



August 21, 2023

Uniform Law Commission
Study Committee on Indian Child Welfare Act Issues

Dear Tribal Leader,

The Uniform Law Commission (ULC) established a Study Committee on Indian Child Welfare Act Issues in 2022. The charge of this study committee is to determine whether to draft a state law that would include the protections of ICWA and clarify and improve it. On behalf of the study committee, we are writing to request your input and consultation regarding a potential uniform or model Indian Child Welfare Act law for states to implement as state law if they wish to do so.

Founded in 1892, the ULC consists of lawyers, judges, legislators, legislative staff, and law professors who are appointed by state governments to research and draft uniform or model state laws where uniformity is desirable and practical. Potential uniform laws go through multiple stages, including proposals for an act, a committee to study approved proposals, and, if approved, then a committee to draft an act for consideration by the Commission in its entirety. If the ULC approves an act, it is available for consideration and enactment in the states. To ensure that an act is well-drafted and worthy of enactment, the ULC invites and encourages stakeholders to participate at every stage of its process.

The study committee has met five times between November 2022 and July 2023. Many tribal leaders and attorneys were invited to be observers on the study committee, but, due to the sovereign nature of tribal nations and the impact any uniform law would have on Native families and tribes, the Study Committee has determined that it must consult more broadly with tribal leaders or their designees on this issue before it makes a recommendation on whether to move forward to drafting. Please note the ULC is not an entity of the federal government or any one state government, and consequently, this effort to consult with tribes is not a government-to-government consultation. However, given the potential impacts on state law and tribal interests, the ULC is eager for tribal input. The ULC is therefore intentionally modeling its approach on some previous government-to-government consultations with tribes, including this “Dear Tribal Leader” letter for the purposes of familiarity, efficiency, and most importantly, to obtain meaningful input from tribes.

As you know, the Indian Child Welfare Act (ICWA) is a federal law that states must follow under the Supremacy Clause of the Constitution. Due to the recent challenge to the federal law in the United States Supreme Court in *Haaland v. Brackeen*, the ULC began studying whether it would be beneficial to draft a uniform state law. Although the challenge to the constitutionality

of ICWA was not successful, the ULC is continuing to study whether to approve a drafting committee. A number of states have adopted state ICWA laws, but a large majority have not acted, and a few state ICWAs automatically sunset in the upcoming years. As required by ICWA, any proposed uniform law would include the protections currently provided in ICWA, but also could clarify or improve those protections. No state is required to adopt a uniform law, or replace their own state ICWA with a uniform version. Once drafted, a uniform or model act is available for states that wish to enact it.

The Study Committee will host a virtual meeting to consult with tribal leaders or their designees on September 6 from 3:00 pm to 5:00 pm ET. Link to register for the meeting here:

<https://uniformlaws.zoom.us/meeting/register/tZctdu-hrzsuHtf7iT3O6BSOJ2AygKcva9pT>

The Study Committee will also take written comments until September 30, 2023; please submit all comments to Katie Robinson, ULC Senior Director for Strategy & Communications, at krobinson@uniformlaws.org.

The Committee would appreciate your input and consultation focused on five issues:

1. Is the development of a uniform Indian Child Welfare law desirable?
2. What provisions of the ICWA or ICWA regulations need clarification or improvement?
3. What issues arise in an ICWA case that are not currently covered by the law or regulations that would be beneficial to add?
4. Are there specific provisions in existing state ICWA statutes that would be beneficial to include in a uniform law, should the ULC move to drafting?
5. If the ULC moves forward with drafting, what is the best mechanism to ensure that there is adequate tribal involvement and that the final product is broadly acceptable to those most directly affected – Indian children, families and tribes?

A copy of the study committee's most recent report is attached for your information. Further information about the ULC can be found at the ULC's website at www.uniformlaws.org. We appreciate your time and consideration of this project.

Commissioner and Study Committee Chair Martha Walters
 Commissioner and Study Committee Vice Chair Elena Duarte
 Study Committee Reporter Kathryn Fort