



NICWA News

Service and Advocacy for Indian Children

The National Indian Child Welfare Association's Quarterly Newsletter

Fall 2005

Pew Commission Recommendations Include Funding for Tribes

Many in the child welfare field, as well as state and federal policymakers, have been pushing for changes in the child welfare system. The areas most often mentioned are program financing and court oversight. Those advocating for changes in the current system charge that children are not being served effectively, and accountability must be increased. American Indians and Alaska Natives are feeling the impacts of the inadequacy of the current child welfare system too, and tribal governments continue to be ineligible for some basic federal funding, such as Title IV-E Foster Care and Adoption Assistance, hampering their ability to help abused and neglected children under their care. In 2003, the Pew Charitable Trusts funded the establishment of a commission of experts to examine federal child welfare financing and court oversight. The Pew Commission on Foster Care focused their work in two areas:

1. Improving existing federal financing mechanisms to facilitate faster movement of children from foster care into safe, permanent families and to reduce the need to place children in foster care
2. Improving court oversight of child welfare cases to facilitate better and more timely decisions related to children's safety, permanence, and well-being

The Pew Commission completed its work and produced a report with recommendations in May of 2004 (<http://pew-fostercare.org>). Among the recommendations made by the Pew Commission was making tribal governments eligible to receive direct funding from Title IV-E and a proposed block grant as well as any technical assistance resources that might be developed.

This work is significant, both because the Pew Commission has recognized the government-to-government relationship that exists between tribes and the federal government and because the Pew Commission's recommendations are being given serious consideration by members of Congress. It also acknowledges the legal authority and vital role that tribal governments have in serving their tribal children. Terry Cross, executive director of the National Indian Child Welfare Association (NICWA), stated, "The Pew Commission's recommendations regarding the funding of tribal governments affirms tribes' legal authority to provide services and the critical role they play in helping American Indian and Alaska

Native children achieve permanency." NICWA is now a partner with the Pew Commission on Foster Care and is helping tribal governments and policymakers understand how the commission's recommendations can support American Indian and Alaska Native children in the child welfare system.

Below are the recommendations that the Pew Commission made in its report and discussion of their application for tribal governments and policymakers.

Federal Child Welfare Financing Recommendations

- Preserving federal foster care maintenance and adoption assistance as an entitlement and expanding it to all children, regardless of their birth families' income and including Indian children and children in the U.S. territories
- Providing federal guardianship assistance to all children who leave foster care to live with a permanent legal guardian when a court has explicitly determined that neither reunification nor adoption are feasible permanence options
- Helping states build a range of services from prevention to treatment and post-permanence by (1) creating a flexible, indexed Safe Children, Strong Families Grant from what is currently included in Title IV-B and the administration and training components of Title IV-E and (2) allowing states to "reinvest" federal and state foster care dollars into other child welfare services if they safely reduce their use of foster care
- Encouraging innovation by expanding and simplifying the waiver process and providing incentives to states that (1) make and maintain improvements in their child welfare workforce and (2) increase all forms of safe permanence
- Strengthening the current Child and Family Services Review process to increase states' accountability for improving outcomes for children

In their full report, the Pew Commission clearly states that tribes should be eligible for federal child welfare funds

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Pew Commission Recommendations Include Funding for Tribes

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(equal access) and that tribes' restricted access limits their ability to protect abused and neglected children under their jurisdiction. This would include the Title IV-E programs; the Safe Children, Strong Families Grant; and guardianship assistance. The Pew Commission also recommended that technical assistance be provided to tribes that need help with capacity building to enable them to administer child welfare services. While the Pew Commission did not discuss tribal participation in its state child welfare waiver and Child and Family Services Review recommendations, tribal governments have an interest in these issues too. State waivers, some of which include tribal governments as partners, provide states with opportunities to modify their federal child welfare programs in ways that can improve outcomes. The federal review process, known as the Child and Family Services Review, includes requirements to measure state Indian Child Welfare Act (ICWA) compliance and to include tribes in efforts to plan and conduct this assessment. The information from these reviews can form the basis for state performance improvement plans to increase compliance with ICWA.

State Court Recommendations

- Adoption of court performance measures by all dependency courts to ensure that they can track and analyze their caseloads, increase accountability for improved outcomes for children, and inform decisions about the allocation of court resources
- Incentives and requirements for effective collaboration between courts

Tribal Foster Care Legislation Update

In a continuing effort to make tribes eligible to receive Title IV-E Foster Care and Adoption Assistance funding directly, legislation was introduced this year (S.331) to achieve that goal. The primary sponsor of the legislation, Senator Gordon Smith (R-OR), has been a co-sponsor of similar legislation in the past and has agreed to be the primary sponsor this year. Seven other senators join him in co-sponsoring the legislation. The bill would allow tribes to apply directly to the federal government to receive Title IV-E funding rather than having them go through states, as is currently the only option for tribes. The bill would also allow tribes to apply in consortium and continue to validate tribal-state Title IV-E agreements. You can find a complete description of the legislation at <http://www.nicwa.org/policy/legislation/S672/index.asp>.

Prospects for the legislation moving forward in this Congress will depend upon whether the Senate is able to attach it to a budget reconciliation bill they are working on in the Senate Finance Committee during the month of September. If it is attached and the budget reconciliation bill is passed by the Senate with the tribal legislation intact, it will likely then move to a conference committee between the House and Senate. This activity will happen between September and the end of the congressional session, which could be as late as November of this year. In order to keep the tribal legislation alive, it will be important for people to contact their senators and tell them how important this legislation is for American Indian and Alaskan Native children and the tribal governments that serve them. If you would like more information or assistance, please contact David Simmons or Chey Clifford-Stoltenberg at 503-222-4044 or e-mail us at desimmons@nicwa.org or chey@nicwa.org.

- and child welfare agencies on behalf of children in foster care
- Strong voices for children and parents in court and effective representation by better trained attorneys and volunteer advocates
- Leadership from chief justices and other state court leaders in organizing their court systems to better serve children, provide training for judges, and promote more effective standards for dependency courts, judges, and attorneys

While the report did not mention tribal courts in their court recommendations section, given that tribes have and exercise jurisdiction over child welfare proceedings involving their member children, it is vital that tribal courts also receive attention and resources to support their work. NICWA will continue to focus attention on support for tribal courts in discussions with tribal leaders and state and federal policymakers.

Conclusion

Given the level of discontent with the current federal child welfare financing system, it is likely that Congress will continue both to investigate approaches to reforming the system and to improve court oversight. American Indian and Alaska Native children, who are served by both state and tribal governments, will no doubt be impacted by these reform efforts, so it is important for tribal leaders and state and federal policymakers to understand the key strategies and concepts being discussed. NICWA can provide information on these issues and assistance in educating other key policymakers and advocates. To receive this help, please contact David Simmons or Chey Clifford-Stoltenberg at 503-222-4044 or e-mail us at desimmons@nicwa.org or chey@nicwa.org. It is up to all of us to assist in education efforts so that American Indian and Alaska Native children are given appropriate consideration as our policymakers endeavor to reform the child welfare system.

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Director of Government Affairs and Advocacy*

FEDERAL COURT ISSUES OPINION IN ICWA CASE

On July 19, 2005, the federal Ninth Circuit Court of Appeals issued an opinion in a case from California that asked whether tribal governments in Public Law 280 states had exclusive jurisdiction over child custody proceedings that involved members living on tribal lands (*Doe v. Mann*). The court found that the state and tribes shared concurrent jurisdiction for these types of cases and that a California District Court had jurisdiction over a case involving a member of a northern California tribe and her child. The case involved an Indian mother living on the reservation who had her child removed from her care and then later had her parental rights terminated. The child was then placed in an adoptive home by the California district court. The tribe and the birth mom challenged the jurisdiction of the district court in this case. The opinion said that the tribe could reassume jurisdiction by following the procedures identified in the Indian Child Welfare Act (ICWA) and that the federal court could also continue to hear challenges to state court decisions in ICWA cases. For a more detailed description of this opinion, please visit NICWA's website at www.nicwa.org or obtain a copy of the opinion by visiting the Ninth Circuit Court's website at <http://www.ca9.uscourts.gov/> and click on July and then *Doe v. Mann*.