



PROTECTING OUR CHILDREN THROUGH TRIBAL LAW

A Review of 100+ Tribal Child Welfare Codes

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NICWA
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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



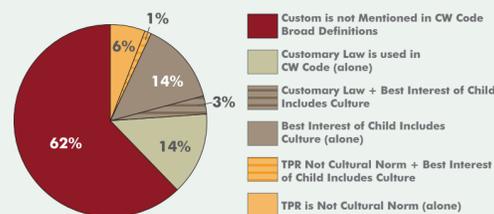
Tribal Policy Considerations:

How can a tribal child welfare code incorporate cultural values?

- Add cultural elements and values to preamble and purpose statements.
- Prioritize 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).

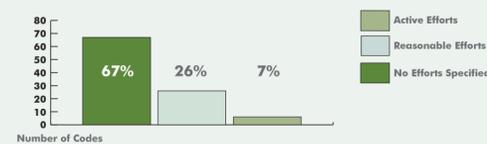
Discrete use of culture in broad child welfare definitions.

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



REMOVAL

Efforts to Prevent Removal of Child from Home in Tribal Law



Tribal Policy Considerations:

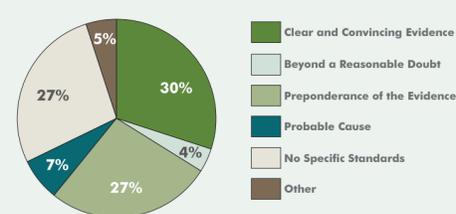
How can tribal law help keep families together?

- 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?

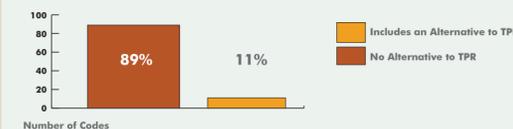
- For Native American children in state court, clear and convincing evidence is the standard for removing a child from an unsafe situation. Should tribal law require higher or lower burdens of proof to remove a child from the home?
- A higher burden of proof can decrease the number of unnecessary removals.

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



TERMINATION OF PARENTAL RIGHTS (TPR)

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



Tribal Policy Considerations:

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

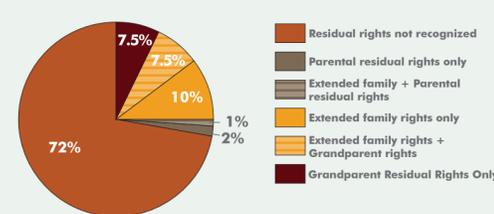
- Should tribal law include a more culturally-appropriate alternative?

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

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

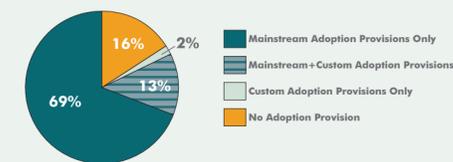
Residual Rights of Parents or Grandparents After TPR

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 processes unique to the tribe).



Tribal Policy Considerations:

What tribal traditions guide placement of a child?

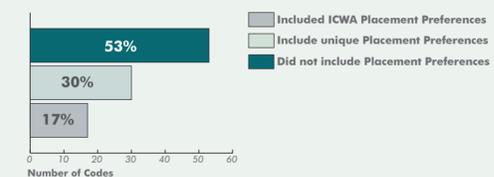
- Tribal customary adoption allows tribes to place children permanently without severing the child's relationship to their parent, family, clan, or community.

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.*



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