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## SHAPING THE FUTURE OF INDIAN CHILDREN: CHILD WELFARE LAW AND POLICY

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Joaquin Gallegos



# Current State of Native youth Well-being

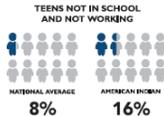
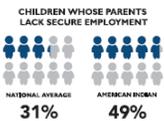
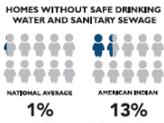
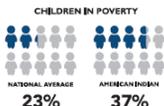
What is well-being?

*“the balance point between an individual’s resource pool and the challenges faced: stable wellbeing is when individuals have the psychological, social and physical resources they need to meet a particular psychological, social and/or physical challenge.”*

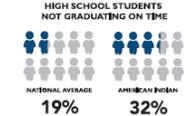
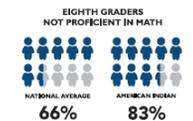
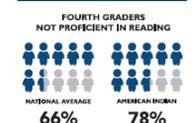
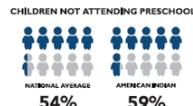
**THE WELL-BEING OF AMERICAN INDIAN AND ALASKA NATIVE YOUTH:  
USING WHAT WE KNOW TO MAKE BETTER POLICY**

Set of indicators across four well-being categories, served by federal programs, show poorer conditions for American Indian and Alaska Native children compared with the national average.

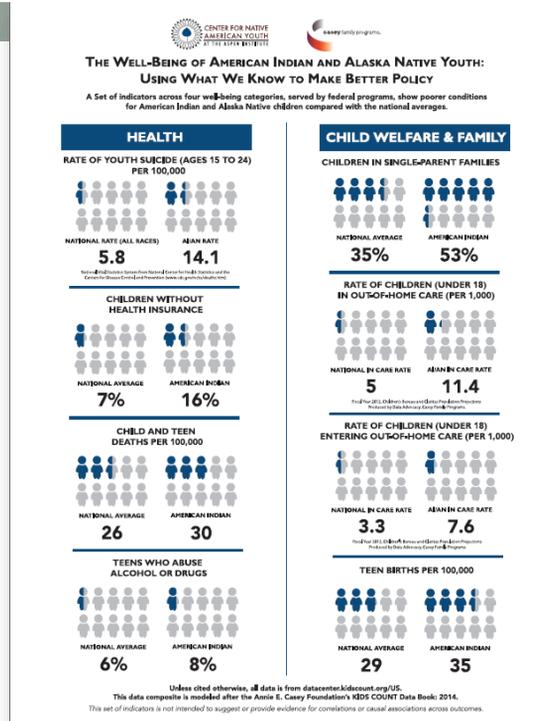
**ECONOMICS & COMMUNITY**



**EDUCATION**



Unless cited otherwise, all data is from [datacenter.kidcount.org/US](http://datacenter.kidcount.org/US). This data composite is modeled after the Annie E. Casey Foundation's KIDS COUNT Data Book: 2014. This set of indicators is not intended to suggest or provide evidence for correlations or causal associations across outcomes.



## Public Health Research

- South Dakota:
- Grandmother of a 17-month-old boy accused of second-degree murder and felony child abuse and neglect.
- Mother's boyfriend of a 10-month-old boy accused of first-degree murder. Abusing child when it died. Included "blunt trauma to the head."
- Rapid City Journal

## The Intersection of Indian Child Welfare and Public Health



### Indian Child Welfare Act (ICWA)

- Congress enacted ICWA in 1978 to address the Federal, State, and private agency policies and practices that resulted in the “wholesale separation of Indian children from their families.”
- Congress enacted ICWA to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishing minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes or institutions which will reflect the unique values of Indian culture.”
- ICWA thus articulates a strong “federal policy that, where possible, an Indian child should remain in the Indian community.”

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## ICWA

- “Since ICWA was enacted by Congress in 1978, it has improved child welfare practices regarding Indian children. Commentators have asserted, however, that it has not reached its full potential due largely to ineffective or inconsistent implementation in some case.”
- Currently, Indian children are overrepresented in foster care at a rate that is 2.1 times their rate in the general population.
- Five states with the highest disproportionality are Minnesota, Montana, Nebraska, Iowa, and Washington.
- Example: In South Dakota an estimated 750 AI/AN children are placed in foster care per year.

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## ICWA

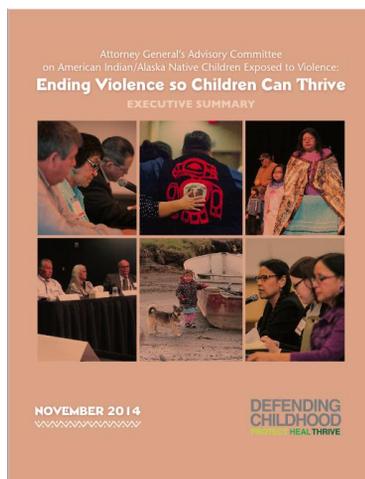
- “Several long-term studies have been conducted of Native American adult adoptees. Despite socioeconomic advantages that many of them received by virtue of their adoption, long term studies reflect that these adoptees experienced increased rates of depression, low self-esteem, and suicide. In addition, many adult adoptees continue to struggle with their identities and have reported feelings of loneliness and isolation.”

## The Path to Strengthening ICWA

- At the 2013 White House Tribal Nations Conference, Attorney General Eric Holder announced the creation of the Attorney General's Task Force on American Indian and Alaska Native Children Exposed to Violence.



## The Path to Strengthening ICWA



## The Path to Strengthening ICWA

- “Unfortunately, the response of child-serving systems often re-traumatizes the child.”
- 2.1 “The legislative and executive branches of the federal government should ensure Indian Child Welfare Act (ICWA) compliance and encourage tribal-state ICWA collaborations.”
- 2.1.A “Within two years of the publication of this report, the Administration for Children and Families (ACF) in the Department of Health and Human Services (HHS), the Bureau of Indian Affairs (BIA) in the Department of the Interior (DOI), and tribes should develop a modernized unified data-collection system designed to collect Adoption and Foster Care Analysis and Reporting System (AFCARS) (ICWA and tribal dependency) data on all AI/AN children who are placed into foster care by their agency and share that data quarterly with tribes to allow tribes and the BIA to make informed decisions regarding AI/AN children.”

## The Path to Strengthening ICWA

- 2.1.B “The Secretaries of the Department of Interior (DOI) and Health and Human Services (HHS) should compel BIA and ACF to work together collaboratively to collect data regarding compliance with ICWA in state court systems. The ACF and BIA should work collaboratively to ensure state court compliance with ICWA.”
- 2.1.C “The BIA should issue regulations (not simply update guidelines) and create an oversight board to review ICWA implementation and designate consequences of noncompliance and/or incentives for compliance with ICWA to ensure the effective implementation of ICWA.”
- 2.4 “The Indian Health Service (IHS) in the Department of Health and Human Services (HHS), state public health services, and other state and federal agencies that provide pre- or postnatal services should provide culturally appropriate education and skills training for parents, foster parents, and caregivers of AI/ AN children. Agencies should work with tribes to culturally adapt proven therapeutic models for their unique tribal communities (e.g., adaptation of home visitation service to include local cultural beliefs and values).”

## The Path to Strengthening ICWA

- 2.6 The Secretary of Health and Human Services (HHS) should increase and support access to culturally appropriate behavioral health and substance abuse prevention and treatment services in all AI/AN communities, especially the use of traditional healers and helpers identified by tribal communities.



## Creating Impact

- Examples:
- 2.1.A: On March 25, ACF announced “intend[s] to publish a supplemental notice of proposed rulemaking (SNPRM), which will propose that title IV–E agencies collect and report additional ICWA-related data elements in Adoption and Foster Care Analysis and Reporting System (AFCARS).
- 2.1.C: On February 24, Assistant Secretary Washburn announced release of “*Guidelines for State Courts and Agencies in Indian Child Custody Proceedings* to support the full implementation and purpose of ICWA.” These updates will will help ensure tribal children are not removed from their communities, cultures and extended families. The guidelines:
  - clarify the procedures for determining whether a child is an Indian child, identifying the child’s tribe, and notifying its parent and tribe as early as possible before determining placement.
  - provide comprehensive guidance on the application of active efforts to prevent the breakup of the Indian family.
  - provide clarification that ICWA’s provisions carry the presumption that ICWA’s placement preferences are in the best interests of Indian children.

## Creating Impact

- 2.1.C (Cont'd): On March 16, Assistant Secretary Washburn announced the proposal of a new rule, *Regulations for State Courts and Agencies in Indian Child Custody Proceedings*, to improve compliance with ICWA.
- “A binding interpretation to ensure consistency in implementation of ICWA across all States.”
- The Regulations establish procedures:
  - determining whether ICWA applies to any child custody proceeding
  - providing notice to the parents or Indian custodian and Indian tribe(s),
  - requesting and responding to requests to transfer proceedings to tribal court,
  - adjudication of involuntary placements, adoptions, and terminations of parental rights
  - undertaking voluntary proceedings
  - identifying and applying placement preferences
  - post-proceeding actions.

## Creating Impact

- Public meetings and consultation sessions on proposed regulations.

Public Meetings	Tribal Consultations
April 22, Portland, OR, 9:00am-12:00pm PST	April 20, Portland, OR, 3:30-5:30pm PST
April 23, Rapid City, SD, 1:00-4:00pm MST	April 23, Rapid City, SD, 9:00am-12:00pm MST
May 5, Albuquerque, NM, 1:00-4:00pm MST	May 5, Albuquerque, NM, 9:00am-12:00pm MST
May 7, Prior Lake, MN, 1:00-4:00pm CST	May 7, Prior Lake, MN, 9:00am-12:00pm CST
May 12, Teleconference, 1:00-4:00pm EST	May 11, Teleconference, 1:00-4:00pm EST
May 14, Tulsa, OK, 1:00pm-4:00pm, CST	May 14, Tulsa, OK, 9:00am-12:00pm, CST

[comments@bia.gov](mailto:comments@bia.gov)  
Subject Line: ICWA

## Creating Impact

- *Oglala Sioux Tribe v. Luann Van Hunnik*
- Three mothers, Oglala Sioux Tribe, and Rosebud Sioux Tribe
- charged a lack of proper procedural or judicial oversight
- documented how Indian parents have been denied the right to speak in their own defense, have court-appointed counsel, cross-examine witnesses or present evidence at the hearings, many of which lasted for only a few minutes
- parents were denied their right to review the secret petitions against them, documents which are routinely undisclosed and available only to the judge.
- “The ruling vindicates the fundamental right of Indian parents to a fair hearing when state officials remove their children—a right that was being systematically ignored by the defendants, including state court judges.”
- “Indian children and their parents deserve better.”

## Elevating Native Youth Well-being



## Elevating Native Youth Well-being

**NATIVE AMERICAN HERITAGE MONTH  
NATIVE YOUTH SPOTLIGHT**



**Eriq Jet Swiftwater, 18**

Eriq is a stellar Oglala Lakota student and star football player at Black Hills State University in Spearfish, South Dakota. Majoring in business management, Eriq wants to start his own business and help improve the economy of his home, the Pine Ridge Indian Reservation, and for all of Indian Country. Mr. Swiftwater also wants to become a coach to mentor Native youth with athletics. He stresses that academics should take priority for students. Eriq sets a pattern of perseverance and strength, having spent time in foster care and supporting his mother in her battle with cancer. Preserving Native American culture is important to Eriq because it contains a lot of direction and its rich traditions need to be retained for future generations. His participation in sweat lodges and assistance at sundances during the summer help keep his Lakota culture alive. He also works with elementary school students and takes care of the baseball fields so youth have clean and safe places to play sports. Mr. Swiftwater makes sure he is there to support his family and community. As a budding leader, Eriq is a strong role model for all Native youth to look up to.




**CENTER FOR NATIVE  
AMERICAN YOUTH**  
AT THE ASPEN INSTITUTE

## Elevating Native Youth Well-being

White House AIAN retweeted

 **CNAY** @Center4Native · Dec 8

#NativeYouth from all over the US gather to talk about foster care. They are at the @WhiteHouse now! #WHFosterYouth

 CaseyFamilyPrograms



View more photos and videos

White House AIAN retweeted

 **CNAY** @Center4Native · Dec 8

#NativeYouth and tribal leader from Nez Perce preparing to attend @WhiteHouse meetings on foster care! #WHFosterYouth



View more photos and videos

## Elevating Native Youth Well-being



## Elevating Native Youth Well-being



## Elevating Native Youth Well-being

**CNAY** @Center4Native · Mar 3  
#NativeYouth Shilo talking about his experiences in foster care and the need for supportive, culture-based services.



...it/Chippewa, preparing to speak about toxic stress & during a briefing on Capitol Hill!



**Toxic Stress and AI/AN Children:**  
An Overview and Promising Solutions for Promoting Resilience in Indian Country

March 3, 2015

James Jarvis, MD, FACP  
Chair  
Committee on Native American Child Health  
American Academy of Pediatrics

## Elevating Native Youth Well-being

Pinned Tweet

**CNAY** @Center4Native · Apr 5

On 4/8 @FLOTUS will highlight the need to #InvestInNativeYouth & create more opportunities for them! #GenI



View more photos and videos

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## Discussion

- What additional aspects do you see as part of Native youth well-being?



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## Discussion

- What tools and resources do you think would improve Native youth well-being in your community?



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## Discussion

- In what ways can the needs and priorities of Native youth, especially those in foster care, be included and prioritized in programming?



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## Discussion

- How can public health and research sectors better capture data relating to AI/AN youth, especially youth in foster care?
- *“The lack of accurate, relevant data on tribal children and families often results in AI/AN children being left out of discussions about policy development, resource allocation, and decision making at the federal level. Or, because of the lack of such data regarding AI/ AN children, policy makers delay or decline to make decisions and resource allocations because they cannot “justify” the services. By increasing tribal capacity (through tribal child protection agencies in BIA and IHS) in the area of data collection, tribal engagement and federal responsiveness to AI/AN children’s needs can be increased.”*

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## Thank You

*"I am happy to say that my time at the White House has shown me that the Administration is searching for new ways to improve the lives of Native foster youth. And, more personally, it showed me that people do care about what happens to the invisible." - Seanna Pieper-Jordan*