Support HB 30 The Indian Family Preservation Act

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This legislative session, Utah has the opportunity to support Native children and families by passing HB 30, the Indian Family Preservation Act Amendments. This bill would allow tribes to establish foster home standards and oversee child custody cases, ensuring community-driven, culturally aligned solutions for Native children.

With just over a week left in the session, the bill is still stuck in the House Rules Committee. We need your help to move it forward! Here's how you can take action:

- Contacting your representatives and/or contacting the House Judiciary Committee Chair Rep. Nelson Abbott (district 57) via email: nabbott@le.utah.gov or phone: 385-358-3269.
- Emailing or calling your representatives.
- Signing on to the Indian Family Preservation Act Statement of Support.

Overview

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In Utah, Native American children in foster care were still over-represented at 2.3 times their rates in the general population in 2019. [2]

> When non-Indian families have similar presenting problems, Native American children are four times more likely to be removed by state child welfare systems than non-Native children. [3]

The following two sections are from a blog we previously posted, offering a brief overview of the federal Indian Child Welfare Act (ICWA) policy and why it was established. At the end, you'll find ways you can support HB 30 this session.

To understand the importance of Indian Child Welfare Act (ICWA), it helps to understand the background that led Congress to create and pass the act. The relationship between Tribal Nations and the U.S. Government had been in turmoil for centuries. This complicated history affected the welfare of Native American children as the U.S. government focused on the assimilation of those children.

The first assimilation strategy occurred from the 1870s to the 1930s with boarding schools.

The perception of the purpose of boarding schools from the Native American communities' viewpoint was that Native American languages, beliefs, foods, traditions, family life, jewelry, and clothing were viewed as "uncivilized" by the growing population of primarily white settlers and the U.S. Government. U.S. Army officer Richard Pratt founded the first federal Indian boarding school and in a speech in 1892, he proclaimed his philosophy of the school was to "kill the Indian [and] save the man."[4]

> During this time, thousands of Native American children were forcefully

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> removed from their families, homes, and tribes and placed in boarding schools. The distance they traveled to these schools was often great, which left them without access to their families or community.

Due to this lack of access and boarding school policies, children were deprived and kept from learning the languages and practices of their culture. Removing children from their communities and sending them to boarding schools without any investigation of maltreatment by their families or well-being was standard, and not every child returned home. [5]

The second chapter in the Native American children's assimilation strategy occurred during the mid-1900s and lasted up until the passing of ICWA.

It was unveiled during Congressional testimony how officials from the Federal Bureau of Indian Affairs and state and county social service agencies engaged in the systematic removal of Native American children from their families and into non-Native foster care families.

> It is estimated that 90 percent of the children removed were placed in non-Native homes and communities. By the 1970s, the percentage of Native American children removed from their families was 25 to 35 percent. [6]

Two significant policies that pushed many Native American children to be removed from their families are as follows.

From 1958 to 1967, the United States funded the Indian Adoption Project. This program partnered the federal government with state social workers to remove Native American children from their homes. Children were then placed into white families through adoptions.

In 1961, states encountered many cases of child abuse and neglect, which resulted

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in legislation and statutes to remove children, significantly affecting low-income families. Low-income families became easy targets primarily due to receiving state social services and, therefore, were being closely observed. Native American families were disproportionately affected because of the high poverty rate in those communities, which led to the increased rate of removal of children during that period. [7]

This troubled relationship between the U.S. government and Native American Tribes helped lead to the passage of the Indian Child Welfare Act (ICWA) of 1978, but it took several years for it to pass. ICWA legislation received congressional hearings during the 93rd, 94th, and 95th Congress, which ran from 1973 to 1978.

In 1974, the Subcommittee on Indian Affairs received pressure from several Native American Tribes and Tribal Leaders to investigate, as they called it, “the wholesale removal of Indian Children from their families and subsequent placement in non-Indian adoptive and foster homes.”[8] The bill took roughly five years to finally pass and be signed into law.

Poverty was a key measurement utilized by state child welfare agencies to remove Native American children from families on the reservation. During the 1974 congressional hearing, the Executive Director of the Association on American Indian Affairs, William Byler, provided the following testimony.

> “…state social workers believed that the reservation was, by definition, an unacceptable environment for children and would remove Indian children without providing services or even the barest investigation whatsoever.” [9]

Tribal Leaders and associations presented additional evidence to Congress of the continued systematic removal of Native American children from their families and tribes, similar to the testimony given by Byler.

Ultimately, the passage of ICWA established procedures and requirements for the state when dealing with a child welfare case associated with a Native American child, stating, “there is no resource that is more vital to the continued existence and

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integrity of Indian tribes than their children."[10]

How ICWA Protects Native Indian Children and Tribal Sovereignty

ICWA's safeguards provide active protection to prevent the breakup of families by involving the child's parents and tribe in the proceedings. If it is ultimately determined a child must be removed from the home, the child's parents and Tribe must be notified and involved in the proper placement of the child if at all possible. [11]

ICWA also established procedures that states must follow when dealing with an ICWA case. The state must recognize tribal jurisdiction over decisions about Native American children, which is significant because jurisdiction over child welfare custody cases explicitly acknowledges tribal sovereignty.

The law also establishes minimum standards for the removal of Native American children. If removal is determined, selection preferences prioritize placing the child with extended family, a family within the same tribe, or another Native American family. ICWA also ensures that if parental rights should be terminated, birth parents relinquish their parental rights voluntarily. [12]

Why a State ICWA Policy Like HB 30 Matters

Representative Angela Romero is sponsoring HB 30 Indian Family Preservation Act Amendments. This state policy strengthens protections for Native American children in Utah, ensuring they remain safeguarded if ICWA is ever overturned. While the U.S. Supreme Court upheld ICWA's constitutionality in June 2023, having a state policy ensures continued protection for Native children should the federal policy face future challenges.

> If HB 30 is heard and passed, Utah will join 17 other states with a stronger State ICWA policy. Utah's tribal communities support this policy, and we stand with them in advocating for their right to protect and care for their children.

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How You Can Support

On Thursday, February 20th, 2025, the Paiute Indian Tribe of Utah will hold a rally at the Utah State Capitol Rotunda. They are also gathering signatures for their statement of support. We encourage you to sign on and attend the rally next Thursday.

If you can't attend, we encourage you to contact your representatives and let them know you support HB 30. You can find your representatives here.

SIGN STATEMENT

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[1] ACS 1-Year Estimates Public Use Microdata Sample 2021, Native American alone or in combination.

[2] https://www.nicwa.org/wp-content/uploads/2021/12/NICWA_11_2021-Disproportionality-Fact-Sheet.pdf

[3] https://www.nicwa.org/wp-content/uploads/2018/10/Setting-the-Record-Straight-2018.pdf

[4] "Boarding Schools and the History of ICWA," KIDS MATTER INC., n.d., https://kidsmatterinc.org/legal-help/native-american-children/boarding-schools-and-the-history-of-icwa/.

[5] Child Welfare Information Gateway, "The Indian Child Welfare Act: A Primer for Child Welfare Professionals," 2021, https://www.childwelfare.gov/pubs/factsheets/ICWA/.

[6] Matthew L.M. Flethcher, "The Orgins of the Indian Children Welfare Act: A Survey of the Legislative History," Indigenous Law & Policy Center Occasional Paper Series (Michigan State University College of Law: Michigan State University, April 10, 2009), https://www.law.msu.edu/indigenous/papers/index.html.

[7] Native American Law and Sovereignty Institute, "Expert Q&A: Professor

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EagleWoman Explains Important ICWA Case Heading to Supreme Court"; Diane Allbaugh, "Tribal Jurisdiction Ove Indian Children: Mississippi Band of Choctaw Indians v. Holyfield," American Indian Law Review, American Indian Law Review, 16, no. 2 (1991): 533–58.

[8] Allbaugh, "Tribal Jurisdiction Ove Indian Children: Mississippi Band of Choctaw Indians v. Holyfield."

[9] Flethcher, "The Origins of the Indian Children Welfare Act: A Survey of the Legislative History."

[10] "25USC Ch. 21: Indian Child Welfare From Title25 - Indian," § 1901 to 1963 (1973).

[11] "National Indian Child Welfare Association NICWA - Resources Page," n.d., https://www.nicwa.org/families-service-providers/.

[12] Flethcher, "The Origins of the Indian Children Welfare Act: A Survey of the Legislative History"; "Frequently Asked Questions Bureau of Indian Affairs Final Rules: Indian Child Welfare Act (ICWA) Proceedings" (U.S. Department of the Interior Indian Affairs, June 17, 2016), https://www.bia.gov/bia/ois/dhs/icwa.

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