

INDIAN CHILD WELFARE ACT (ICWA) CONSIDERATIONS

The Indian Child Welfare Act (ICWA), enacted by Congress in 1978, created certain requirements for child welfare proceedings involving American Indian children to ensure the primacy of tribal decision-making regarding the welfare of Indian children. ICWA sets requirements in a number of areas that potentially impact the ability of state courts to process dependency cases involving Indian children in a timely manner. If the ICWA applies to a child protection proceeding, it is in the child's best interests for the court to ensure compliance with ICWA **from the earliest possible stage of the case.**

Based on 2003 census data, less than 1.3 percent of Ohio's population reports having some American Indian heritage. Thus, it might be easy to dismiss this important step as inconsequential in Ohio. **However, for those cases where ICWA does apply, the implications are disastrous for the child and all parties and professionals involved in the case when the child's Native American heritage is not identified early in the case.**

Therefore, at the opening of a case, the agency/court should inquire whether the child or parents may be of Indian or Native American heritage. If there is any indication that the family has Indian or Native American heritage, until it is determined that the child or parents are not eligible for enrollment in a federally recognized tribe and therefore not protected under ICWA, the agency/court should proceed as if ICWA would apply. In accordance with ICWA and OAC 5101:2-42-52, the agency must document all efforts to secure verification of the child's heritage and to notify the required parties — the Indian custodian and the tribe(s) — of their rights. Involvement of the child's tribe and extended family as early in the case as possible could assist in assuring that active efforts requirements and placement preferences are met.

For children protected under ICWA, the court must determine whether the agency made "active efforts" to identify responsible extended family or other tribal members or Indian families to serve as placement for the child, if necessary. The court must determine whether the agency relied upon the social and cultural standards of the parents' Indian community in assessing the appropriateness of the child's placement. Throughout the court proceedings outlined in Ohio's Dependency Docket Bench Cards, there are other determinations which the court must actively make.

Please refer to the Indian Child Welfare Act Checklists prepared by the National Council of Juvenile and Family Court Judges in June 2003, or the Family, Children and Adult Services Procedure Letter No. 85 for more detailed information regarding hearing procedure, notice, and findings. The National Council's ICWA Checklists were created to assist judges in assuring that the necessary inquiries are being made to determine as early as possible in every case whether ICWA applies. As stated in the introduction to the ICWA Checklists, "[l]eadership by the court is essential to ensure ICWA compliance. These children should not be subject to their placements and permanency plans being disrupted well into the final stages of the case."