Fostering Collaboration
Understanding Our Roles for the Best Outcomes For Families

ICWA Panel

Congressional Findings 25 USC 1901(3) and 25 USC 1901(4)

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds-

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

NICWA National Statistics

- Native Children are disproportionally removed from their families than non-native children.
- 3.75% higher than proportion of general population

What is Disproportionality in Child Welfare?

Research and data from states tell us that American Indian/Alaska Native (Native) children are disproportionately represented, or overrepresented, in state foster care systems nationwide. This means that higher percentages of Native children are found in state foster care systems than in the United States (U.S.) population.

The overrepresentation of Native children often starts with reports of abuse and neglect at rates proportionate to their population but grows higher at each major decision point in child welfare:

1. Whether to order an investigation regarding child abuse or neglect allegations,
2. Whether to substantiate abuse or neglect allegations during or after an investigation, and
3. Whether to remove a child from their home and place in foster care.

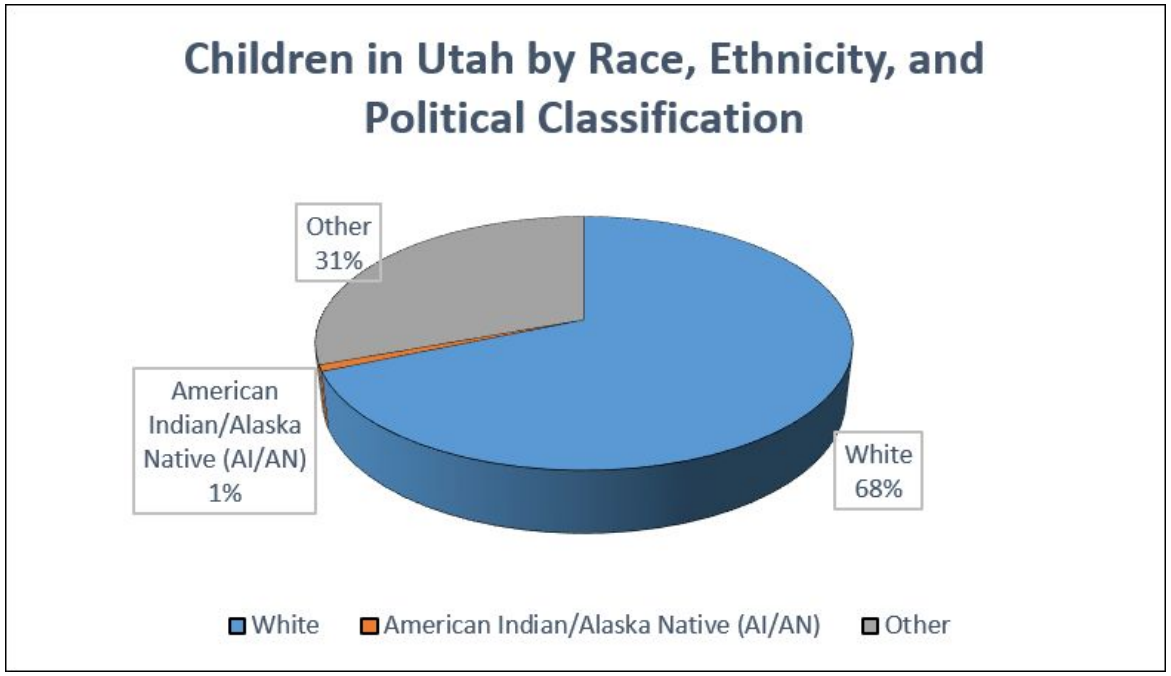


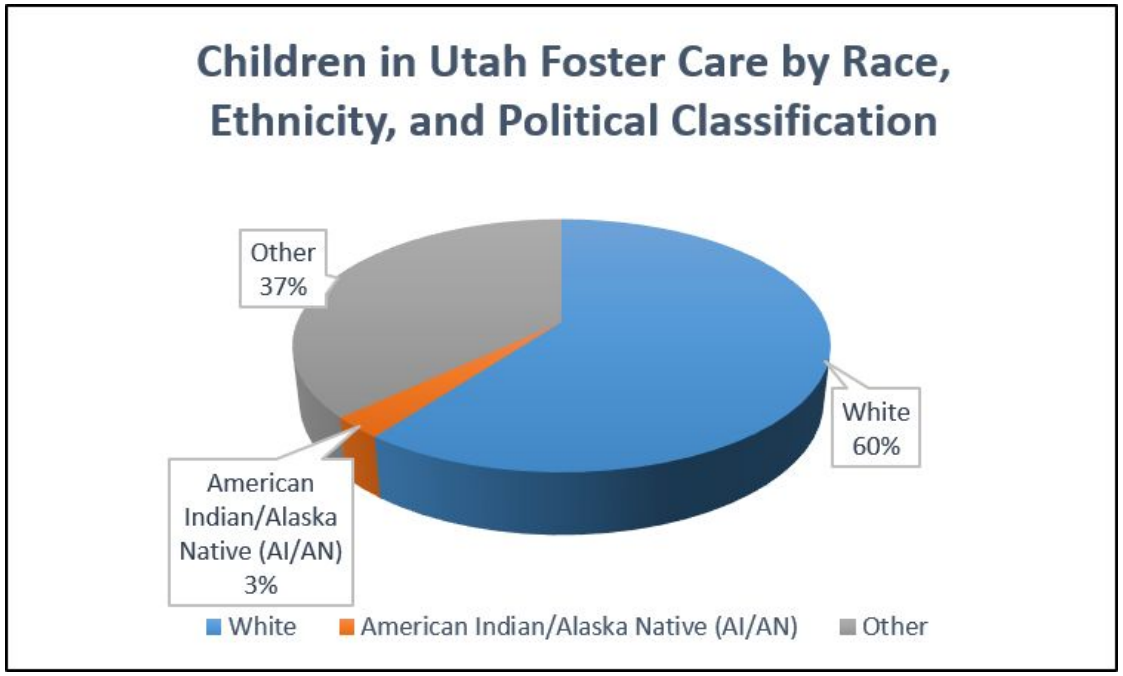


One national study found that, where abuse has been reported, Native children are two times more likely to be investigated, two times more likely to have allegations of abuse or neglect substantiated, and four times more likely to be placed in foster care than White/Caucasian children (Hill, 2007).

Utah Specific Statistics

- 2024 Statistics
  - 933,629 Total Number Children in Utah
    - .8% or 7,469 children are American Indian/Alaska Native
    - 68.6% or 640,469 are White
  - Total number of Children in Utah Foster Care
    - 1,706
  - In Utah foster care
    - 2.8% or 47 American Indian/Alaska Native
    - 60.3% or 1,028 are White
  - Native Children are 3.5 times more likely to be in foster care than White children in the State of Utah.





American Indian/Alaska Native children in Utah are 3.5 more times likely to be in foster care compared to White children.

Biases

- Misunderstanding of cultural customs and traditions
  - Expectations for what is appropriate
- Misunderstanding of what lead to congressional findings and history thereof
- Misunderstanding of generational trauma and role that state played in promulgating these issues
- Values
- Environmental Biases and Misconceptions
- Lack of willingness to learn from Tribe regarding cultural appropriateness and child rearing practices
- Lack of willingness to trust or believe in Tribal services
  - PIP, behavioral services, SUD treatment

Systemic Methods to Help Indian Families Stay Together

- Learn ICWA and be willing to follow and look for ways to improve on ICWA
- Work in collaboration with Tribe
- Early communication with the Tribe and Families
- Provide Active Efforts to Prevent the Breakup of the Indian Family to the Tribe and Families
- Inquire with the Tribe about cultural customs/traditions/appropriateness and services thereof
- When children are removed, ensure that there is strict compliance with placement preferences.

  (1) A member of the Indian child's extended family;
  (2) Other members of the Indian child's Tribe; or
  (3) Other Indian families.
  (b) If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply.
  25 CFR 23.130
- Look at other States bench books and BIA guidelines
- Listen to Tribal input whether that be in CTFMs, meetings, or Courts

When is ICWA triggered?

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention.

25 USC 1912.

Involutnary Proceeding Definition

Involuntary proceeding means a child-custody proceeding in which the parent does not consent of his or her free will to the foster-care, preadoptive, or adoptive placement or termination of parental rights or in which the parent consents to the foster-care, preadoptive, or adoptive placement **under threat of removal of the child by a State court or agency.**

Voluntary Proceeding Definition

Voluntary proceeding means a child-custody proceeding that is not an involuntary proceeding, such as a proceeding for foster-care, preadoptive, or adoptive placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.

BIA Guidelines Involuntary vs Voluntary

- ICWA has provisions that apply to “child-custody proceedings.” See the definition of “child-custody proceeding” and associated guidelines in section L of these guidelines. Child-custody proceedings include both involuntary proceedings and voluntary proceedings involving an “Indian child,” regardless of whether individual members of the family are themselves Indian. Thus, for example, a non-Indian parent may avail himself or herself of protections provided to parents by ICWA if her child is an “Indian child.” Involuntary Proceedings If the child may be involuntarily removed from the parents or Indian custodian or the child may be involuntarily placed, then ICWA applies to the proceeding. If the parent or Indian custodian does not agree to the removal or placement, or agrees only under threat of the child’s removal, then the proceeding is involuntary. Voluntary Proceedings If the parents or Indian custodian voluntarily agrees to removal or placement of the Indian child, then certain provisions of ICWA still apply. Voluntary proceedings require a determination of whether the child is an Indian child and compliance with ICWA and the regulation’s provisions relating to the placement preferences. See section B.3 of these guidelines for a list of which regulatory provisions apply to each type of proceeding. A proceeding is voluntary only if the parent or Indian custodian voluntarily agrees to placement, of his or her own free will, without threat of removal.

Active Efforts to Prevent the Breakup of the Indian Family

Remedial services and rehabilitative programs; preventive measures. 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 breakup of the Indian family** and that these efforts have proved unsuccessful.
25 USC 1912(d).

25 CFR 23.2 Active Efforts

Active efforts means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and Tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include, for example: . . .

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BIA Active Efforts Guidelines

The regulations reflect that the court must conclude that active efforts were made prior to ordering foster-care placement or TPR, but does not require such a finding at each hearing. It is, however, a recommended practice for a court to inquire about active efforts at every court hearing and actively monitor compliance with the active efforts requirement. This will help avoid unnecessary delays in achieving reunification with the parent, or other permanency for the child. The court should not rely solely on past findings regarding the sufficiency of active efforts, but rather should routinely ask as part of a foster-care or TPR proceeding whether circumstances have changed and whether additional active efforts have been or should be provided.

Communities

- Community is often key in Tribal cultures.
- Each Tribal culture is different and unique.
- Meeting families where they are at rather than having preset expectations of where they should be at.
- Listening and hearing what the barriers are and reacting appropriately.

Guidance

- Be cognizant of what you don’t know.
- Be willing to learn new information.
- Be willing to listen.
- ICWA is far more complex than can be fitted on a single piece of paper.
- Encourage consistent policies across the State from DCFS.
- Encourage more trainings on ICWA and cultural awareness for anyone involved with ICWA.
- Encourage higher Department participation when local Tribes offer ICWA trainings.

Guidance continued

- Find resources to refresh recollection before entering cases.
- Know what Active Efforts means and the definition and where to find it.
- Reach out to Tribe to see what they would consider their understanding of Active Efforts is and how to apply it.
- Look to what other states are doing.
- Review BIA Guidelines.
- Call Tribes for information to learn what ICWA is and how to participate in ICWA cases.
- Don’t put western values on Tribal members.

References

- NAT'L INDIAN CHILD WELFARE ASSN., DISPROPORTIONALITY IN CHILD WELFARE, (May, 2026) NICWA_Disproportionality-Child-Welfare-Fact-Sheet_2026.p0df.
- U.S. Dep't of Health & Hum. Servs., Child's Bureau, *Child Welfare Outcomes Report Data Site*: Utah, https;//cwoutcomes.acf.hhs.gov/cwodatasite/bystate/utah.
- 25 U.S.C. 1901(3) and 25 U.S.C. 1901(4)
- 25 CFR 23.130
- 25 CFR 23.2
- 25 USC 1912(d).
- Guidelines for Implementing the Indian Child Welfare Act at 13; 43