an important relationship with their children and families: they have important knowledge of how to best meet the needs of AI/AN children, and are best suited to effectively serve those needs and improve outcomes for these children.ⁱⁱⁱ Furthermore, many states find tribes to be an essential part of the child welfare system because of the culturally competent case management, services, and placements they provide tribal children.^{iv} Not only is the federal funding currently available for tribal child welfare programs inadequate, but tribes remain ineligible for several important sources of child welfare funding that states access and rely upon to create a continuum of care (from prevention to permanency).

Indian Child Protection and Family Violence Prevention Act Grant Programs

Recommendation: *Appropriate \$40 million to the Indian Child Abuse Treatment grant program (\$10 million) and the Indian Child Protection and Family Violence Prevention grant program (\$30 million).*

The Indian Child Abuse Treatment grant program is currently authorized at \$10 million and the Indian Child Protection and Family Violence Prevention grant program at \$30 million (25 U.S.C. § 3208 and 3210). Yet these grant programs have **never** received any appropriations. The BIA, which has oversight authority over these programs, has not made a budget request in over 10 years.

11.0 of 1,000 AI/AN children were abused or neglected in 2011. This compares to 7.8 of 1,000 for White children and 14.6 of 1,000 for African American children.^v Further, AI/AN women are more likely than any other single racial group to experience intimate partner violence (IPV, also known as domestic violence; 39% of AI/AN women report having experienced IPV at some point in their lives).^{vi} These findings underscore the need for tribal access to family violence prevention funding that takes into account the relationship between child maltreatment and domestic violence, such as the Indian Child Protection and Family Violence Prevention grant program, which remains unfunded.

In addition, tribes lack access to resources that provide for targeted treatment of AI/AN children who have experienced child abuse or neglect. When children who have faced maltreatment are unable to access mental health services, the residual effects of trauma can continue for many years and greatly affect their mental, physical, and social well-being—costing families and society a great price. The Child Abuse Prevention and Treatment Act (CAPTA), reauthorized in 2010 (P.L. 111-320), is the only federal law focusing solely on prevention, assessment, identification, and treatment of child abuse and neglect. Yet it contains no funding for tribes to address these critical public health issues, other than a small \$277,000 per year program that only funds two tribes. The unfunded Indian Child Abuse Treatment grant program, if funded, would fill this void.

ICWA, Title II Funding for On-Reservation Child Welfare Services Grant Program

Recommendation: *Increase appropriations for ICWA, Title II tribal grant program by \$10 million for an approximate total of \$30 million in ICWA funding for tribal child welfare programs.*

There is no specific authorization amount included in the legislation. However, its legislative history indicates that Congress estimated at least \$26 million would be needed to fully implement this grant program for tribes in 1978 (25 U.S.C. 1932). The ICWA, Title II Funding for On-Reservation Child Welfare Services grant program began just after the passage of the law in 1979. During the first 14 years, the grant program was a competitive grant process. During

these years, the appropriated funding never exceeded \$17 million and less than one-third of all tribes received ICWA, Title II dollars. In FY 1994, Congress appropriated \$25 million for the grant program, which allowed the BIA to make it a noncompetitive grant program for the first time. Now almost every tribe receives this funding. However, almost two-thirds of tribes receive less than \$30,000 per year to support essential child welfare services. Since FY 1994, the overall appropriations for this program have actually decreased by approximately \$6 million.^{vii}

Tribal child welfare programs work with some of the most at-risk and needy families in America, and in spite of this, have access to fewer resources than their state counterparts. For this reason, ICWA funding continues to be the base funding for most Indian child welfare programs. But in order to provide the most effective services, the small amount of ICWA, Title II dollars given to a tribe is divided between child protective services, family reunification and rehabilitation, case management, foster care recruitment and retention, and adoption services.

When ICWA was passed, Congress estimated that \$26–\$62 million was required to fully fund tribal child welfare programs for all interested tribes on or near reservations during the first four years of the grant program.^{viii} The current funding level is well below \$26 million. An allocation increase from the FY 2012 level of \$10 million dollars will provide a level of funding which will increase tribal capacity to serve their children within their jurisdiction and partner more fully with states to improve outcomes for tribal children in state child welfare systems.

ICWA, Title II Funding for Off-Reservation Child Welfare Services Grant Program

Recommendation: *Reestablish the Off-Reservation Indian Child Welfare Program under Title II of ICWA funded at \$5 million.*

There is no specific authorization amount identified in the legislation (25 U.S.C. 1932). However, starting the year after ICWA's passage (FY 1979) and lasting until FY 1996, the BIA requested funds for the grant program within the Special Projects and Pooled Overhead portion of its budget separate from tribal ICWA, Title II funds. The ICWA Off-Reservation competitive grant program appropriated \$1.5–\$2.0 million over the course of these years, which funded several key programs within urban areas with higher densities of AI/AN children and families.

ICWA does not make a distinction between which Indian children should benefit from the Act. It is designed to provide protections to AI/AN children and families regardless of where they reside and therefore authorizes grant funding under Title II for Off-Reservation ICWA programs as well as the On-Reservation programs discussed above. In 1970, 38% of AI/AN individuals lived off-reservation;^{ix} in the 2010 census, 67% of all individuals who identified as AI/AN alone lived off-reservation; and 78% of all individuals who identified as AI/AN and another race(s) lived off-reservation.^x Indian children living outside of their tribal community are some of the most vulnerable Indian children given the challenges they face in staying connected to their culture and kinship networks.

When funded, the ICWA, Title II Off-Reservation grant program ensured that AI/AN children and families living in urban areas received the protections of ICWA and states had additional expertise and culturally appropriate services available to them. Specific services typically provided by ICWA, Title II Off-Reservation programs included recruitment of AI/AN foster care homes, case management, identification of at-risk families for services, and in-home services that help children stay in their homes or be reunified with their parents safely.

With an increasing number of AI/AN individuals living off-reservation, reinstating this funding would provide support to urban areas and other areas off-reservation where there is pronounced AI/AN density.

Child Assistance Funds

Recommendation: Increase Child Assistance appropriation request by \$10 million to \$35 million.

Child Assistance Funds are provided through the Tribal Priority Allocations line item and authorized under the Snyder Act (25 U.S.C. § 13). Historically, appropriations have never exceeded \$31 million and in FY 2012, the enacted level was \$24.2 million.

These funds are critical because tribal governments have a responsibility to support the placements of AI/AN children under their jurisdiction that live on tribal lands and cannot safely remain in their homes. These funds are available to tribes to provide basic payments to support foster care, guardianship, and adoptive placements. Without these funds, tribes would have to place children in *unsubsidized* foster care, which often places a strain on those individuals—many of whom have few resources—willing to care for children who would otherwise have no home. Aside from Title IV-E, a program that is not feasible for every tribe, tribes have no other source of funding to support out-of-home placements that occur on-reservation.

In addition, tribes that are now pursuing administration of the Title IV-E program—which requires a significant tribal match to support program services and placements—will need some portion of these BIA funds to continue to serve tribal children who are not Title IV-E eligible, as well as to help meet the Title IV-E matching requirements.

While these funds are critical to tribes that receive them, not all tribes that need these funds have access to them. The BIA continues a policy of not making these funds available to tribes that they deem have access to other, similar types of services. This policy has created huge gaps in the ability of tribes to provide necessary child welfare services to their citizens that are under their jurisdiction and responsibility. It is for this reason that the allocations should be increased from \$25 million to \$35 million so that all tribes providing child welfare services can subsidize their out-of-home placements.

ⁱ Hill, R. B. Casey-CSSP Alliance for Racial Equity in Child Welfare, Race Matters Consortium Westat. (2008). *An analysis of racial/ethnic disproportionality and disparity at the national, state, and county levels*. Seattle, WA: Casey Family Programs.

ⁱⁱ Summers, A., Wood, S., & Russell, J. (2012). Technical Assistance Bulletin: Disproportionality rates for children of color in foster care. National Council of Juvenile and Family Court Judges: Reno, NV.

ⁱⁱⁱ National Indian Child Welfare Association & Pew Charitable Trusts (2007). *Time for reform: A matter of justice for American Indian and Alaska Native children*. Philadelphia, PA: Pew Charitable Trusts. Retrieved from <http://www.nicwa.org/government/time-for-reform.pdf>

^{iv} United States Government Accountability Office (2005). *Indian Child Welfare Act: Existing information on implementation issues could be used to target guidance and assistance to states*. (GAO Publication No. 05-290.) Washington, DC.

^v U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau (2011). *Child Maltreatment 2010*.

^{vi} Black, M. C., & Breiding, M. J. (2008). Adverse health conditions and health risk behaviors associated with intimate partner violence—United States, 2005. *Morbidity and Mortality Weekly Report* 57(5), 113-117. Atlanta, GA: Centers for Disease Control and Prevention.

^{vii} Budget documents provided by the BIA only show enacted funds of \$10.85 million for the most recent fiscal year (FY 2012). Self-governance tribes, which comprise an increasing number of the total number of tribes, receive their share of these funds through a separate budget allocation mechanism for which the BIA does not provide specific numbers. However, the number of tribes receiving these funds and reported levels has not significantly changed over the last 10 years, which supports the assumption that the total enacted appropriation for this program is closer to \$20 million.

^{viii} U.S. Senate Report 95-597, page 19.

^{ix} National Urban Indian Family Coalition (2008). *Urban Indian America, The Status of American Indian and Alaska Native Families Today: A Report to the Annie E Casey Foundation*. Washington: Seattle.

^x Norris, T., Vines, P. & Hoeffel, E. M. (2012). 2010 Census Briefs: The American Indian and Alaska Native Population 2010. U.S. Census Bureau: Washington, DC.