

# **Indian Child Welfare Act Conference**

December 10, 2010  
Smullin Center, Medford

Power Point Presentation  
Judge William Thorne

# Indian Child Welfare Act

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## Introduction - Background

- Self
  - Background
  - Own bias re: ICWA
- 500+ Indian Tribes
  - Differences among tribes
  - Differences within tribes
- 300+ Tribal Courts
  - Sophisticated
  - Developing
  - Rudimentary

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**Everyone wants  
what is best for  
the child !**

***“Why are Indian  
children and families  
treated differently?”***

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## **PERCEPTION**

- Is often influenced by your where you are standing when observing

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Further research?

Adoption and Ethics: The  
Role of Race, Culture and  
National Origin in  
Adoption

By Freundlich [CWLA]

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**The historical  
context ...**

**for child welfare efforts  
and Indians**

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**Why trust is not automatic when confronted with:**

“I am from the government - I am here to help”

or,

“Trust us, we know what is best for your children”

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**BIA boarding schools**

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*BIA started as part of the War Department*



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Education as a part of the  
“civilizing” function



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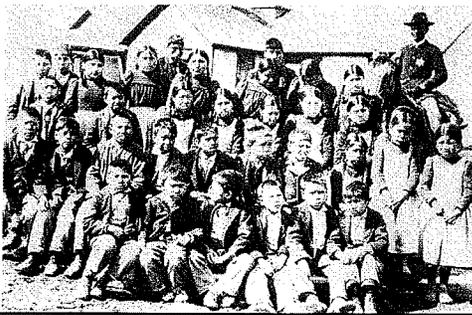
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Education was supposed to be the  
Solution to the “Indian Problem”



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1878 the Hampton Institute, a school  
for freed slaves, accepted Indian  
prisoners in an assimilation experiment.



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In 1879 Carlisle Indian School, patterned after the military model, opened.



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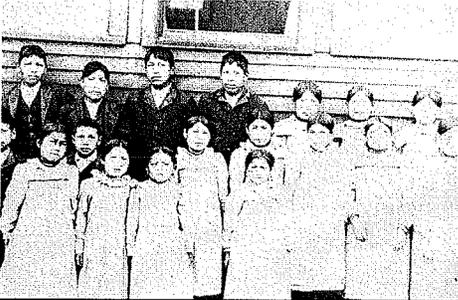
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By 1890 attendance was enforced through threats of cessation of rations and supplies.



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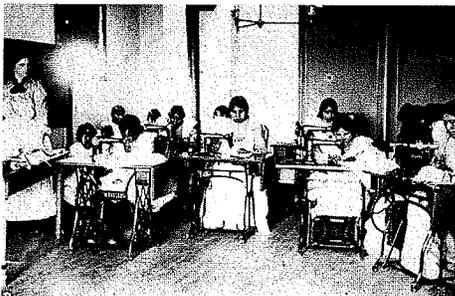
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Early "approved" curricula prohibited teaching of reading & writing.



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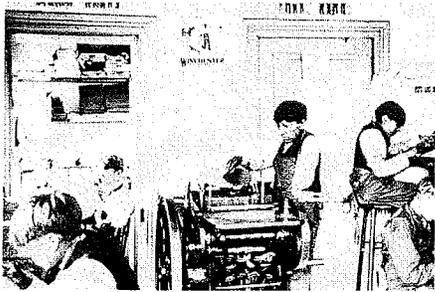
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Early “approved” curricula prohibited teaching of reading & writing.



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Early “approved” curricula prohibited teaching of reading & writing.



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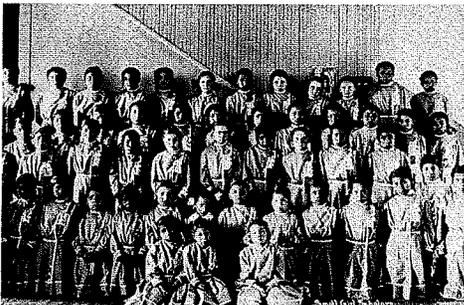
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Many died of disease and broken hearts.



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Succeeded in breaking intergenerational teaching in Indian communities. Language, religious practices, cultural knowledge were targeted



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Generations learned to parent from BIA dorms



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### View from another continent

- Same impact...
- "Rabbit Proof Fence"
  - Movie about the Australian Aborigine experience with education

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**Indian Child Welfare  
Efforts  
50 years ago**

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**1958 Indian  
Adoption Project**

**Joint project of the BIA  
&  
the Child Welfare League  
of America [CWLA]**

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**1958 Indian Adoption Project**

- Goal: to provide adoptive placement for American Indian children whose parents were deemed unable to provide a 'suitable' home
- States were paid by the BIA to remove Indian children from their homes alleging "neglect"
- Transracial placements were encouraged and most were separated from their communities
- 25 – 35% of all Indian children were removed from their homes

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**Indian Child Welfare  
Efforts  
30 years ago**

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**American Indian Policy  
Review Commission  
of the  
United States Congress**

**May 17, 1977**

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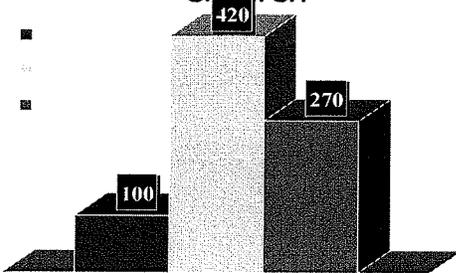
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**Comparative Rates for Indian  
Children**



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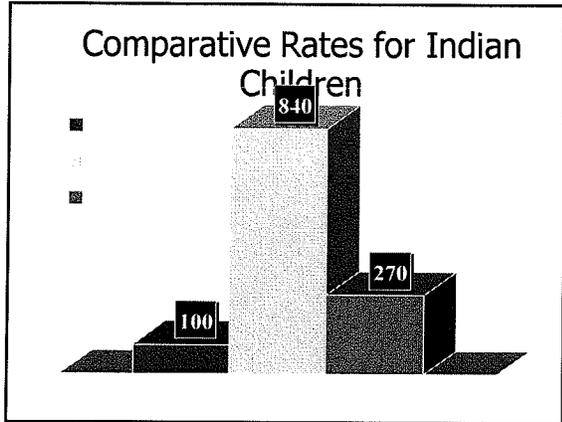
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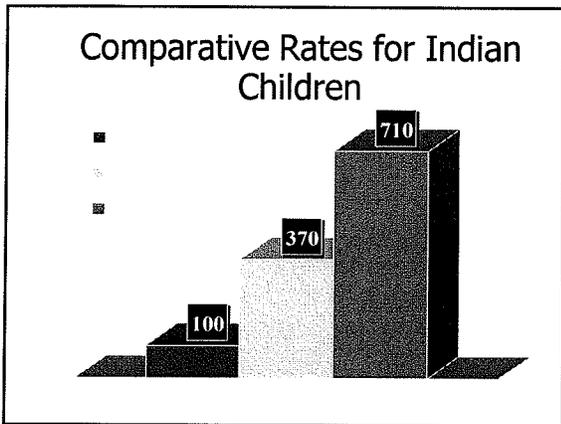
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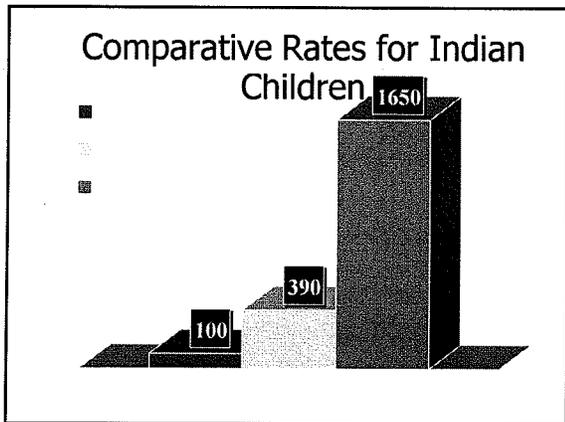
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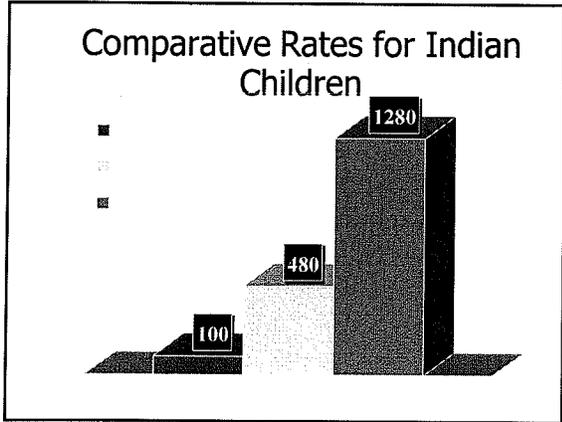
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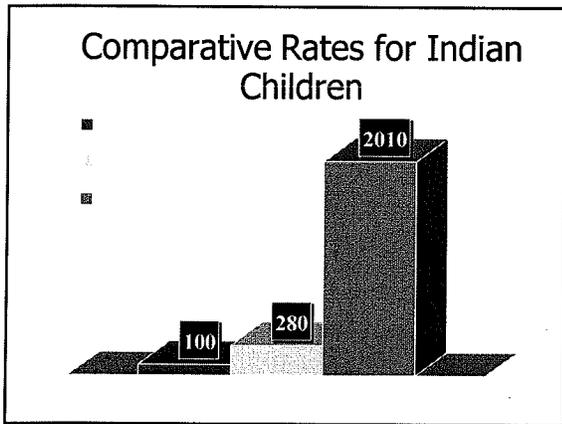
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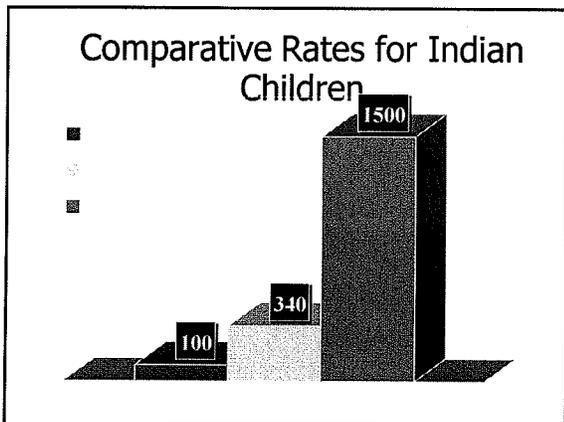
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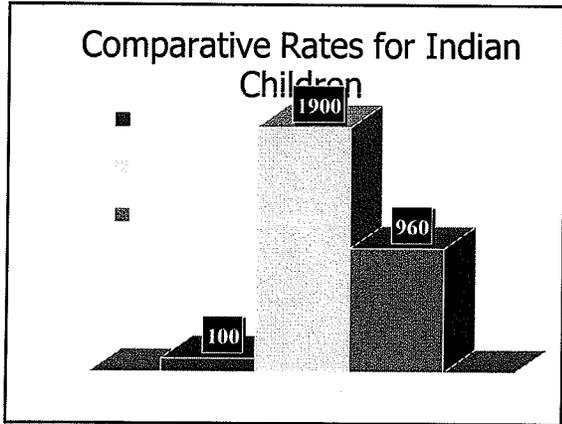
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INDIAN CHILD  
WELFARE ACT  
P.L. 95-608 (11/8/78)

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**Indian Child Welfare  
Efforts  
2007**

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**2007 GAO Report [St. = 1.0]**

- Colorado -- 1.94      [.78]
- North Dakota -- 3.09    [.69]
- Utah -- 3.97            [.82]
- Washington -- 4.99     [.80]
- Iowa -- 5.41            [.86]
- Nebraska -- 6.54        [.80]
- Minnesota -- 7.31      [.63]
- Oregon -- 8.68         [.75]

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How does this happen?

■ *An exercise ...*

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**MIND THE LITTLE THINGS**

**Springs are little things, but they are sources of large streams; nails and pegs are little things, but they hold the parts of a large building together; a word, a look, a smile, a frown, are all little things, but powerful for good or evil. Think of this and mind the little things. - Hillis**

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**Impact of removal**

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**IDENTIFICATION  
WITH THE  
*AGGRESSOR***

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**Thematic Apperception  
test**

Good \_\_\_\_\_ Bad

Beautiful \_\_\_\_\_ Ugly

Smart \_\_\_\_\_ Dumb

Honest \_\_\_\_\_ Dishonest

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**A sample of differences...**

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**MISUNDERSTANDINGS**

■ **Eye-Contact**

■ **Time**

■ **Home**



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**Sec. 2**

...the Congress finds...

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children... by nontribal public and private agencies....

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**ICWA is designed to remedy cultural mistakes that result in Indian children being placed out of home more often than necessary through:**

**Judges who are familiar with Indian values**

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**ICWA is designed to remedy cultural mistakes that result in Indian children being placed out of home more often than necessary through:**

■ **Caseworkers who are required to look beyond the surface**

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**ICWA is designed to remedy cultural mistakes that result in Indian children being placed out of home more often than necessary through:**

■ **Giving extended family the first option to provide surrogate care**

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**ICWA is designed to remedy cultural mistakes that result in Indian children being placed out of home more often than necessary through:**

- Requiring a higher burden of proof for removal

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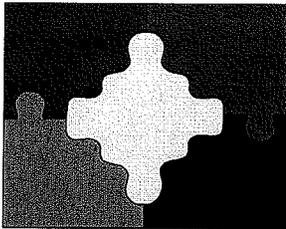
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ICWA ...



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INDIAN CHILD  
WELFARE ACT  
P.L. 95-608 (11/8/78)

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## DEFINITIONS

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### Indian

- (3) “...member of an Indian tribe [federally recognized], or who is an Alaska Native and a member of a Regional Corp....”
- Political, not racial, identification
- Government to government relationship

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### Indian Child

- (4) “Indian child” unmarried under 18...either
- (a) a member of an Indian tribe or
- (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

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## Parent

- (9) “parent” means the biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

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## Extended Family

- (2) “extended family member” ... defined by the law or custom of the Indian ... tribe or, in the absence...
- grandparent, aunt or uncle, brother or sister (including in-laws), niece or nephew, first or second cousin, or stepparent.

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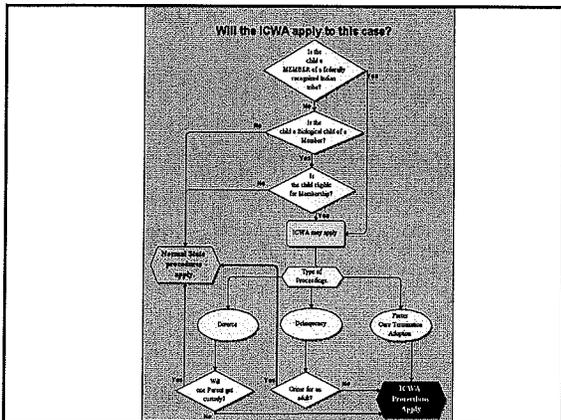
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TITLE I, SECTION 101  
25 U.S.C. 1911

- Exclusive Jurisdiction
- Transfer

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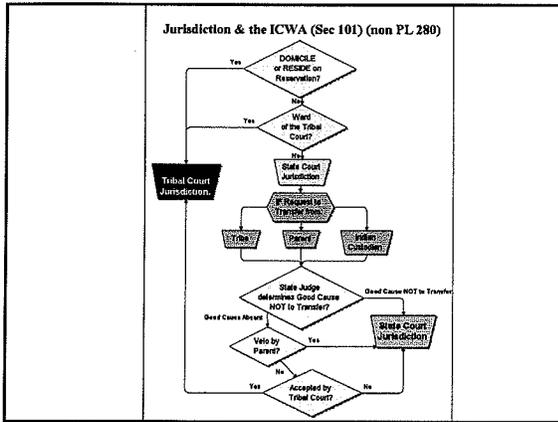
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TITLE I, SECTION 101  
25 U.S.C. 1911

- Exclusive Jurisdiction
- Transfer
- Right to Intervene
- Full faith and credit\*

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TITLE I , SECTION 102  
25 U.S.C. 1911

■ Notice

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**NOTICE**

(a) In any involuntary proceeding in a State court... party seeking the foster care ...or termination ...shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested ....

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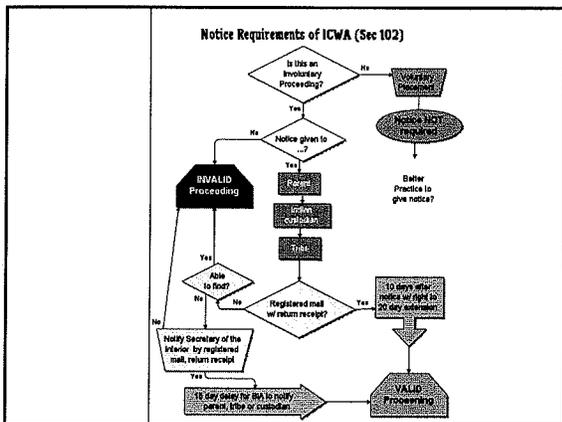
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**ACTIVE EFFORTS**

■(d) ...party seeking ... shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs ...and that these have been unsuccessful

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**Standards for Removal & Placement**

■ (d) Standards for placement are: the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

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**Keys to judging Indian families:**

- Is the Child safe?
- Is the Child cared for?
  - Food, shelter, etc.
- Is the Child loved?
- Everything else is gravy

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### **Foster Care Standard**

- (e) No foster care placement...in the absence of ...clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody is likely to result in serious emotional or physical damage to the child.

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### **Termination Standard**

- (f) No termination of parental rights...in the absence of ...evidence, beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody is likely to result in serious emotional or physical damage to the child.

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### **Priorities for Placement**

**25 U.S.C. 1915**  
**Absent good cause...**

- (a) Adoptive placement preferences
- (b) Foster care placement preferences
- (c) Tribe may change preferences

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**Priorities for Placement**

**25 U.S.C. 1915**

**Absent good cause...**

- (a) Adoptive placement preferences
- (b) Foster care placement preferences
- (c) Tribe may change preferences
- ...where appropriate child or parent preference may be considered....

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**PLACEMENT PREFERENCES**

■ **FOSTER CARE**

- 1<sup>st</sup> : Extended Family
- 2<sup>nd</sup> : Foster home licensed by Tribe
- 3<sup>rd</sup> : Indian foster home licensed by State
- 4<sup>th</sup> : Institution approved by Tribe
- 5<sup>th</sup> : Other foster homes licensed by State

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**PLACEMENT PREFERENCES**

■ **PERMANENT PLACEMENT**

- 1<sup>st</sup> : Extended Family
- 2<sup>nd</sup> : Member of child's tribe
- 3<sup>rd</sup> : Member of another Indian tribe
- 4<sup>th</sup> : Other adoptive homes

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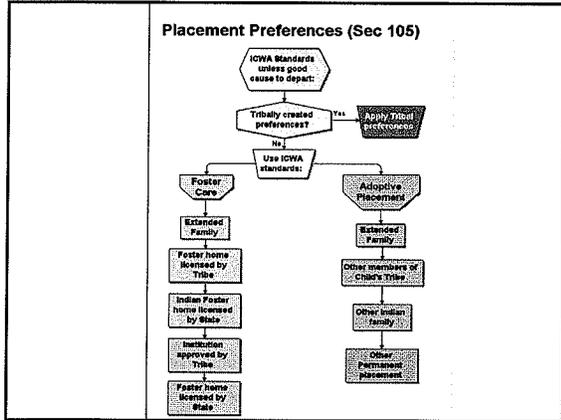
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**Section 103  
25 U.S.C. 1913  
■ Voluntary Consent**

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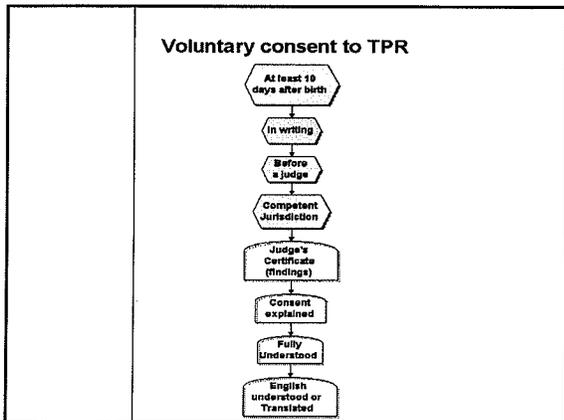
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**Section 103**  
**25 U.S.C. 1913**

■ **Voluntary Consent**

■ **Withdrawal of Consent**

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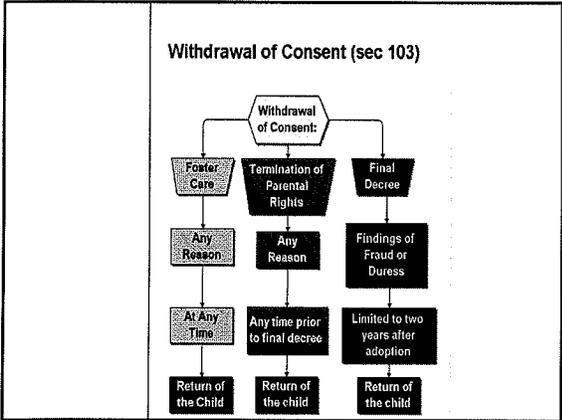
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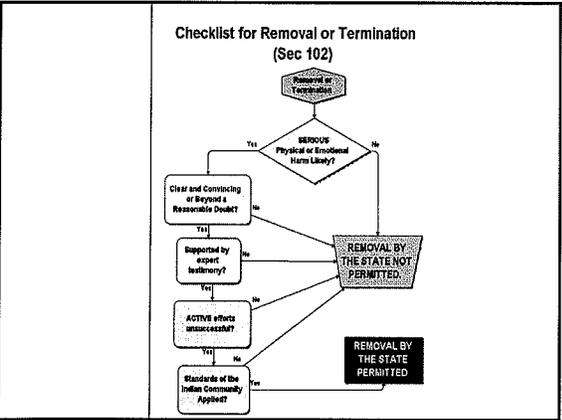
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# Emergency Removal

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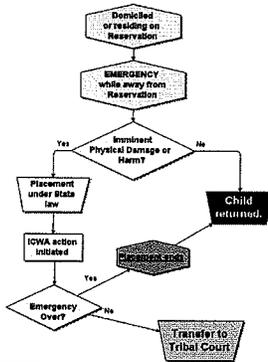
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## Emergency Removal (Sec 112)



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# Bonding

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**Mississippi Band of Choctaw  
Indians v. Holyfield,**  
109 S. Ct. 1597, 1611, 490  
U.S. 30,104 L. Ed. 2d 29 (1989),  
quoting Utah Supreme Court  
**In Re: Halloway.** 48 Utah Adv.  
Rep 3, 732 P. 2d 962.

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Had the mandate of the ICWA been followed in 1986, of course, much potential anguish might have been avoided, and in any case the law cannot be applied so as automatically to 'reward those who obtain custody, whether lawfully or otherwise, and maintain it during any ensuing (and protracted) litigation.'"

(Mississippi Band of Choctaw Indians v. Holyfield, 109 S. Ct. 1597, 1611, 490 U.S. 30,104 L. Ed. 2d 29 (1989) quoting Supreme Court of Utah) 48 Utah Adv. Rep 3, 732 P. 2d 962. In Re. Halloway.

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**ICWA is not  
perfect  
But it is an  
improvement**

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**The end...**  
After, a story...

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The Wolves Within  
*Author Unknown*



**I too, at times, have felt a great hate for those that have taken so much, with no sorrow for what they do. But hate wears you down, and does not hurt your enemy. It is like taking poison and wishing your enemy would die. I have struggled with these feelings many times."**

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The Wolves Within  
*Author Unknown*



**An old grandfather, whose grandson came to him angry at a schoolmate who had done him an injustice, said "Let me tell you a story. I too, at times, have felt a great hate for those that have taken so much, with no sorrow for what they do. But hate wears you down, and does not hurt your enemy. It is like taking poison and wishing your enemy would die. I have struggled with these feelings many times."**

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The Wolves Within  
*Author Unknown*



**He continued, "It is as if there are two wolves inside me; one is good and does no harm. He lives in harmony with all around him and does not take offense when no offense was intended. He will only fight when it is right to do so, and in the right way."**

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The Wolves Within  
*Author Unknown*



**But the other wolf, ah! He is full of anger. The littlest thing will set him into a fit of temper. He fights everyone, all the time, for no reason. He cannot think because his anger and hate are so great. It is helpless anger, for his anger will change nothing. Sometimes it is hard to live with these two wolves inside me, for both of them try to dominate my spirit."**

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The Wolves Within  
*Author Unknown*



**The boy looked intently into his Grandfather's eyes and asked, "Which one wins, Grandfather?"  
 The Grandfather smiled and said, "The one I feed."**

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**Thank-you**

For everything you do on  
behalf of the families  
and the children

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