



# NICWA

National Indian Child Welfare Association

## Child and Family Policy Update

September 2023

An electronic copy of this update can be found on the National Indian Child Welfare Association's (NICWA) website at <https://www.nicwa.org/policy-update/>.

### Hot Topics

#### **Uniform Law Commission Considers Developing Uniform State ICWA Law**

The Uniform Law Commission (ULC), a national organization that develops and advocates for uniform state laws, formed a Study Committee in the summer of 2022 to examine the need for a uniform Indian Child Welfare Act (ICWA) state law. The Study Committee, made up of attorneys in private practice, state court judges, a state legislative representative, and law professors, met to examine the need for a uniform, model state ICWA law. The ULC has a leadership from each of the states that help guide the work of ULC in developing and advocating for uniform laws. The Study Committee on Indian Child Welfare Act Issues met five times from November 2022 to July 2023 and invited select representatives from state and private organizations and tribal communities to observe. On July 13, 2023, the Study Committee issued a [report](#) on their findings. In their report they issued three recommendations.

1. Consult with tribal nations prior to drafting a uniform state ICWA law.
2. Conduct additional research into areas of ICWA that a uniform state ICWA law could address.
3. Examine issues related to the *Haaland v. Brackeen* decision and if a uniform state ICWA law could address these issues.

On August 21, 2023, a virtual tribal consultation was announced and scheduled for September 6, 2023. At the consultation and in the prior announcement, it was stated that written comments on the uniform state ICWA would also be accepted until September 30, 2023. Represented on the tribal consultation call were a number of attorneys with subject matter expertise, two ULC Study Commission members, four tribal leaders, and representatives from a couple Native organizations. The call was two hours long and the facilitator, Kate Fort, Director of the Indian Law Clinic at Michigan State University, provided questions for the participants to respond to.

On October 4, 2023, a second virtual tribal consultation was announced for Monday, November 6. The scheduling of this was based upon comments provided at the first consultation that expressed a desire for more tribal leadership involvement before a decision about whether to draft a uniform state ICWA law is made. The letter announcing the November 6 tribal consultation and registration link can be found [here](#).

In NICWA's written comments provided to ULC on September 30, NICWA stated our support for state ICWA laws. Our experience has taught us that they are helpful to improving ICWA compliance and providing additional clarity and enhancement of ICWA's requirements. We also expressed our concerns about the limited tribal leader involvement in the Study Committee process and recommended more tribal leader input be gathered before the Study Committee makes a decision about whether to draft a uniform state ICWA law. While having additional state ICWA laws could be helpful, there are important questions about the role of tribal nations in states where the legislation might be introduced, especially if tribal involvement is limited or not available. You can find NICWA's written comments [here](#).

## **Additional Tribal Consultation on ICWA Announced and Extension for Written Comments**

The Department of the Interior, Department of Justice, and Department of Health and Human Services announced a third tribal consultation on improving ICWA's implementation that will be held in Tulsa, Oklahoma, on November 7, 2023. This follows two earlier tribal consultations that were held in August. The November consultation can be attended in person or virtually. You can find a Dear Tribal Leader letter [here](#) with more information on how to register and details regarding the consultation.

**In the Dear Tribal Leader letter, the federal departments extended the deadline for submitting written comments on improving ICWA's implementation to January 12, 2024.** NICWA strongly encourages tribal nations, urban Indian organizations, and ICWA advocates to attend this consultation session and/or provide written comments. NICWA submitted written comments in September that you can find [here](#).

## **ACF Releases Final Rule on Relative Caregiver Licensing and Two Notices of Proposed Rulemaking for Comment**

On September 28, 2023, the Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services announced one new [Final Rule](#) for tribes and states to develop separate licensing standards for relative care providers, which may differ from standards for non-relative foster care providers, and two proposed regulations, the first to establish protections for LGBTQI+ children in foster care, and the second to provide access to legal representation for children and families in the child welfare system. The proposed regulations, also known as a Notice of Proposed Rulemaking (NPRM), are accepting comments on the proposed changes.

"We enthusiastically support this effort to remove barriers for relative care providers," said NICWA's Executive Director Sarah Kastelic. "Extended families are critical to helping Native children stay connected to their families, tribes, and cultures and this Final Rule on foster care licensing facilitates tribes' and states' ability to support Native relative care providers more fully and appropriately." You can read a copy of NICWA's submitted comments in support of separate licensing standards for relative care providers from earlier this year [here](#).

The [first NPRM](#) proposes to require that tribal and state child welfare agencies find safe and appropriate placements and services for youth who identify as LGBTQI+ who are involved in child welfare systems. This NPRM seeks to address disparities that LGBTQI+ youth often experience in child welfare systems that leads to increase in homelessness, mental illness, and discrimination. NICWA encourages tribal nations and advocates for Native children to submit comments.

The [second NPRM](#) proposes to allow tribes and states to use federal Title IV-E funds to support legal services for children in foster care, parents, and kinship caregivers. It also allows the funding to be used to reimburse tribal nations for the legal services they incur in child welfare proceedings. This expanded use of federal child welfare funds seeks to address inequities in the juvenile court system that can leave key parties without legal counsel as important, life-changing decisions are made about children in care or their parents. Tribal nations often do not have adequate funding to support their work to protect Native children in state child welfare proceedings, so this proposed change has the potential to increase legal services for Native children and greater accountability regarding the Indian Child Welfare Act.

**Comments are due by November 27, 2023, and can be filed at the online links above. ACF is hosting a virtual tribal consultation on the two NPRMs for Indian Country at 2:00 p.m. Eastern Standard Time on Monday, October 30, 2023. Interested parties can register for the consultation by going [here](#).** NICWA will be developing comments and sharing those with tribes and tribal advocates in early November. NICWA highly encourages tribal nations and advocates for Native children to submit comments to both NPRMs.

## Legislation

### **Native American Child Protection Act Passes House and Senate Committees**

The Native American Child Protection Act, [H.R. 663](#), was reintroduced by original co-sponsor Representative Ruben Gallego (D-AZ) on January 31, 2023, and Senator Lujan introduced a companion bill in the Senate, [S. 2273](#). The legislation reauthorizes the two grant programs and the national resource center for tribes, clarifies that cultural programs and services may be used in the grant programs, and increases the funding authority Congress has to appropriate funding for the tribal grants authorized in the legislation. This is some of the only dedicated tribal funding regarding access for child abuse prevention and child abuse victim treatment. The legislation was introduced in the last Congress and was approved by the House of Representatives and the Senate Committee on Indian Affairs.

The House Natural Resources Committee reported out H.R.663 on May 17, 2023, with amendments that removed the amount of funding authorized for the two grant programs, the resource center, and the years the funding was authorized. This language is crucial to reauthorizing the Indian Child Protection and Family Violence Prevention Act grant programs for tribes. The language that remained in the bill reported out of committee contained amendments that clarified eligible activities that could be carried out under the grant program but stops short of reauthorizing the grant programs. The Senate Committee on Indian Affairs reported out a companion bill that is identical to the one reported out by House Natural Resources on July 19, 2023.

The impact of deleting the funding authorization levels and years authorized continues over two decades of not having a current authorization for these critical grant programs. While Congress will sometimes appropriate funding for federal grant programs that are not authorized, it sends a message that these grant programs are not a priority and creates barriers to getting sufficient appropriations funding in the future.

NICWA is working with tribes and Indian organizations to contact their House and Senate members to support S. 2273. This legislation is one of NICWA's top policy priorities in 2023 and we need your help to get the legislation authorized this year. You can find contact information for your congressional representatives [here](#).

### **Tribal Family Fairness Act Legislation Reintroduced in 118<sup>th</sup> Congress**

Congresswoman Sidney Kamlager-Dove (D-CA) with co-sponsors Don Bacon (R-NE) and Sharice Davids (D-KS) introduced the Tribal Family Fairness Act ([H.R. 2762](#)) in the House of Representatives on April 20, 2023. The bill would provide additional funding for tribes under the Promoting Safe and Stable Families Program (Title IV-B, Subpart Two under the Social Security Act) that funds flexible family preservation and support services. The legislation also seeks to streamline the reporting and application requirements for tribes and increase funding for tribal court improvement grants for tribal family courts. The legislation is an important step forward in helping tribes secure more flexible child welfare funding that can help children avoid removal from their homes and strengthen families so children can be returned home safely. The legislation was introduced first in the 117<sup>th</sup> Congress in 2021 but needed to be reintroduced to be considered in the current 118<sup>th</sup> Congress. Senate members are considering introducing a version of this legislation in the Senate as well.

NICWA has been a supporter of this legislation and urges tribal advocates to contact their senators and urge them to sign on to the legislation as a co-sponsor. Please ask your House of Representative members to sign on to the legislation as a co-sponsor and support the legislation.

### **Indian Boarding Schools Legislation Reintroduced in 118<sup>th</sup> Congress**

On May 18, 2023, Senator Elizabeth Warren with 26 senators introduced the [Truth and Healing Commission on Indian Boarding School Policies Act](#) (S. 1723). This is a reintroduction of the legislation that was introduced in the House and Senate in the 117<sup>th</sup> Congress. NICWA submitted [written testimony](#)

for a May 2022 hearing on the legislation that focused on the intersection of the Indian boarding schools and experience of Native children and families in state and private child welfare systems.

The Senate Committee on Indian Affairs held a markup of the legislation on June 7, 2023, where the committee reported out the legislation favorably with amendments. The amendments approved in committee were generally clarifying amendments without making substantive changes to the key purposes of the legislation. Now the legislation is being scheduled for full consideration by the Senate. No companion bill has been introduced in the House of Representatives.

The legislation establishes a commission to formally document and investigate Indian boarding school policies and practices in the United States. The commission members are appointed by Senate and House of Representatives leadership and the president. The legislation also establishes an advisory committee to provide advice and recommendations to the commission comprised of representatives that include, but are not limited to

- National Indian organizations with expertise in child welfare, education, and boarding school issues.
- Federal agencies, such as Bureau of Indian Education, Office of Indian Education in the Department of Education, and commissioner of the Administration for Native Americans.
- Members of federally recognized tribes and Native Hawaiian organizations.
- Mental health, healthcare, or Native healing practitioners that have experience working with descendants of board school students.
- Family members of students that attended boarding schools, current teachers, and students that have attended a boarding school in the past or currently are attending one.

The commission will be holding public hearings to gather evidence and will be making recommendations on how to address and heal the historical and intergenerational trauma caused by the Indian boarding school policies and practices. The commission will also collaborate and exchange information with the Department of Interior during its investigation.

Tribes and advocates for Native children and families are encouraged to contact your congressional representatives and urge them to sign on as co-sponsors to the legislation and support its passage. You can find contact information for your congressional representatives [here](#)

### **Administrative**

#### **HHS Moves Forward with Proposed Changes to AFCARS**

The Department of Health and Human Services (HHS) officials are working to restore the 2016 Adoption and Foster Care Analysis Reporting System (AFCARS) data elements for Native children and families in state foster care systems that were removed by the previous Administration in 2020. These were to be the first ever data elements that would track Native children by their tribe and would also provide information on Indian Child Welfare Act implementation regarding Native children in state child welfare systems. HHS has announced they are moving forward with a proposed regulation change, also known as a Notice of Public Rulemaking (NPRM), that is expected to be published in the Fall of 2023.

NICWA has led efforts since the early 1990s to include ICWA data elements in AFCARS and has previously provided testimony and comments promoting the critical importance of new data elements in AFCARS to address disparities in outcomes and disproportionality in state foster care systems for American Indian and Alaska Native children. Of important note, ICWA is the only major federal child welfare law that does not have a structured and regular data collection system that tracks implementation.

## Budget

President Biden's FY 2024 budget recommendations to Congress were released mid-March with recommendations for increases to federal programs that tribal nations rely on. The annual budget recommendations are an important marker for the budget and policy priorities of the president as Congress considers their budget and policy priorities for FY 2024. Some of the president's FY 2024 recommendations for child and family programs that tribal nations use include increasing<sup>1</sup>

- Head Start funding (discretionary funds) \$1.1 billion over FY 2023 levels.
- Child Care and Developmental Block Grant funding (discretionary funding) \$900,000 over FY 2023 levels.
- Child welfare program funding (discretionary funding under the Child Abuse Prevention and Treatment Act and Title IV-B, Subparts 1 and 2 programs) \$135 million over FY 2023 levels.<sup>2</sup>
- BIA Indian Child Welfare Act funding \$8 million over FY 2023 levels.
- BIA Social Services \$24.6 million over FY 2023 levels.<sup>3</sup>

Coming down to the wire, the House and Senate on September 30, 2024, passed a continuing resolution that extends federal government operations and funding until November 17, 2023, at last years levels. This will allow the Senate and House to continue work on a final appropriations bill for FY 2024. Concerns about the appropriations process going forward are exacerbated by the House Speaker, Kevin McCarthy (R-CA) being removed from his position on October 3, 2023. The House will likely be consumed with nominating and confirming a new Speaker, which will likely slow their process to address unfinished appropriation work.

*For more information relating to this update, please contact NICWA Government Affairs Director David Simmons at [desimmons@nicwa.org](mailto:desimmons@nicwa.org).*

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<sup>1</sup> The proposed budget increases include funding that would be shared by states and tribes. Specific data on how much of the proposed increase would accrue to tribal nations is not specified.

<sup>2</sup> The president's budget recommendation does not specify how much of the increase is intended for each of these child welfare programs or to eligible tribal nations. This increase also includes two new grant programs that address racial inequities in child welfare and child welfare workforce totaling \$80 million of the \$135 total increase proposed.

<sup>3</sup> The increase would also be used to support implementation of the Indian Child Protection and Family Violence Prevention Act programs (P.L. 101-630).

