

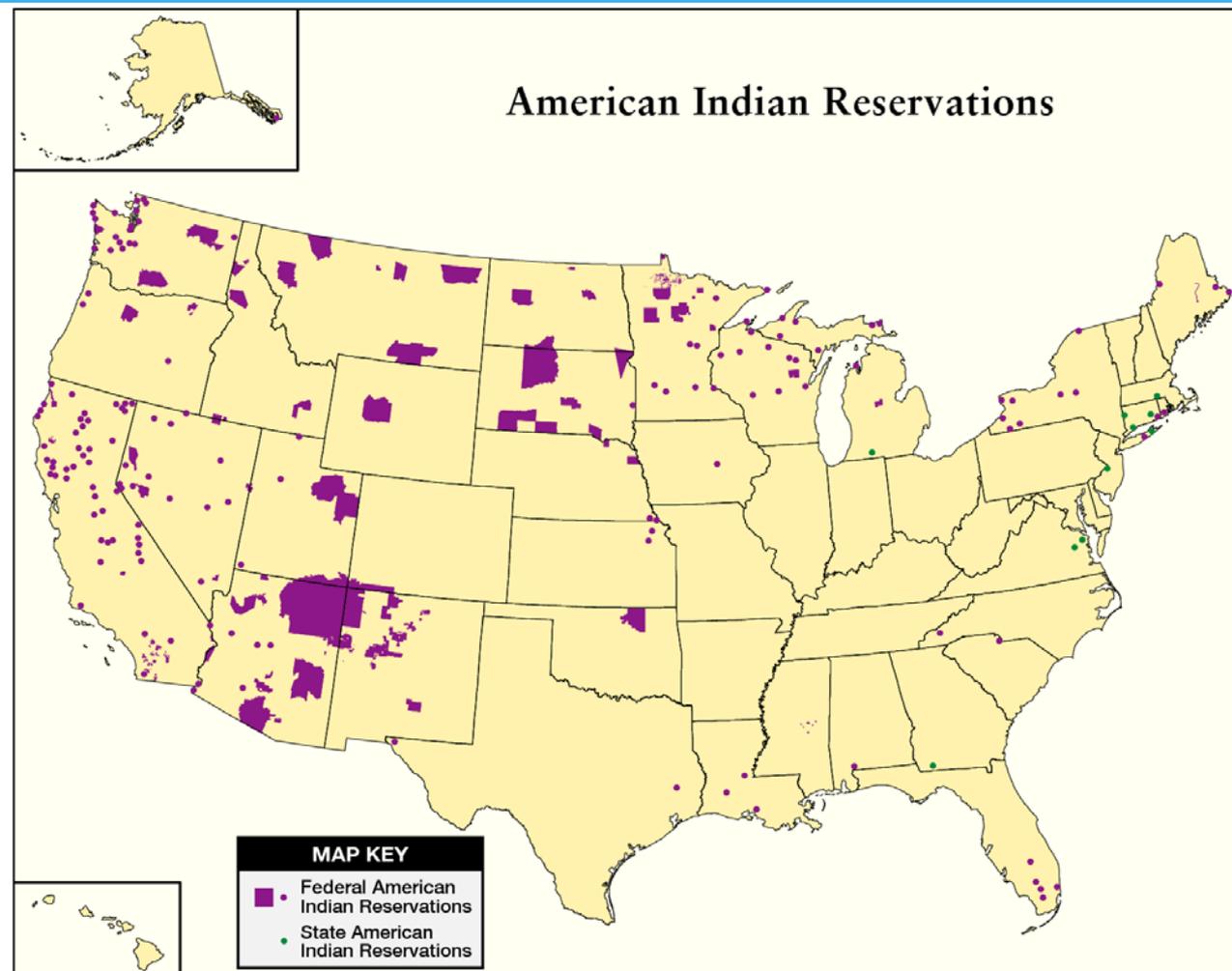
Proposed Change to Washington Court Rules

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“Indian Country”



Indian Child Welfare Act

25 USC § 1901 *et seq.*

- * 25 USC § 1911 (c)
 - * In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding

Indian Child Welfare Act

- * 25 USC 1911 (b)
 - * In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

How Does a Tribe Participate?

- * Who can come into the State Court from the Tribe and request to intervene in a case?
- * Who can ask to transfer the Case to the Tribal Court?
- * BIA publishes a list of “designated Tribal agents” for service of Notice.
- * Many tribes send a “Tribal Representative”

Tribe's Representative?

- * The Tribe appoints a representative, it could be:
 - * Tribal Chairman?
 - * Tribal Social Worker?
 - * In house attorney?
- * If the Tribal Representative notifies the Court of intent to Intervene in a case, does ICWA allow that representative to appear without legal representation?

“Pro Se”

- * Established law that corporations cannot be represented “pro se” and must have an attorney. Osbourn v. Bank of US, 22 U.S. (9 Wheat.) 326 (1824).
- * Tribes are not “corporations”- though some courts will extend the Osbourn rule to Tribes and say they must have an attorney.
- * Some Tribes have trouble in Washington State.

Pro Hac Vice

“for this matter only”

- * Washington State APR 8
 - * Admitted to practice law in another state
 - * Permission from the Court
 - * Must have a state licensed atty as atty of record on the case
 - * Pay a non-refundable fee to WSBA for license (\$415)
 - * (there are some exceptions that still require motioning the Court, association of counsel, and other terms)

PROBLEM!!!!

- * Some Tribes can't afford attorneys
- * Tribal attorney appointed to represent Tribe in ICWA case may be involved in a case in another state, where the Tribal attorney doesn't have a license.
- * The rules are applied unequally by the courts. Some Courts will allow a representative social worker appear, and others will say that the Tribe needs an attorney licensed in the state court to appear.

Nevada Supreme Court Case

- * “We conclude that tribal participation in state custody proceedings involving Indian children is essential to achieving the goals of ICWA. The tribal interests represented by ICWA and the Tribes right to intervene under § 1911(c) and § 43-1504(3) outweigh the State interest represented by § 7-101. Thus we determine that federal law preempts the requirement of § 7-101 that the Tribe be represented by a Nebraska licensed attorney in these proceedings.” *State v. Jennifer M. (In re Elias L.)*, 767 N.W.2d 98, 104 (Neb. 2009).

ICWA Regulations

“front matter”

- * Section 23.133 encourages State courts to permit alternative means of participation in Indian child-custody proceedings in order to minimize burdens on Tribes and other parties.
- * The Department agrees with the practice adopted by the State courts that permit Tribal representatives to present before the court in ICWA proceedings regardless of whether they are attorneys or attorneys licensed in that State.

Oregon's New Rule

- * {(9) An applicant is not required to associate with local counsel pursuant to subsection (1)(c) of this section or pay the fee established by subsection (6) of this section if the applicant establishes to the satisfaction of the Bar that:
- * (a) The applicant seeks to appear in an Oregon court for the limited purpose of participating in a child custody proceeding as defined by 25 U.S.C. §1903, pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. §1901 et seq.;
- * (b) The applicant represents an Indian tribe, parent, or Indian custodian, as defined by 25 U.S.C. §1903; and
- * (c) The Indian child's tribe has executed an affidavit asserting the tribe's intent to intervene and participate in the state court proceeding and affirming the child's membership or eligibility of membership under tribal law.}

Proposed Change to WA Rule

- * Would mirror Oregon's Rule
 - * No fee; no association with local attorney
 - * Satisfy Bar that only appearing in an ICWA custody proceeding representing Tribe, Indian Custodian, or parent
 - * Affidavit from Tribe asserting intent to intervene and participate as well as child's eligibility for enrollment or enrollment in the Tribe

Fostering Change

WA

BILL OF RIGHTS {legal draft}
www.FosteringChangeWA.org
Facebook.com/FosteringChangeWA



Foster Parent Bill of Rights

{proposed}

Purpose

Since 2010, Washington State has lost over one thousand foster families. This is adversely affecting a multitude of children in dependency cases. Foster Parents are a key component to the dependency process. Foster parents are unable to participate in meetings and lack access to the courts because they have been denied essential rights. In order for foster parents to properly advocate for the children in their care, they must be legally recognized in legal proceedings, and they must be valued as a respected member(s) of the child welfare team. The heart of DCFS and the passion of foster parents are to protect children and to help families in crisis. Unfortunately, this is not happening on the ground level.

This bill will not only protect foster parents but also provide them the tools they need to advocate for the children in their care. This bill will lead to better recruitment and retention of foster parents across the state by unifying DCFS, which will cause better outcomes for families in crisis.

Definitions

Foster Parent: a person(s) licensed to provide twenty-four hour care to minor dependent(s) of the state

Child: dependent of the State in foster care

Preferential Treatment: The right of any foster parent to be offered an opportunity to foster, adopt or permanently foster the Child that has been previously in their care

Bonding/Attachment: The relationship between child and care provider and recognized by the most current research

Meetings: any meeting involving DCFS that may impact the Child including but not limited to, staffing's, health and safety, individual educational planning, medical and/or care reviews

Requirements

The **Division of Children and Family Services** (“DCFS”) shall comply with the mandates contained in the Foster Parent Bill of Rights

1. The Foster Parent shall be treated by DCFS, any representatives of DCFS, and any other associated parties with dignity, respect and recognized as the primary care giver of the child.
 - a. The Foster Parent shall have the right to attend and actively participate in any meetings regarding the child in their care.

- b. A written record shall be obtained and retained by DCFS in the case that the Foster Parent waives his or her right to attend any meeting. Such written record shall contain the date and a record of all correspondence with the Foster Parent as relevant to the meeting.
2. The Foster Parent shall have a right to the following information, provided by DLR: (Department of Licensing)
 - a. Notification of any upcoming trainings within their region.
 - b. Contact information for the current contracted liaison in their region.
 - c. Current laws, guidelines, obligations, responsibilities and policies regarding licensure.
 - d. Notification, in writing, of any cost or expenses for which the Foster Parent may be eligible for reimbursement.
 - e. A printed copy of the “Foster Parent Bill of Rights” and FPAWS “Having Problems with Your Foster Case” upon licensing.
 - f. A written explanation of corrective plan(s) for policy violations
 - g. A step-by-step informational guide regarding licensing investigations and what to expect during this process.
3. The Foster Parent shall have a right to the following information, provided by DCFS:
 - a. A current contact list of emails and phone numbers for DCFS.
 - b. Notification of all pertinent information, including but not limited to, full disclosure of all medical, psychological, an psychiatric conditions of the Child as well as propensity to cause violence, sexual or otherwise, that may impact any member of the Foster Parent’s home
 - c. A record of any false or misleading information to Foster Parent in order to secure placement .
 - i. In situations where the child’s history is not available, placement information inaccurate or the ISSP is incomplete, the Foster Parent has the right to refuse placement after a 72-hour period of the Child in their home without fear of adversely affecting any future placements.
 - d. Notification of Child’s history from DCFS, including the following:
 - i. Number of times Child has been moved including reasons for removal.
 - ii. Any previous foster parents’ contact information (-if previous foster parent authorizes release).
 - e. A written copy if the ISSP (Individual Service and Safety Plan)
 - f. Notification in advance of case workers’ routine health and safety visits, including but not limited to, home, school or daycare visits.
 - g. Notification in advance, in writing, of any hearings or review dates where the case plan or permanency of the Child may be discussed.

4. The Right to Normalcy
 - a. The Foster Parent shall retain the right to continue practicing their own traditions, values and beliefs insofar as the values and beliefs of neither the Child nor biological family are infringed upon.
 - b. The Foster Parent shall have the right to communicate with professionals-- including but not limited to therapists, physicians, and teachers-- who work with the Child on a day-to-day basis.
 - c. The Foster Parent shall retain the right to communication with Child's biological family, subject solely to a determination by DCFS that such communication is unsafe.
 - d. Foster Parent shall retain the right to travel with Child domestically for up to 72 hours without permission from DCFS.
5. The Right to Preferential Treatment
 - a. The Foster Parent shall have 60 days to accept or decline the Child for adoption once permanency plan has changed to adoption or biological parents voluntarily relinquish parental rights
 - b. The Foster Parent shall have 30 days to accept the Child previously in their care if such Child is brought back into foster care
 - c. Foster Parent shall have the right to be considered "fictive kin" after 6 months of the Child living in their home if the primary plan changes from "return home" to adoption (based on research establishing bonding and attachment timelines).
6. The Foster Parent shall have the right to have standing to participate in all court hearings pertaining the Child in their care.
7. The Foster Parent shall have the right to an advocate at every stage of an investigation of abuse, neglect or other licensing violations as well as the right to appeal final decision.
8. The Foster Parent shall have the Right to file a complaint if they perceive that any sections or subsection of this Foster Parent Bill of Rights has been violated. The Foster Parent shall have the right to a fair and impartial review of any such complaint by DCFS, and decisions by DCFS are appealable to the State of Washington Superior Court.