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# Implementation of the Indian Child Welfare Act

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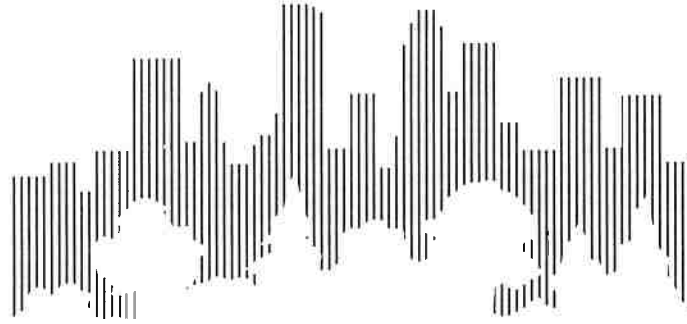
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**C • O • L • L • E • G • E**

**MASTER OF ARTS  
IN SOCIAL WORK THESIS**

**Daniel G. Dierfeldt**

**MSW  
Thesis**

**Implementation of the Indian Child Welfare Act**

Thesis  
Dierfe

1994

# Implementation of the Indian Child Welfare Act

Daniel G. Dierfeldt

Thesis submitted in partial fulfillment of the requirements for  
the Master of Social Work Degree

Augsburg College  
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Minneapolis, MN 55454

Department of Social Work

Graduate School

Augsburg College

May, 1994

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To my friends for their personal support -- Cara Carlson who always seemed to know what to say to me when I became frustrated with writing; Tim Trimble for his great humor; Sandee Lester for her patience and understanding; Kirby Clifford for his unique perspective. To Eustolio Benavides III, for his understanding and mentorship.

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# Implementation of the Indian Child Welfare Act

Daniel G. Dierfeldt

April 20, 1994

## Abstract

The Indian Child Welfare Act (I.C.W.A.), P.L. 95-608, became federal law in 1978. Its purpose was to protect Native American children, families and culture. Prior to the passage of the I.C.W.A. Native American children were being placed in substitute care in statistically high numbers. The law mandates a system which provides for tribal participation whenever permanent or temporary care is required for Native American children. The I.C.W.A. encourages family preservation and establishes legal protections when children must be separated from their families.

To date little study has been done related to the implementation of the Indian Child Welfare Act at either the state or federal level. This thesis will review existing research and knowledge on the I.C.W.A. and will share the findings and knowledge gained from an exploratory research project completed in support of this thesis.

## Section I

### A. Introduction

The Indian Child Welfare Act, (I.C.W.A.) was enacted 16 years ago. It was the first major legislative attempt to protect the rights and interests of Native American children, families and tribes.

It establishes minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes that will reflect the unique values of Indian culture... (Miller, Hoffman & Turner, 1980, p.469).

Jurisdiction over Native American children was returned to tribal courts. This jurisdiction went beyond reservation borders and included children who were eligible for membership but lived outside the reservation. "...before the 1978 act the state courts had gradually assumed jurisdiction over Indian children; until the late 1960's their right to intervene was seldom questioned" (Johnson, 1981, p.440).

The focus of this thesis is the implementation of the I.C.W.A. which has faced several obstacles over the years. Variables related to the implementation of the I.C.W.A. will be explored in both the literature review and in a modest exploratory study completed for this thesis.

federal assimilation policies to the breakup of American Indian families" (Byler, 1977,p.3). This premise is supported by other noted Indian Child Welfare experts. Grafton Hull, Jr. writes "It can be argued, for example, that the federal government pursued policies and practices for over 200 years that were disruptive to Indian family structure and life-styles" (Hull, 1982, p.341).

### Federal Policy

#### Boarding Schools

One of the federal government's most notorious policies created a Native American boarding school system. Children, families and native cultures were all damaged. Assimilation of Native American children into white society was the unofficial objective of federal policies and a primary means of accomplishing this objective were placements of Indian children in boarding school. Schools were located great distances from Native communities to separate children from the "primitive" influences of their parents and tribes.

Discipline in these schools was harsh and the daily routine rigid. Children were required to speak only English and were punished for using their

Assimilationist Policies Continued

In 1871 it became federal policy not to make treaties with Native American tribes. In one sense this was not significant as the government had a long established pattern of breaking treaties made with tribal governments. It was, however, a dangerous step towards treating all Native Americans alike without regard to the unique cultural differences of tribes. It also destroyed even the appearance of the tribal government having some sovereignty.

Beginning in 1829 President Andrew Jackson established a policy of forcing all Native Americans to move west of the Mississippi. It resulted in very culturally diverse tribes being put on confederated reservations. This policy put a huge stress on families.

By the 1880's reservations (usually located on land white settlers did not want) became visible signs of poverty. Those who advocated western expansion developed a concept for conquest which advocated for the assimilation of indigenous people. This idea of assimilation involved Native culture(s) and religions. An extreme example of this concept put into practice was the 1890 murder of 146 Dakota people who had refused to stop their



the 1960's and the 1970's focused public attention on Indian issues, including Indian Child Welfare" (Cross, 1986, p.287).

Indian Child Welfare

C. Summary of Act

The Indian Child Welfare Act (P.L. 95-608) was enacted by the United States Congress in 1978. A main objective of the Indian Child Welfare Act (I.C.W.A.) was to greatly reduce the large number of Native American children being placed in substitute care. When placement of children is necessary, care will be given to be respectful of the child's culture.

In addition the Indian Child Welfare Act:

- \* Reenacts tribal jurisdiction over child welfare matters involving Native American children living both on and off the reservation.
- \* Stipulates that public child welfare agencies and state courts must follow certain procedures when substitute care of termination of parental rights for Native American children are identified as options.
- \* Establishes a protocol to determine the preference of potential adoptive placements or substitute care options. The act requires

In 1985 the state of Minnesota passed such a law -- known as the Minnesota Indian Family Preservation Act. This law in greater detail defined the importance of race and heritage when foster care or other placements are being considered. It also offered state courts some guidelines.

An outgrowth of federal and state legislation to protect Native American children has been legislation in Minnesota to respect the heritage of all children when considering a placement.

While the focus of this thesis is the implementation of the Indian Child Welfare Act, failure to appreciate the contribution of later legislation would be a mistake. Implementation of the I.C.W.A. has in part depended upon the passage of new laws. The legal and human service systems in various states wanted additional definition of the act's mechanisms for implementation.

Also laws alone cannot guarantee respectful and appropriate Indian Child Welfare services. For example, Native American children are still being placed too often. There are not enough supportive services to families available. Laws can help articulate concerns and hopefully move individuals to see different aspects of a situation. They can also address abuses of rights, redress grievances, and set priorities for policy. In addition, laws must be supported by resources and widespread community commitment.

rates of ... "states, 100%; reservations, 92%; B.I.A., 95%; off-reservation, 69% (Plantz, Hubbell, Barrett & Dobrec, 1988, p.2-1). The second part of the research was a field study in four states -- Arizona, Minnesota, Oklahoma and South Dakota -- all have large Native American populations. The field study included personal interviews and a review of records for data collection.

The design required seven locations in each of the study states. Of which:

- \* three were to be local county/state child welfare agencies
- \* two reservation or tribal child welfare programs
- \* one local Bureau of Indian Affairs (B.I.A.) child welfare program
- \* one off-reservation child and family program facilitated by an Indian Center

(Plantz, et al., 1988, p.4-3).

The study found: "Indian children are placed in substitute care at a rate that is 3.6 times greater than the rate for non-Indian children" (Plantz, et al., 1989, p.25).

Additional findings found that the tribal programs do a creditable job with the I.C.W.A. and follow good casework standards. Uncertain funding for tribal programs was identified as a problem which has limited prevention work.

The Indian Child Welfare Act standard requires that --

No foster care placement may be ordered in the absence of a determination, supported by clear and convincing evidence, including testimony of a qualified expert witness, that the continued custody of the child by the parent of Indian custodian is likely to result in serious emotional or physical damage to the child (I.C.W.A., 1978, S102(e)).

In his conclusion Fischler recognizes that the implementation of the I.C.W.A. has been hampered by inadequate appropriations. He summarizes his objections to the act by asserting that "It is unfortunate that the means of greater sovereignty for American Indian adults, places American Indian children in jeopardy" (Fischler, 1980, p.348).

"A Perspective on the Indian Child Welfare Act" (Miller, Hoffman, Turner, 1980) offers a very different position from the Fischler article. Although both offer a similar historical perspective on what leads up to the I.C.W.A., the similarity ends there. The Perspective article is very supportive of the act and urges social workers to become familiar with it. The article goes on to suggest that an oversight system should be set up to monitor compliance to the act by cities and counties. The article offers no evidence to support its position that compliance is a problem. The compliance question is

helpful if the I.C.W.A. were a little more explicit in defining who is a Native American child. While I can understand their frustration with the cumbersome nature of the current procedures, I do not think the I.C.W.A. can define Native American children to a greater degree without negating the rights of tribes to define their own membership requirements. In the "Indian Child Welfare: A Status Report" it was noted in the field study findings that -- "Indian children are not identified as Indian by public agency workers. Inquiries about a client's race or ethnic background are not standard procedure in most agencies" (Plantz, et al., 1988, p.2-4). This seems to suggest that a simple question concerning a child's race or ethnic background could avoid some current problems. A serious consequence of this problem is an overturned adoption decree and disrupted placement with the strong potential of harm to children, families and tribes. It is impossible to identify Native Americans by appearance or surname. It may never occur to a judge to inquire whether or not a blond blue-eyed child is Native American.

Kessel and Robbins identify worker turnover as an issue because Indian Child Welfare frequent training sessions are then required.

The problems with the social service delivery system have existed for a long time and are not specific to I.C.W.A. Farris and Farris write about how

to deal with the requirements of the act. It appeared that some individuals avoided available I.C.W.A. training sessions.

Kessel and Robbins note that state or county social workers have resentment about the lack of child welfare training among tribal personnel (Kessel & Robbins, 1984, p.229). However, the "Indian Child Welfare: A Status Report" finds "The proportion of staff with a bachelor's or master's degree in social work is higher in tribal programs than in public [state/county] programs visited for the study" (Plantz, et al., 1989, p.27).

The authors suggest that both non-tribal and tribal child welfare workers require training to improve the service delivery system. Understanding Native American values, cultural norms and child rearing practices were some of the areas identified as essential to good practice.

La Fromboise and Rowe also write about the importance of culturally sensitive training. They write that traditional mental health practices of the federal government have failed to help American Indian people. The authors identify skills training as one culturally appropriate intervention method. Skills training has its roots in social-learning theory and associated personality

The importance of ongoing evaluation is stressed to maintain practice which is sensitive to both ethnic and cultural issues. To understand one's own ethnic or cultural background is seen as necessary to having a better understanding of others. The incorporation of this training approach into more Indian Child Welfare Act (I.C.W.A.) training programs would be helpful.

The study titled "Betwixt and Between in Family Preservation: Native American workers and families first model. A Qualitative Study" (George & Sawyer, 1992) demonstrated that a family preservation program (Families First) required some changes in order to be appropriate in serving Native American families. The Social Workers who were familiar with the cultural issues were able to adapt their work as appropriate. Indirectly this article illustrates the need for training Indian Child Welfare Act workers to be sensitive to cultural norms and values. (George & Sawyer, 1992)

In "Reactions by Native American Parents to Child Protection Agencies: Cultural and Community Factors," Horejsi, Heavy Runner Craig & Pablo (1992) identify a number of factors which make life difficult for Native Americans. These conditions -- historic oppression, poverty, racism, alcoholism, discrimination, endless grieving and others have contributed to child abuse and neglect. In addition the traditional mistrust of government

### Section III

#### Research Method

To date limited study of the Indian Child Welfare Act has been done. An exploratory study although small would contribute to our knowledge of how the I.C.W.A. has been implemented and what effect it has had. The successful implementation of the I.C.W.A. is dependent in large part upon those people designated by law to carry out its mandate.

Therefore, their perceptions and opinions related to the I.C.W.A. are important to explore.

The I.C.W.A. involves the participation of human service and legal professionals. I chose to focus on the human service professionals.

Within the study area of Scott County nine individuals were identified by county and reservation administrators as having I.C.W.A. responsibilities. Seven of the possible respondents were employed by the county and two were employed by the Shakopee Mdewkanton Sioux (Dakota) Community (Reservation). One of the county's employees and one of the reservation's employees are in supervisory roles; the other individuals are all in direct service positions. Six county employees work in the child protection



some aspects of the I.C.W.A. made confidentiality essential.

The questionnaire was designed so that it would be clear and simple to complete. An uncluttered appearance seemed key to this goal. To be user friendly I reduced the number of questions to only ten. Rather than forcing all ten questions on to one or even two pages, I used three which allowed for open space. "The desirability of spreading questions out in the questionnaire cannot be overemphasized" (Rubin & Babbie, 1989, p.164). A large bold font was used to make the questionnaire easy to read and visually appealing.

Questions one through four identified position, training and experience. Questions five through seven examined the professional's opinion regarding the I.C.W.A.; is it meeting its purpose? Are resources adequate? Question eight is intended to look at how a worker would proceed to find I.C.W.A. information. Question nine is intended to measure the adequacy of the I.C.W.A. The term adequate was not defined for respondents in order to gain further insight. The last question is open ended to allow for a wide range of responses.

To pretest the questionnaire I asked a social worker outside of my study population to complete the survey and then to comment on the instrument.

## Section IV

### A: Findings

Within Scott County a total of nine possible respondents were identified as appropriate candidates for this study. Seven were employed by Scott County Human Services in the Child Protection department and two were employed by the Shakopee Mdewakantan Dakota Community (reservation) in human services. All respondents were direct service providers except two -- one of whom was a county supervisor and another who was a reservation supervisor.

Eight out of the nine who received questionnaires completed and returned them. The one individual who declined to participate was employed by the county.

Except for the supervisor all of the county people identified their current position as that of a social worker. The human service staff employed by the reservation include a supervisor and a family advocate.

The Scott county people reported more years of human service experience than did their reservation counterparts. Four out of six responding

scale which also had response categories of somewhat inadequate and very inadequate (see Table 1,p.28).

The next four questions also utilized Likert-type scales to measure responses; response categories remain the same as the proceeding question.

Based on experience all but one of the respondents found the number of American Indian foster homes to be very inadequate. One county respondent found the number to be somewhat inadequate.

Based on their knowledge and experience respondents were asked to rank the adequacy of the Indian Child Welfare Act in protecting the rights of children, families and tribes. Two county workers found the I.C.W.A. to be very adequate in protecting the rights of children. Two others plus a reservation worker found the act somewhat adequate in protecting children (see Table 2, p.30). Three people, two county workers and a reservation worker found the act to be somewhat inadequate in protecting children.

The I.C.W.A. was rated higher by county workers in protecting the rights and interests of families. Two county respondents found the act very adequate in its protection of families. Four county people and one reservation person found the act to be somewhat adequate. One reservation worker found the act's protection of families to be somewhat inadequate (see Table 3, p.31).

*Based on your knowledge and experience is the Indian Child Welfare Act adequately protecting the interests and rights of families?*

TABLE 3

	County Staff N=6	Reservation Staff N=2
Very Adequate	2 (33.33%)	0
Somewhat Adequate	4 (66.66%)	1 (50%)
Somewhat Inadequate	0	1 (50%)
Very Inadequate	0	0

respondents were unsure if the current level of funding for I.C.W.A. program was appropriate.

*Estimation of the adequacy of the I.C.W.A. in protecting the rights of ...*

**Table 5**

(County Staff N=6, Reservation Staff N=2)

	Very Adequate		Somewhat Adequate		Somewhat Inadequate		Very Inadequate	
	C*	R*	C	R	C	R	C	R
	Children	2	0	2	1	2	1	0
Families	2	0	4	1	0	1	0	0
Tribes	3	0	3	1	0	1	0	0

\*C=County

\*R=Reservation

The Minnesota Department of Human Services was identified as the most common sponsor of training. This was not surprising because the state has a responsibility to provide this type of training and make it available to county, reservation and private agencies charged with I.C.W.A. responsibilities.

Training sponsored by the reservation appears to have been under utilized by county staff. This is unfortunate as the reservation has training resources available on the local level. The reservation could provide office space for a county social worker. This change in physical location would increase the visibility of available training resources.

Three respondents rank their I.C.W.A. knowledge very adequate while the remaining five respondents rank their knowledge as somewhat adequate.

It is likely that respondents reported having at least a somewhat adequate level of I.C.W.A. knowledge in part because of the training they received. It appears that some individuals may have had a false sense of confidence in their own I.C.W.A. knowledge base. Some of the comments respondents wrote on the questionnaires would indicate that they do not fully understand the act. For example "The family and the tribe have more rights than the children in a number of cases."



The concern that I.C.W.A. puts the rights of family and tribe before children has been made by others including Fischler (Fischler, 1980, p.345).

The I.C.W.A. protects a child's rights to family and tribe. It would be difficult to measure the loss of either one in a child's life.

The I.C.W.A. does not prevent the removal of children from their home if they are in need of protection. Child abuse and neglect laws apply to Native American children. In an emergency situation temporary placement with a non-Native family is permitted if a Native American placement is unavailable.

Although access to Native American foster homes is a problem in some locations this should not be used as an excuse to leave children in danger or to ignore the I.C.W.A. The counties, reservations and their child welfare agencies have a shared responsibility in the recruitment, training and support of Native American foster homes. The fact that respondents by a large majority found the number of Native American foster homes very inadequate would indicate a problem at least in Scott County.

The Indian Child Welfare Act was designed to protect Native American children by utilizing traditional cultural strengths. "Cultural were protected from abuse and neglect by the very nature of their society -- they belonged not

A majority of study respondents viewed the I.C.W.A. as protecting children, families and tribes. All respondents considered the number of Native American foster homes as inadequate. Study findings suggest some key elements required for the successful implementation of the I.C.W.A.

Culturally sensitive practice is needed for the I.C.W.A. to be effective.

Red Horse writes about a Minnesota congregate dining program intended for Native American elders which almost failed because of a cultural value.

Elders characteristically were accompanied to congregate dining by children. This presented a conflict in values because the children were not allowed meals under federal guidelines. Elders, in turn, chose family obligations over program benefits - they withdrew (Red Horse, 1980, p.491).

My experience as a reservation social worker affirmed for me the need to work with the entire extended family system and to sometimes include additional tribal members. During my first couple months of work for the reservation I gave a tribal elder a ride to a doctor appointment when his prearranged transportation fell through. Although this task was outside of my "job description" it resulted in a small avalanche of new clients who reported being referred by the elder I had helped. This experience in many ways was typical of others I had with Native American family and tribal systems. Culturally sensitive practice in most Native American tribes involves establishing a trusting relationship. Recruitment and supervision of Native American foster homes logically could be facilitated by the tribe utilizing the systems already in place.

Tribal programs depend upon federal funding to operate I.C.W.A. programs.

The amount of money allocated for tribal programs needs to be increased.

Applicants compete against each other annually for the limited Title II funds available. An average of 150 awards have been made each year -- about three-quarters to tribes and the remainder to off-reservation Indian centers. The average grant has been around \$55,000, and programs often have been funded one year but not the next (Plantz, Hubbell, Barrett & Dobrec, 1989, p.27).

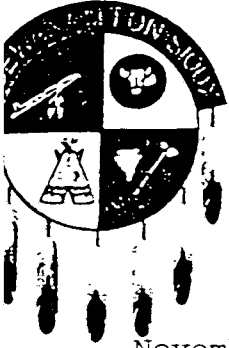
Fischler identified the lack of tribal financial resources as a reason the I.C.W.A. could fail to protect children (Fischler, 1980, p.348).

The Indian Child Welfare Act has made a difference in the lives of Native American children, families and tribes. Steps should be taken to implement the I.C.W.A. in a complete manner so that the full benefit of this law will be realized.

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# SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

2330 Sioux Trail N.W. Prior Lake, Minnesota 55372  
Tribal Office (612) 445-8900  
FAX: (612) 445-8906



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November 5, 1993

To Whom It May Concern:

This letter is to verify my permission to allow Dan Dierfeldt, Master's student at Augsburg College, to conduct his research on the Indian Child Welfare Law with the Shakopee Mdewakanton Sioux Community Social Service Department. We understand the research will consist of completing a questionnaire on the Indian Child Welfare Act. The staff participating [REDACTED], [REDACTED]

\*\* [REDACTED] and [REDACTED].

For participating in this research project, we are asking for copies of written reports or results.

We look forward to working with Mr. Dierfeldt and hope we can be of help to his research.

Sincerely,

Kim Holden  
Social Services Director

\*\* Names were deleted to protect anonymity

### Minnesota Indian Child Welfare Act Study - Consent Form

You are invited to be in a research study of the Indian Child Welfare Act. You were selected as a possible participant because of your employment in a reservation or county human service department which serves American Indian children. I ask that you read this form and ask any questions you may have before agreeing to be in the study. This study is being conducted as part of my masters program at Augsburg College.

The purpose of this study is to examine perceptions social workers and those involved with the Indian Child Welfare Act have concerning the Act. This study will also work to identify where professionals have gained their current Indian Child Welfare Act knowledge and where they seek answers to questions concerning the act.

If you agree to be in this study, I would ask you to do the following things; first, complete the attached questionnaire (it should take about five minutes), then place it in the enclosed envelope and drop in the mail. To maintain confidentiality please do not put your name or other identifying information on the questionnaire. For your participation in this study you will receive the results in aggregate form.

The records of this study will be kept private. Information gained will be presented in aggregate form protecting the identity of individual subjects. Research records will be kept in a locked file; only the researchers will have access to the records.

Your decision whether or not to participate will not affect your current or future relations with Augsburg College, the county, reservations or this researcher. If you decide to

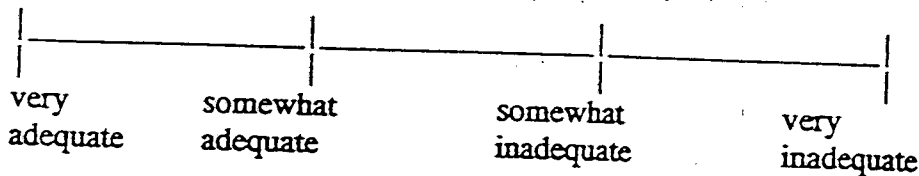
INDIAN CHILD WELFARE ACT - QUESTIONNAIRE

1. Your current position (circle one):
  - a) social worker
  - b) supervisor
  - c) other (please specify) \_\_\_\_\_
  
2. Your number of years in human services (please check one):
 

<input type="checkbox"/> 12 months or less	<input type="checkbox"/> 1 - 3 years
<input type="checkbox"/> 4 - 5 years	<input type="checkbox"/> 6 - 10 years
<input type="checkbox"/> over 10 years	
  
3. Have you received any type of instruction, formal or informal regarding the Indian Child Welfare Act? (please check one):
 

<input type="checkbox"/> Yes	<input type="checkbox"/> No
------------------------------	-----------------------------
  
4. If yes, please identify the sponsor(s) of your training (please check all that are appropriate):
 

<input type="checkbox"/> agency inservice training	<input type="checkbox"/> reservation sponsored training
<input type="checkbox"/> Minnesota Dept. of Human Services	<input type="checkbox"/> county sponsored training
<input type="checkbox"/> private agency	<input type="checkbox"/> other agency (specify) _____
  
5. In your opinion, is your current level of Indian Child Welfare knowledge adequate? (please circle the most appropriate response)





Questionnaire - 3

8. If you had a question related to the Indian Child Welfare Act, where would you go first in search of an answer? (please check one):

- co-worker
- state employee
- supervisor
- private agency
- county employee
- other (please specify) \_\_\_\_\_
- reservation employee

9. In your opinion, should the level of funding for Indian Child Welfare programs be changed? (please check one):

- yes, funding should be increased
- yes, funding should be decreased
- no, funding should remain at the current level
- I am unsure

10. Any comments about the Indian Child Welfare Act:

