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INFORMATION PACKET: *Indian Child Welfare Act*

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Indian Child Welfare Act

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The issue is an historic one between the Indian tribes and American society. The tribes assert their political sovereignty against that of the United States. Tribes wish to decide what happens to their members, not people from outside the tribe. The United States wishes to include Indian children in its mission to promote the safety of children. State courts' jurisdiction is promoted in family cases by non-Indians.

To Indians, removal of their children from the Indian community is cultural genocide. They say that the child is devastated by the resulting loss of cultural heritage. However, non-Indian authorities seek to promote Indian child welfare by placing needy Indian children in available foster and adoptive homes despite the ethnic or racial identity of the new caretakers. Placement of Indian children away from their families have grown while the number of available Indian foster or adoptive homes has been inadequate.

Native American advocates say that some social workers and judges do not know or understand Indian child-rearing beliefs and practices and thus erroneously remove the children from their families. The tribes want the children returned to the tribe. They further assert the existence of evil-doing such as foster parents using the system to earn federal payments and to secure farm workers.

Native Americans fear the ultimate annihilation of their tribes, identity and culture by the on-going removal of their children.

On the other side, the Indian position seems to fly in the face of what has evolved as an attempt to focus on child welfare and to provide permanent homes for children in need.

Statistics

The Administration for Children and Families within the U.S. Department of Health and Human Services publishes statistics about children in order to comply with U.S. legislative mandates.

Presented here are data from three states that have significant numbers of Native American children: South Dakota, Montana, and Oklahoma. In my analysis of the state data, I focus on a comparison of Indian children to the general and to the white population of children.

Certain states showed a large percentage of Native American children adopted in fiscal 1998-1999 as compared to the total number of children adopted in that state:

Alaska 48 %

South Dakota 46 %

Montana 14 %

North Dakota 14%

Oklahoma 10%

I selected South Dakota, Montana and Oklahoma for further analysis as to race/ethnicity.

In **South Dakota**, Indian children made up 14.1% and 14.4 % of the general child population under 18 years of age in 1998 and 1999. The percentage of child victims in 1998 was 45.1% Indian. Native children in foster care were 63.5 and 63.6 % on 10/1/98

and 9/30/99 respectively. Indian children were 57.6% of those waiting to be adopted in 1999. The per cent of children adopted in 1998/1999 were 34.5% and 46.4% Indian. In 1999, the great majority of all children in South Dakota who exited foster care were reunited with their families. For Indian children, the per cent reunited was 80.7% of 663 Indian children compared to 70.6% of 401 white children. Indian children who were adopted was 6.5% while 15.5% of white children were adopted.

In **Montana**, Indian children made up 10.1 and 10.4 % of the general child population under 18 years in 1998 and 1999. The percentage of child victims in 1998 was 25% Indian in 1998 and 24.9% Indian in 1999. Children in foster care were 26.3% and 30.1% on 10/1/98 and 9/30/99 respectively. Indian children were 18.9% waiting to be adopted in 1998 and 19% in 1999. The percentage of children adopted who were Indian was 10.7 and 18.3 in 1998 and 1999. The majority of children who exited foster care were reunified with their families. For Indian children, 65% of 371 in 1998 and 61.8% of 343 were reunified in 1998 and 1999 compared to 61.5/59.2% of 742/855 white children in 1998/1999. Indian children adopted were 5.1% in 1998 and 11.4% in 1999 while 18.1/17.0 % of white children were adopted. Startling, however, is that 23.2/20.9 % of Indian children were missing from foster care in 1998/1999 while 9.6/8.8% of white children were missing.

In **Oklahoma**, Indian children made up 10.1/9.7% of the general population of children under 18 years in 1998/1999. The percentage of child victims who were Indian was 13.6/14.4% in 1998/1999. Indian children in foster care were 14.7/14.8% on 10/1/98 and 9/30/99 respectively. Indian children were 13.6/13.9 % of those waiting to be adopted in 1998/1999. The per cent of children adopted in 1998/1999 were 11.7/9.6 %

Indian while 56.2/56.6% were white. In 1998 and 1999, the majority of children who exited foster care were reunified with their families. For Indian children, the percentage reunified was 60.1% out of 759 in 1998 and 75.3% of 665 in 1999 compared to 56% out of 3,141 and 73% of 2,780 white children in 1998 and 1999 respectively. Indian children adopted were 7/15% in 1998/1999 while 8.3/18.2% of white children were adopted.

These statistics show that in states where there is a significant Native American population, Indian children statistically suffer more maltreatment (mostly, “neglect”), are disproportionately represented in foster care, but have a greater tendency to be reunified with families and have lower adoption rates than the majority white population.

Since neglect is a matter of cultural judgment, there is some support here for the Indian tribes’ allegation of cultural incompetence on the part of social workers and judges.

The higher percentage of reunification and relatively low percentage of adoptions probably attests to the successful application of the Indian Child Welfare Act which demands the placement of children within Indian families and the return of Indian children to their respective tribes.

Policies and Legislation

During the 1960’s, an increasing number of non-white children were placed in white homes. Native American children were placed predominantly with white couples until the 1978 Indian Child Welfare Act. This act gave tribes the authority to make placement decisions for their own children. (Crosson-Tower, 2001, p. 360)

The Indian Child Welfare Act of 1978 institutionalized traditional Indian family systems in child welfare policy. In 1980, the Adoption Assistance and Child Welfare Act institutionalized a national program of family preservation for the first time in legislative history. Together, ICWA and AACWA set the stage for a major reorientation in child welfare with emphasis on family support and preservation. However, funding patterns showed preference for foster care over family preservation. (Red Horse, 2001, p. 15)

The Multi-Ethnic Placement Act was adopted in 1994 to end the barrier to permanency that was the consideration of racial/ethnic identity in foster and adoptive placement. It was replaced in 1996 by more precise language in The Removal of Barriers to Interethnic Adoption amendments to the Social Security Act Title IV-E, Foster Care and Adoptive Assistance.

The new policy excepted ICWA because Indian tribes have a political status more than a racial status. It was intended to speed placement for African-American children.

Lengthy foster care and popularized cases of child abuse led to the Adoption and Safe Families Act (ASFA) in 1997 which promotes permanency via financial incentives for adoption. ASFA is antithetical to ICWA and to tribal customs and practice although it does not supersede ICWA provisions. (Red Horse, 2001, p.16)

Models

ICWA provokes tension between the best interests of the child philosophy and the American Indian advocacy of family/tribal/cultural preservation. Best interest of the

child is informed by attachment theory while the integrity of the Indian nation is the goal of Native Americans.

Recent research in family and child welfare draws attention to empowerment or strength-based case management models. This approach identifies family strengths and resources, as well as problems to be addressed, as focal points for the therapeutic process.

Wraparound emphasizes decision-making participation by family members in the development and implementation of case management. The goal of strength-based social work is to facilitate a process of capacity-building within families. This model uses extended family and community resources. Tribal family preservation programs use an empowerment approach.

The strength-based model opposes the dysfunction-based paradigm which labels families as inadequate.

A multisystems approach is another recent trend in family preservation. It identifies relationships with the family, with the extended family, with the community and with the intervention group. It identifies constraints and seeks to remove them.

Wraparound and strength-based multisystems models mirror traditional tribal practices. Indians say, “Do not remove the child; remove the dysfunction.”

(Red Horse, 2001, pp. 17-22)

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