PROTECTING OUR CHILDREN THROUGH TRIBAL LAW
A Review of 100+ Tribal Child Welfare Codes

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HOW ARE TRIBES ASSERTING THEIR SOVEREIGNTY TO PROTECT THEIR CHILDREN?

This study analyzes how tribes are asserting their sovereignty over child welfare and what lessons can be learned from enacted child welfare codes.

- Researchers reviewed 107 tribal child welfare codes.
- Codes came from tribes in every 50 state region (including Alaska).
- Approximately half of the codes were from Native Nations with a population over 1,000 citizens.
- Almost half the codes reviewed were amended after 2000.
- Codes were retrieved from the National Indian Law Library collection and other on-line sources.

CULTURE

Key places to find culture in tribal child welfare codes
- Customary Law
- Customary Adoption
- Definition of extended family
- Placement

REMOVAL

Tribal Policy Considerations:
How can a tribal child welfare code incorporate cultural values?
- Add cultural elements and values to preamble and purpose statements.
- Prioritize cultural values in each section of the child welfare code.
- Customary minimum permanency to be consistent with cultural values (e.g., define the extended family according to cultural norms, rather than state code definitions).
- Draft provisions that are designed to accomplish the outcome (e.g., tribal code does not allow termination of parental rights).

Discrete use of culture in broad child welfare definitions. Shaded segments indicate percentage of codes incorporating culture at a given level.

TERMINATION OF PARENTAL RIGHTS (TPR)

Alternatives to TPR
Suspension, modification, and cessation of parental rights were the most common TPR alternatives.
- No parental rights
- No parental rights
- No parental rights

Adoptions

Mainstream and Customary Adoptions
The shaded area shows codes that include both mainstream adoption methods and customary adoptions (adaptation process unique to the tribe).

CONCLUSION

Tribal leaders have many local experts (e.g., tribal judges, lawyers, social workers) who understand the current tribal child welfare policies and practices. They know what works, the challenges, and the financial considerations. Their expertise will be critical to creating strong and meaningful child welfare codes.

The citizens of Native Nations are also invaluable experts on child welfare. Through a community engagement process, expertise on community values, tribal culture, and current needs can be gathered. Citizen engagement is essential to the success of the tribal child welfare code process.

This analysis of tribal child welfare codes captured innovative tribal policies and practices, and highlighted unique opportunities to insert tribal culture and priorities into the tribal child welfare codes and practice. Further, because state courts are required to defer to tribal child welfare law in certain circumstances, tribal codes have the power to dictate state action involving Native American children. This study contributes to the information needed to foster continued conversations about how tribes can assert their sovereignty to protect their children.