

**Child Welfare Issues in Domestic Violence
Cases: Addressing the Unique Needs of
American Indian and Alaska Native Families**

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**Challenges Dealing with Cases Where
DV and Child Welfare Intersect**

What have you seen????

Issues and Challenges: DV

Helping Survivors of DV means:

- Acknowledging impact of trauma on victim/survivor
- Not judging V/S
- Believing V/S
- Moving towards health and healing 'holistic'

Child Welfare Lens

- Parents held accountable/failure to protect
- System set up to judge CHIPS adjudication, imminent harm or danger
- Case plan 'voluntary' though doesn't feel like it
- 'Big eyeball' on parent's whole life, including past before incident/event

Examples

- A bifurcated matter; the need for training of court personnel, in this case, the GAL
- Bio mom held to higher standard than bio dad as presumptive custodial parent
- Common for mom to question why big eyeball not on dad, much anger, especially if addiction is in the mix

Historical/Intergenerational Trauma



- Removal
- Reservations
- Allotment
- Boarding Schools
- Termination
- Relocation
- Indian Adoption Program
- Current Practices/Inherent Systemic Biases

Lasting Impacts

- Many children died of disease, abuse, broken hearts
- Broken intergenerational teaching in Indian communities
- Generations learned to parent from boarding school staff, who were abusive



Lasting Impacts

- The breakdown in Native American families due to the forced removal of Native American children can be seen as the reason for the high number of child abuse and domestic violence incidents reported in these families.
- Tribal youth are **2 ½ times more likely** to experience trauma from exposure to violence than non-tribal peers.
- Tribal children and youth experience **PTSD at a rate of 22%** - the same rate as veterans returning from Iraq and Afghanistan and triple the rates of the general population

Lasting Impacts

- AI/AN children experience child abuse and neglect at a rate of **16.5 per 1000 children** (U.S. Health and Human Services, 2007)
- Native disproportionality rates for foster care placement have increased in the last 10 years from **1.5 to 2.5** (NCJFCJ, 2015)
- **50 to 80%** of all identified human trafficking victims are or have been involved with child welfare services at some point in their lives. (State of Alaska Task Force on the Crimes of Human Trafficking, 2013)

Lasting Impacts

- AI/AN women are more likely to experience intimate partner violence and sexual violence at higher rates than women of other races (www.futureswithoutviolence.org)
- Domestic violence and physical and sexual assault are **three-and-a-half times higher** than the national average in Native American communities; however, this number may be low, as many assaults are not reported .

Lasting Impacts

- **Almost 26%** of Native Americans live in poverty compared to 12% for the entire U.S. population (U.S. Census Bureau, 2006).
- Native Americans residing on reservations have **double the unemployment rate** compared to the rest of the U.S. population (U.S. Census Bureau, 2006).

The Indian Child Welfare Act (ICWA)

ICWA is designed to remedy cultural mistakes that have resulted in Native American children being placed in out of home care through:

- Requiring a higher burden of proof for removal
- Requirements that caseworkers look beyond the surface
- Involving extended families and tribes in cases
- Judicial understanding of Native values and tribal sovereignty

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Emergency Removal Language

- ICWA allows emergency removal of an Indian child who is off the reservation in order to prevent imminent physical damage or harm.
- The Indian child must be returned home as soon as the threat of imminent physical harm has passed or the tribal court asserts jurisdiction, whichever is earlier.

Active Efforts

Any party seeking foster care placement or TPR of an Indian child 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; and
- These active efforts have been unsuccessful.

Placement

Absent good cause to the contrary, a State court shall follow these preferences for the foster care placement of an Indian child:

- 1st Extended Family
- 2nd Foster home licensed by Tribe
- 3rd Indian foster home licensed by State
- 4th Institution approved by Tribe
- 5th Other foster homes licensed by State

Transfer

A State Court shall transfer to tribal court a foster care placement or TPR proceeding involving an Indian child not domiciled or residing within the reservation of the child's tribe when:

- Requested to do so,
- There is no good cause to the contrary,
- Neither parent objects, and
- The tribal court does not decline jurisdiction

Indian country: Rural and Urban

- Differences?
- State Court vs. Tribal Court
- Considerations: AE applies in both?
- Confidentiality?
- Resources?
- Trust an issue in both? Why or why not?

Cultural Differences in ICWA Cases

- 567 Federally Recognized Tribes
- How do Tribes make laws?
- Adopt state laws?
- Required to follow federal law?



Video

<https://www.youtube.com/watch?v=G50iwY6YjSk>

People who work with V/S in DV and CW should be sensitive to:

Finding a Way Forward

- Defending Childhood Initiative
- State Court Initiatives
- Tribal Court Improvement Projects
- Training (for who?)
- Collaboration
- Community Engagement

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Questions? Feel Free to Contact Me at:
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