



Session 3

ICWA: Legislative History, Jurisdiction, Findings/Policy, Interpretation

Session 3

- Legislative History of ICWA
- Interplay between ICWA and Alaska law
- Congressional Findings
- ICWA's Declared Policy
- Tools for Interpreting ICWA

Legislative History of ICWA

- 1972-1976: Congressional Hearings
- Testimony from Alaska Natives and American Indian people at hearings around the nation
- 1978 – Congress enacted the Indian Child Welfare Act (ICWA) on November 11, 1978

Legislative History of ICWA

Congressional testimony showed:

- 25-35% of all Native children removed
 - Less than 1% alleged physical abuse
 - Many unwarranted removals based on opinions of authorities unfamiliar with prevailing culture and practices of Native families
- Of the children removed, 85-90% placed permanently in non-Native homes
- Families and tribes decimated

Jurisdiction

- Jurisdiction
 - Congress has plenary power over Indian affairs (through U.S. Constitution)
 - Responsibility for protection/preservation of Tribes (through statutes and treaties)
- 2016 ICWA Regulations
- State courts must follow ICWA and the Regulations
- BIA Guidelines (not binding)

ICWA or Alaska State Law?

- State law and ICWA both apply
- Alaska Supreme Court: Follow both if possible
- If conflict: ICWA applies
- Applicable State law provisions:
 - Definitions of abuse and neglect (CINA)
 - Timelines
 - Court process

Congressional Findings

“There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and 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.”

Congressional Findings

“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.”

Congressional Findings

“The States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.”

Declaration of Policy

“Protect the best interests of Indian children and promote the stability and security of tribes and families by the establishment of minimum standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture.”

Interpreting ICWA

- Language of ICWA
- ICWA Regulations
- Legislative History
- BIA Guidelines (not binding)
- Treatises
- U.S. and Alaska Supreme Court decisions
- CINA Rules