

Report: Compliance with Indian Child Welfare Act spotty

Gabby Ferreira, The Desert Sun 5:52 p.m. PDT July 28, 2016



(Photo: Joe Raedle/Getty Images)

When it was first passed into federal law nearly 40 years ago, the Indian Child Welfare Act was a beacon of hope for many in the Native American community who considered the legislation a civil rights victory. But a lack of compliance from child welfare agencies has led a tribal task force in California to find that neither the federal nor state versions of the act are being properly carried out.

The goal of the act is to keep American Indian children within tribal families, according to the National Indian Child Welfare Association. The act also allows tribes (and families) to have a say in child welfare proceedings.

Before ICWA was passed, American Indian children in California were eight times more likely than non-native children to be put in foster care or an adoptive home and more than 90 percent of native children who were subject to adoption were put in non-native homes, according to the report issued a few weeks ago.

The report found that in California there is resistance to tribal court jurisdiction, a lack of services provided to children, native families and tribes prior to removing the child from their home, barriers to tribal participation in court cases, a failure on the part of child welfare agencies to diligently inquire as to the child's tribal status and a lack of education and competency throughout the court system in regard to what the act is and how it should be carried out.



Mary Ann Andreas, the Vice Chair of the Morongo Band of Mission Indians, served on a tribal task force that found agencies across California were not in compliance with the Indian Child Welfare Act. (Photo: Courtesy of Bruce Williams)

The task force that generated the report operated under the direction of several tribal co-chairs, including leaders from the Morongo Band of Mission Indians, the Pala Band of Mission Indians and the Habematolel Pomo of Upper Lake, among others. In addition to interviewing people in California, the task force also conducted surveys with tribes across the United States.

The act was created to address the "alarmingly high" number of native children removed from their homes, according to the National Indian Child Welfare Association, a Portland-based nonprofit organization. The task force's report says issues can arise when an American Indian child is put in a home outside their tribe, leading to cultural differences and a severance of the connection to the tribe.

The report found that state and local agencies still struggle with the law, according to Kimberly Cluff, a task force member and staff member of the Morongo Band of Mission Indians. She said the tribes feel like they're at "ground zero."

"The law provides the tribes and, more importantly, tribal children with a bunch of rights, but if the tribe doesn't know the child is in foster care, or if nobody asks the question of family tribal status, then all those protections are lost," Cluff said. "If we don't know that child is an Indian, we can't protect them as an Indian and it's just somewhat shocking that 40 years after the passing of this law, we're still talking about basic implementation."



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Cluff said that behind everything is the fact that the tribes don't know what they don't know.

"There are kids lost who don't know what tribe they're from and may never know; they're just simply lost to their tribe, to their family," she said.

Mary Parks, a spokeswoman for the Riverside County Department of Public Social Services, said the department's ICWA work group is currently reviewing the task force's report and is developing a response.

"DPSS remains very proactive with tribal members and through dedicated staff who act specifically in a liaison capacity on cases as they arrive," she said. "DPSS meets regularly with the tribes at the Riverside County Tribal Alliance and also at Indian Child and Family Services meetings, we meet with the tribes individually, pretty much have bent over backwards to make ourselves available.

"We really have gone above and beyond to accommodate and make sure we're there to work well with our tribal communities," she said.

Mary Ann Andreas, the vice chair of the Morongo Band of Mission Indians and a tribal task force member, said the findings of the report were "disheartening."



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Andreas said tribes already realize there is a lack of implementation, but the report showed it was worse than she thought it was.

"Previous to ICWA, children were removed wholesale from the reservation without consult to the tribe, without notice to the tribe, without any plans for reunification or culture. Without any consideration at all," Andreas said. "They were just removed and the children, in some cases, were never seen again.

"We have families with children that are still gone to some degree. They are enrolled members but some live in Puerto Rico or Philadelphia and have never been here. They're basically alive and enrolled tribal members but for all intents and purposes, they're not functioning tribal members because they were removed," Andreas said.

"Most of the time, there's no plan for reunification, no notification of the tribe. We think that the ultimate goal should be reunification of the family so that the future of the tribes, the future of the children and the safety of the children is taken into consideration.

"That's the point of the report," Andreas continued. "Overall, they're not in compliance, either through ignorance or resistance."

Now that the report has been generated, she said, the next step is a "detailed action plan" from the Bureau of Children's Justice to find out which agencies are in compliance and which ones are not.



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"And if they're not, reprimand them, fine them, and take it further than there. They need to bring them into compliance," Andreas said. "The future of any tribe is the children. Our cultural future is in our young people."

California is home to about 723,000 people who identify as Native Americans — more than any other state — and nearly one-fifth of all federally-recognized Native American tribes are in California, according to the task force's report.

The task force was put together by the Bureau of Children's Justice, a division of the California Department of Justice that Attorney General Kamala Harris formed last year. The agency reached out to tribes around California, asking if they could gather data on whether local branches of government were complying with the law.

David Simmons, the director of government affairs and advocacy for the National Indian Child Welfare Association, said that in order to have full compliance with ICWA, people need good data and information, as well as the ability to share perspectives, understand where the barriers are and where good work is being done to ensure compliance.

"Not every state collects data or has a task force that has done a compliance study," Simmons said. "We don't know specifics, but what we do know is when we talk with the tribes, even some state agencies, what we find is there's a pretty consistent pattern of non-compliance in just about every state."

Simmons added that ICWA compliance isn't just about complying with the law, but it's about the spirit of the act, which emphasizes considering the child's culture throughout the child welfare process, making sure the case plans address the unique needs of tribal families, keeping the child at home safely for as long as possible and when the child needs to be removed, placing them with extended family members.

"It treats child welfare as a partnership between all the stakeholders involved, not just one or two," he said.

Denise Moreno Ducheny, a former California state senator, authored Senate Bill 678, which went into effect in 2007. The bill, which was hailed by the California Indian Law Newsletter as "the most comprehensive legislation in any state to address implementation of the ICWA," was also addressed by the recent task force report as not being fully launched at the local level.



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"That's why 678 is such a long and crazy-looking bill," Ducheny said. "We'll have to put this in every section of the code so people understand it. So that took a lot of work to get people to understand the different code sections and update the code that was really meant to just implement (ICWA) but in more comprehensive way."

As a former lawyer handling child welfare cases, Ducheny said she saw parents and grandparents who weren't told where their child was for two to three years. By that time, the child had already started to bond with their foster family.

"By that time, the family says, 'This kid's been with me for two to three years. How can you take this kid away from me?'" she said, calling those situations "heartwrenching" for the children.

"To me, these tribal issues were similar except you have the added thing of tribal sovereignty," she said, referring to the additional scrutiny under ICWA in Native American child welfare cases.

Ducheny said the only opposition she faced to the bill was from adoption lawyers.

"It's tough because there is an argument about the kid and their best interests and stable family, but the whole purpose of ICWA goes back to the Riverside schools (The Riverside Indian School in Anadarko, Oklahoma) and those kinds of schools where they ripped the kids out of the tribes," Ducheny said. "The tribes are small enough now and they don't have that many kids holding on to what they got. Raising them in their traditions is a huge deal."

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