

The Indian Child Welfare Act and CASA/GAL Volunteers:
Advocating for the Best Interests of Native Children

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Passed by Congress in 1978, the Indian Child Welfare Act (ICWA or the Act) requires that every state court dependency matter involving an Indian child must be resolved with reference to specific provisions. The Act is a clear indictment of state courts and social service agencies whose practices and abuses led to the unprecedented necessity of federal intervention. Within the Act, Indian children are afforded specific protections by Congress designed to insure that the pre-Act abuses of states are eliminated. It is important for the CASA/GAL volunteer involved with an Indian child to realize that most courts and agencies resist being labeled as abusive, even within a historical context. The CASA volunteer must understand that the historical tendency of institutional abuse directed at Native American families led Congress to pass this Act. When working with an Indian child, the CASA volunteer has the opportunity to protect the child's rights by ensuring that the state agencies involved with the case are following the Indian Child Welfare Act.

In the 1970s, prior to the passage of the Act, congressional hearings were held. The hearings revealed terrible abuses, indicating a national pattern of wholesale public and private removal of Indian children from their homes which resulted in the undermining of Indian families and had a devastating impact on tribes across the country. At the national level the following results were compiled:

- Indian children were placed in foster care or were adopted at three times the rate of non-Indian children.
- Approximately 25-35% of all Indian children were removed from their homes and placed in non-Indian foster homes and adoptive homes or institutions.

Congress determined that “the Indian child welfare crisis is of massive proportions and that Indian families face vastly greater risks of involuntary separation than are typical for our society as a whole.” It is important to note that Congress did not find the separations warranted. Instead, it was found that the removals often resulted from states failing to recognize the essential tribal relations of Indian people and the different cultural standards regarding extended families which prevail in Indian communities. The removals were not only removals from the nuclear family but from the tribal community and resulted in cultural alienation for the tribal children. The alienation frequently translated into serious adjustment problems during adolescence. Indian children were often not able to adjust to social and cultural environments that were significantly different from their home environments. The children grew up facing racism and exclusion in non-Indian communities and did not have the cultural skills to fit into a tribal environment.

In passing the Act, Congress made the following declaration of policy: "The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum federal 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, and by providing for assistance to Indian tribes in the operation of child and family service programs." This very strong statement is often overwhelming to personnel in non-Indian systems who find it difficult to grasp that such a position evolved from the abusive behavior of institutions that they believe are essentially fair and operating for the good of the entire public. The CASA volunteer must find a gentle but firm way of making sure this policy is the guiding force in any dependency action involving an Indian child.

Many people, when faced with issues involving Indian children, grapple with the concept of different treatment for Indian children. Some may feel it is not fair to the Indian child to be treated differently, to have different rules than non-Indian children. It is the CASA volunteer's job to understand and ensure that the Indian child's special rights are

acknowledged and secured. To be able to advocate in such a manner, it is essential that the CASA volunteer understand the basis for this difference. It can best be understood as a citizenship right. Congress in passing ICWA essentially acknowledged the premise that an Indian child's citizenship within the tribe is a valuable right to be protected for the child. Many tangible and intangible benefits flow from citizenship, many people have strong identity based on citizenship, benefits and responsibilities flow between the sovereign and the citizen. The sovereign has an interest in the welfare of each of its citizens. An Indian child's rights as articulated in ICWA are not based simply on race or cultural considerations, they are based on the political relationship that exists between the government of the United States and each of the recognized tribes. According to the law, these tribes are considered domestic, dependent nations and as such have a special relationship with the federal government that transcends the relationship of states to other citizens of each state. Each Indian child has an interest in his or her tribe, and each tribe has an interest in each of its children. ICWA is designed to prevent inappropriate interference with this relationship.

The CASA volunteer who is assigned an Indian child should immediately review the provisions of ICWA to determine whether or not the Act is being adhered to by the state court and the social services agency. The CASA volunteer should attempt to make contact with the child's tribe and determine what resources are available to the Indian child. Those resources may include relative or tribal placement options, treatment programs for the parents or the child, housing options and educational placements. The CASA volunteer should determine whether the child is enrolled in the tribe, as enrollment is the acknowledgment of citizenship and is a vital interest that must be protected. If the child is eligible but not enrolled, the CASA volunteer should do everything possible to facilitate that enrollment.

If the permanency plan is to allow the parents to try and reunify with the Indian child before offering placement options, the CASA volunteer should advocate for protection of the child's relationship with any potential tribal placement. The CASA volunteer can do this by encouraging contact between possible tribal placements and the Indian child

during the course of reunification. The CASA volunteer can also seek out activities that connect the child with his or her native culture. Many services, and service providers, exist that are linked to Indian communities. The volunteer should advocate to have Indian children served by these providers. It is essential for proper development of Indian children's self-identity to have an advocate for their cultural identity and tribal citizenship. If they do not have this identity, studies show that these Indian children do not fare well as teenagers and adults.

Many Indian communities have long-standing bias against social services. It is important to remember that the Act was not passed in a vacuum. The abuses which led to the passage of the Act were experienced by real people. Many of these victims live in the Indian community today. They remember, sometimes personally and sometimes in the community's collective memory, their children being unjustly taken from them. Their willingness to work with social services is often compromised even when it might lead to a better result in a specific case. The CASA volunteer is not tainted by a relationship with an agency that is responsible for the infliction of pain in the Indian community. This presents a unique opportunity for the volunteer to create a trusting relationship with a child's tribe and can provide an invaluable service to the Indian child by negotiating the issues associated with their dual citizenship.

It is possible under ICWA that a case be transferred to a tribal court. (In certain limited circumstances it would be mandatory.) If there is discussion of transfer of jurisdiction, the CASA volunteer can be a very good liaison between the parties and the tribe. Oftentimes when a transfer is discussed, the state officials, including the court and the social services personnel, react with apprehension. They often fear that a transfer is somehow a lessening of services, or that the tribal system is not as adequate as the state system to protect the child. This apprehension is often based upon assumptions and stereotypes rather than on actual knowledge of what is available on any given reservation. The CASA volunteer's role may very well be to serve as an information link between these two worlds which may not have a good working relationship. Volunteers can only

commit to this if they understand and accept the premise that the best interests of an Indian child includes protection of the child's Indian identity.

ICWA imposes a federal standard on all states which decrees that the best interests of Indian children are served by protecting "the rights of the Indian child as an Indian and the rights of the Indian community and tribe in retaining its children in its society." H.R. Report No. 1386, 95th Cong., 2d Sess. 23 (1978). The Act has many provisions that are mandatory. The purpose of this article is not to convert the CASA volunteer into an ICWA expert but rather to develop an understanding that Indian children must have advocates who zealously protect their rights as Indian children, not just as children. At every stage of the proceeding, special rules apply to Indian cases, and the CASA volunteer must see that those involved in the proceedings adhere to these rules so that the Indian child's rights are not compromised. The CASA volunteer can play an essential role in securing those rights. The Act sets out preferences for foster care placements; however if no Indian homes have been recruited or if no one vigorously seeks a tribal placement, it is possible that the placement preference requirement will be meaningless. As the child's advocate, the CASA volunteer can take the extra steps and efforts to make the provisions of the law reality for the Indian child.

In conclusion, a CASA volunteer working with an Indian child has a critical role. As with all CASA volunteer advocacy, it is a role that requires diligence. A special sensitivity is needed to help the parties involved understand the federal mandates and the added requirements of those mandates. The CASA volunteer must advocate for the child's citizenship rights within their tribe while ensuring that the child's day-to-day needs for basic care are being met. It is a challenging task but one which is essential if the Indian children they work with are to reach their full potential.

To view the full text of ICWA, please visit
<http://www.nicwa.org/policy/law/icwa/ICWA.pdf>.