



# NICWA

National Indian Child Welfare Association

**Zero To Three Expert Advisory Group Q&A  
with NICWA Executive Director Sarah Kastelic  
August 2024**

***What should everyone know about the protections American Indian and Alaska Native children and families are entitled to by law in regards to child welfare?***

The federal Indian Child Welfare Act (ICWA) was passed by Congress in 1978 to prevent the forced removal of Native children from their families. At the time, 25-35% of all Native children were removed from their families; 85% of those children were placed in non-Native homes.

ICWA applies to a subset of Native kids: children who are members of a federally recognized tribal nation or who are eligible for membership and have a biological parent who is a tribal member. ICWA protections are applied based on the political relationship of Native children to their tribal nation; it's their citizenship in a tribal nation that gives their tribe the authority to be involved in decisions about what is in a child's best interest, not their racial status.

ICWA does three things: 1) sets minimum standards for state removal of Native children from their families, 2) recognizes tribal nations' inherent jurisdiction over child welfare proceedings involving their member children, and 3) provides minimal funding to tribal nations for the operation of child and family programs.

ICWA is the gold standard of child welfare policy and practice. It keeps Native children connected to their family, community, and culture whenever possible.

ICWA is necessary because it: ensures that states consider tribal values; empowers tribes to serve their children and families; counterbalances bias in people and the system; expands resources available to support Native children and their families; and protects the best interests and unique rights of American Indian and Alaska Native children as tribal members.

Here is a helpful NICWA [resource](#) about complying with ICWA requirements.

***When are Indian child welfare cases handled by tribal authorities and when might they not be?***

Tribal nations have exclusive jurisdiction over child custody proceedings when either a Native child is domiciled on tribal lands and no federal law (like P.L. 93-280) modifies that jurisdiction or the child is a ward of tribal court. Domicile means the place where a parent and child consider their permanent home, as opposed to temporary residence. If a tribe has exclusive jurisdiction, the state court must notify the tribal court that it is dismissing the proceeding, officially dismiss the proceeding, and then ensure that it sends the tribal court all information related to the proceeding and any other information pertaining to the child's eligibility for state or federal programs and services.

A tribe has concurrent jurisdiction when either a child is domiciled off tribal lands and the tribe asserts jurisdiction (transfer jurisdiction from state to tribal court) or a child lives on tribal lands but a federal law

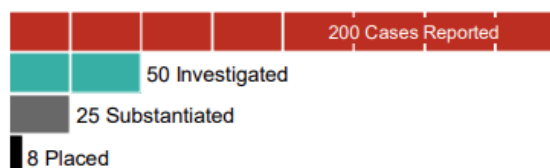
states that jurisdiction is shared with a state (P.L. 280). Both states and tribes have authority to make decisions in these situations, including taking steps to ensure the safety of a Native child. In *Holyfield*, 490 U.S. 30 (1989) the court said that jurisdiction is “presumptively tribal” (e.g., that transfer to tribal court can and should occur when requested by the child’s tribe).

***How are American Indian/Alaska Native families disproportionately impacted by the issue we’re examining, namely the role that substance use policy plays as a driver of overrepresentation in the state child welfare system? (note that these data represent Native children in state child welfare systems; there are not national data for children in tribal systems.)***

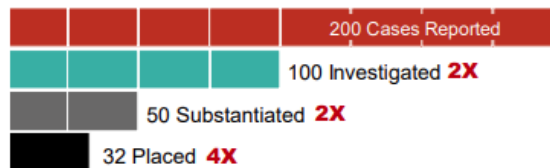
National Child Abuse and Neglect Data System (NCANDS) data indicate 9,187 American Indian or Alaska Native (AI/AN) children were victims of child abuse or neglect in 2020. AI/AN children had the highest rate of victimization of any racial/ethnic group, with 15.5 per 1,000 children. By comparison, the nation overall had a victimization rate of 8.4 per 1,000 children, and White children’s rate of victimization was 7.4 per 1,000 children. Racial distributions show that for nearly all race categories, there was a decrease in child victimization during federal fiscal year (FFY) 2020. However, AIAN victims had an increase of 1.4% for the fiscal year (Children’s Bureau, 2022).

Using Adoption and Foster Care Analysis and Reporting System (AFCARS) data from 2015, Davis et al. (2022) examined differences between AI/AN children and non-Native children in foster care.<sup>1</sup> They specified two groups of AI/AN children to compare with non-Native children; those identified as AI/AN Only and those who are identified as having two or more races, one of which is AI/AN (AI/AN +). In terms of reason for entry into foster care, Davis et al. (2022) found AI/AN Only children are less likely than non-Native children to be removed due to physical abuse, child behavior concerns, or parents’ inability to cope, and more likely to be removed for neglect. AI/AN+ children are less likely to be removed due to child behavior problems or parents’ inability to cope and more likely to be removed for drug use by a parent than non-Native children. However, the biggest difference in foster care entry reason for both AI/AN Only and AI/AN+ children compared to non-Native children was parental alcohol use. One in five AI/AN Only children and one in 10 AI/AN+ children were removed due to a parent’s misuse of alcohol, in contrast to 5% of non-Native children. It is unknown whether the actual risk for AI/AN Only and AI/AN+ children due to alcohol misuse is higher, or whether workers are more likely to investigate and substantiate reports of alcohol misuse due to stereotyping or bias.

**White/Caucasian Children**



**American Indian/Alaska Native Children**



**PRIMARY REASONS AMERICAN INDIAN / ALASKA NATIVE CHILDREN COME INTO FOSTER CARE:**

- 63% – Allegations of neglect
- 15% – Reported alcohol use by parents
- 41% – Reported other substance use by parents

<sup>1</sup> Davis, C. G., Dunnigan, A., & Stevens, B. B. (2022). Indigenous-centered racial disproportionality in American foster care: A national population study. *Journal of Public Child Welfare*, 1–25. DOI: 10.1080/15548732.2021.2022565

***What are the key policy or historical events that continue to drive the systematic reporting and removal of Indian children from their families/communities?***

Over several centuries, federal Indian policy oscillated between policy goals of destruction, assimilation, and tribal self-determination. Specific policies were aimed at removing Native people from their communally held tribal lands and disrupting tribal governance systems, taking land and natural resources, as well as outlawing Indian religious and spiritual practices and gatherings, and forcibly removing Native children from their families. Two particularly damaging policy periods were the Indian boarding school policies and, as the boarding schools fell out of favor with the general public, the rise of policies and practices that separated Native children from their families through public and private child welfare agencies.

For 150 years (1819-1969), it was a coordinated policy of the US government to use education as a tool to assimilate Native children while Indian tribes were dispossessed of their territory. Children as young as four years old were stolen or kidnapped and taken hundreds of miles from their homes to live at residential schools. In 2024, the U.S. Department of the Interior identified 417 federally operated or supported schools in 37 states.<sup>2</sup> By 1926, nearly 83% of Native school-age children were in boarding schools.<sup>3</sup>

In 1958, as Indian boarding schools were starting to wane, the Bureau of Indian Affairs (BIA) created the Indian Adoption Project. Both the U.S. Indian Boarding School and the Indian Adoption policies were intentionally designed to force assimilation and eradicate Native cultures and family systems. Administered by the Child Welfare League of America and funded by a federal contract from the Bureau of Indian Affairs and the U.S. Children's Bureau, the Indian Adoption Project lasted from 1958 through 1967.<sup>4</sup> During an era when race-matching dominated adoption practice, it placed 395 Native American children from 16 western states with white families in Illinois, Indiana, New York, Massachusetts, Missouri, and other states in the East and Midwest. The Indian Adoption Project was perhaps the single most important exception to race-matching, an almost universal policy at the time. It aspired to systematically place an entire child population across lines of nation, culture, and race.

When the BIA started the project, it enlisted social workers to visit reservations and convince parents to sign away their parental rights. It was a way to assimilate these children into "civilization." By removing Native children and placing them with non-Native families, they wouldn't have contact with other Native people as they would in a boarding school. The goal was to fully assimilate them at no cost to the government.

By the 1960s about one in four Native children were living apart from their families. Many of these adopted children, now adults, struggle with memories from traumatic childhoods in abusive homes, while trying to figure out where they fit in as Native people in white communities. In 1978, the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) was enacted to stop these adoptions that deliberately removed Native children from tribal communities.

This Vox video, [How the US Stole Thousands of Native American Children](#), describes the connection between the Indian boarding school policies and subsequent public and private child welfare removal policies.

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<sup>2</sup> Department of Interior (2024). *List of Federal Indian Boarding Schools (FIBS)*. [https://www.bia.gov/sites/default/files/media\\_document/vol\\_ii\\_appendix\\_a\\_list\\_of\\_federal\\_indian\\_boarding\\_schools\\_public\\_508\\_final%5B1%5D.pdf](https://www.bia.gov/sites/default/files/media_document/vol_ii_appendix_a_list_of_federal_indian_boarding_schools_public_508_final%5B1%5D.pdf)

<sup>3</sup> Adams, D. W. (1995). *Education for extinction: American Indians and the boarding school experience, 1875-1928*. Lawrence, Kan., University Press of Kansas.

<sup>4</sup> University of Oregon (2012). *The Adoption History Project: Indian Adoption Project*. <https://pages.uoregon.edu/adoption/topics/IAP.html>

***What would you like us to know about Indigenous ways of being and how learning about them can improve how we work together to promote Indigenous rights, autonomy, and family strengthening?***

Prior to colonization, American Indian and Alaska Native practices and beliefs about raising a child allowed a natural system of child protections to flourish. Traditional Native spiritual beliefs reinforce that all things have a spiritual nature that demands respect, including children. Traditionally, not only are children respected, but they are taught to respect others. Extraordinary patience and tolerance mark the methods that have been and are still used today to teach Native children self-discipline. At the heart of a natural system are beliefs, traditions, and customs involving extended family with clear roles and responsibilities. Responsibilities shared by extended family and community members make the protection of children the responsibility of all people in the community. Within the natural safety net of traditional tribal settings and beliefs, child maltreatment was rarely a problem.

Children were removed to boarding schools; they were parented by institutions, not loving relatives. Children lost their language, spiritual teachings, and traditional ecological knowledge. Federal records indicate that the United States viewed official disruption to the Indian family unit as part of Federal Indian policy to assimilate Indian children.

A growing body of research shows that culture is an important protective factor for Native children and youth.<sup>5</sup> Research shows that when kids are connected to their identity and culture it leads to positive outcomes, including higher self-esteem,<sup>6</sup> academic achievement,<sup>7</sup> higher social functioning,<sup>8</sup> increased resilience,<sup>9</sup> and improved physical and psychological health.<sup>10</sup> Studies have reported the positive effects of cultural identity on negative outcomes such as suicide,<sup>11</sup> school dropout,<sup>12</sup> and substance abuse.<sup>13</sup>

Tribal nations play a key role in ensuring the well-being of Native children; they have knowledge and relationships that position them to make decisions in the best interest of their member children. In recent years, an increasing number of tribal nations have decolonized their child welfare systems, refounding them based on their tribal cultures, worldviews, values, and traditional beliefs. In fact, as I write in this Children's Bureau [publication](#), as the US works to reform child welfare, there is much to be learned from tribal nations.

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<sup>5</sup> National Indian Child Welfare Association (2020). Contemporary Attachment and Bonding Research: Implications for American Indian/Alaska Native Children and their Service Providers. <https://www.nicwa.org/wp-content/uploads/2020/03/Contemporary-Attachment-and-Bonding-Research-Final.pdf>.

<sup>6</sup> Kulis, S., Napoli, M., & Marsiglia, F.F. (2002). Ethnic pride, biculturalism, and drug use norms of urban American Indian adolescents. *Social Work Research*, 26(2), 101-112.

<sup>7</sup> Whitbeck, L.B., Hoyt, D.R., Stubben, J.D. & LaFromboise, T. (2001). Traditional culture and academic success among American Indian children in the upper Midwest. *Journal of American Indian Education*, 40(2), 48-60.

<sup>8</sup> Jones, M.D., & Galliher, R.V. (2007). Ethnic identity and psychosocial functioning in Navajo adolescents. *Journal of Research on Adolescence*, 17(4), 683-696.

<sup>9</sup> LaFromboise, T.D., Hoyt, D.R., Oliver, L. & Whitbeck, L.B. (2006). Family, community, and school influences on resilience among American Indian adolescents in the upper Midwest. *Journal of Community Psychology*, 34(2), 193-209.

<sup>10</sup> LaFromboise, T.D., Coleman, H.L., and Gerton, J. (1993). Psychological impact of biculturalism: evidence and theory. *Psychology Bulletin*, 114(3), 395-412.

<sup>11</sup> Chandler, M.J. & Lalonde, C.E. (Unpublished manuscript). Cultural continuity as a moderator of suicide risk among Canada's first nations.

<sup>12</sup> Feliciano, Cynthia. (2001). The benefits of biculturalism: Exposure to immigrant culture and dropping out of school among Asian and Latino youths. *Social Science Quarterly*, 82(4), 865-879.

<sup>13</sup> Moran, J. R., & Reaman, J. A. (2002). Critical issues for substance use prevention targeting American Indian youth. *The Journal of Primary Prevention*, 22, 201-233.