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In 1977, a study by the Association of American Indian Affairs found that 35% of all American Indian children were in out-of-home care and that approximately 85% of those children were placed with non-American Indian families.<sup>2,3</sup>

Subsequently, the Indian Child Welfare Act of 1978 (ICWA) (25 U.S. Code § 1901, et seq.) was passed with the stated intent to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture” (25 USC § 1902).

**Note:** America’s indigenous people refer to themselves in many different ways. We use the term *American Indian* throughout this brief to refer to American Indians and Alaska Natives. The Indian Child Welfare Act uses the term Indian to refer to American Indians and Alaska Natives.

## Introduction

American Indian children are disproportionately more likely to be victims of maltreatment and to be in foster care. In 2012, the rate for American Indian children in foster care was 13 per 1,000 children, compared with 5.1 per 1,000 children for the general population,<sup>4</sup> though states vary in degree of disproportionality.<sup>5</sup> American Indian children are disproportionately more likely to enter foster care than other children in more than one third (17) of the states.<sup>6</sup> With the exception of African American children, American Indian children experience higher rates of confirmed maltreatment than children of other ethnicities.<sup>7</sup> A recent study calculated that 15% of American Indian children are likely to be victims of substantiated maltreatment between birth and 18 years old, which is higher than other ethnic groups except African American children.<sup>8</sup> Due to challenges in identifying American Indian children, which is a fundamental barrier to the application of ICWA, these disproportionality estimates may be an undercount.

Little research is available on the degree of states' compliance with ICWA and its impact on American Indian children's well-being.<sup>9</sup> It is important to note that ICWA has many dimensions, some of which are based on rankings or preferences; thus, state compliance with the federal law should be viewed on a continuum, rather than a simple dichotomy of compliant or non-compliant.

This research brief uses national data to provide one lens to examine the extent to which the placement patterns of American Indian children in out-of-home care are aligned with the placement preference provisions outlined in ICWA (25 USC § 1915). These provisions are only one dimension of ICWA and are as follows:

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

- (i) a member of the Indian child's extended family;
- (ii) a foster home licensed, approved, or specified by the Indian child's tribe;
- (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

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Prior to or during placement in foster care, ICWA requires a high level of support for family preservation and reunification, referred to as active efforts. Specifically, ICWA “mandates the state to make active efforts in every ICWA case in two areas: (1) Provide services to the family to prevent removal of an Indian child from his or her parent or Indian custodian; and (2) Reunify an Indian child with his or her parent or Indian custodian after removal”.<sup>10</sup>

The second National Survey of Child and Adolescent Well-Being (NSCAW-II) is a longitudinal survey that sampled children from child welfare investigations closed between 2008 and 2009. Wave 2 is a follow-up on these children and families approximately 18 months later. At the time of Wave 2 data collection, children ranged in age from 16 months to 19 years. This brief relies on Wave 2 data to present the out-of-home placement patterns for American Indian children and to illuminate how those patterns align with some of the tenets of ICWA placement preferences. The Wave 2 sample on which this analysis is based consists of 436 American Indian children, who are compared to 4,802 children who are not American Indian.<sup>11</sup>



Placement patterns of American Indian children involved with child welfare:  
Findings from the second National Survey of Child and Adolescent Well-Being

Table 1 presents the placement status of American Indian and non-American Indian children approximately 18 months after a Child Protective Services (CPS) investigation.

**TABLE 1**  
**PERCENT OF CHILDREN IN EACH LIVING ARRANGEMENT**

Time frame: approximately 18 months after a CPS investigation

	Percent of American Indian Children (n=436)	Percent of Children Not American Indian (n=4,802)
In-Home: Biological Parent	86	83
In-Home: Adoptive Parent	3	2
Formal Kin Care	1	3
Informal Kin Care	7	9
Foster Care	2	3
Group Home/Res Program	1	< 1
Other OOH Arrangement	1	< 1

**Note:** Due to rounding, column totals may not equal 100%.

The living arrangements of American Indian children are similar to that of other children, and the small differences are not statistically significant. In other words, we do not find that American Indian children are significantly more likely to be in out-of-home care than children of other ethnicities. This finding, while seemingly counterintuitive given national statistics on American Indian disproportionality in child welfare, likely reflects the fact that the sample of children who are not American Indian comprises several ethnic groups, some of whom are also disproportionately over-represented in the foster care system (i.e., African Americans), so specific comparisons among ethnic groups are masked when combined. In addition, these data are based on a sample of children 18 months after an investigation so are not directly comparable to federal point-in-time estimates. Relatedly, these estimates are among all children who have been subject to an investigation. If American Indian children are disproportionately likely to be reported to CPS as alleged victims of child maltreatment, that type of disproportionality is not reflected in these estimates.

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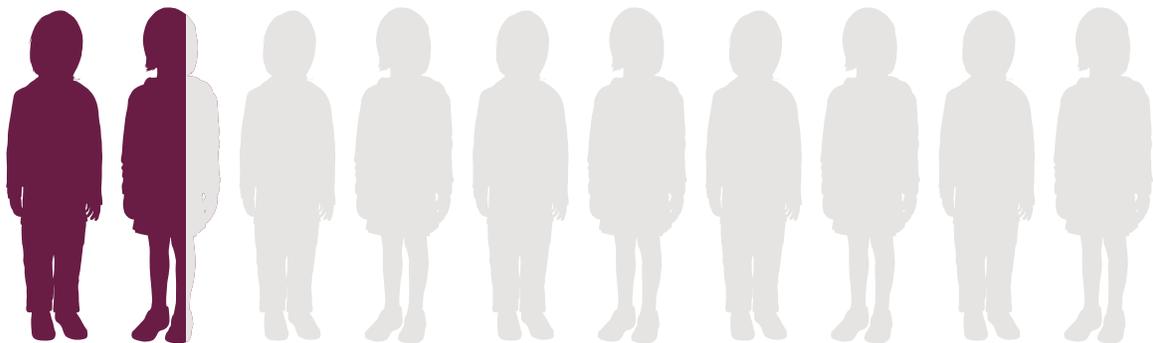
Additional findings show that informal kin care is the most common out-of-home arrangement for all children, regardless of ethnicity. Other research shows that informal kin care is slightly more common in urban than rural areas and is high among African Americans.<sup>12,13</sup>

We found that among all children who remain at home after a child welfare investigation, American Indian children's families were significantly more likely to receive in-home services and also to be higher risk, as measured by a comprehensive family risk measure.<sup>14</sup> (Results not shown here.) It is possible that caseworkers and judges may be choosing to keep even higher risk American Indian families intact while providing the services needed to support them. This finding could imply active efforts to keep the family unit together.

We examined the race and ethnicity of the caregiver, when available, for American Indian children who were not residing at home with their biological parent. Figure 1 illustrates these results.

**FIGURE 1**  
**17% OF AMERICAN INDIAN CHILDREN IN OUT-OF-HOME CARE LIVE WITH AMERICAN INDIAN CAREGIVERS**

Time frame: approximately 18 months after a CPS investigation



Despite ICWA guidelines, only 17 percent of American Indian children not living with a biological parent reside with an American Indian caregiver.<sup>15</sup> Formal kin care is the out-of-home care arrangement under which American Indian children are most likely (43 percent) to be with an American Indian primary caregiver (results not shown here), though this is a small group of children overall (see Table 1).

## Limitations

Several caveats to this analysis are noted. Given state and local variation in disproportionality of American Indian children in out-of-home placement, the sample of 436 American Indian children from 83 sampled counties may not be nationally representative or representative of the 17 states with disproportionality. In addition, a national sample size of 436 American Indian children is small; thus the confidence intervals around these estimates tend to be large. Also, we found discrepancies among caregivers, caseworkers, and youth in whether a child was identified as American Indian. This measurement problem points to a similar problem of the correct identification of American Indian children in child welfare proceedings and the applicability of ICWA to those proceedings. These estimates are not directly comparable to population counts contained in the Adoption and Foster Care and Analysis Reporting System (AFCARS), which are based on semi-annual reporting from states. The NSCAW-II study is a sample that follows a cohort of children over time after a child welfare investigation. Finally, any relationship of these findings to the influence of ICWA on practice is purely speculative.

## Conclusion

The placement preferences for foster care outlined by ICWA do not directly stipulate the preferred ethnicity of the caregiver. Rather, the preference is for placements with extended family and tribally-approved foster care. Thus, the intention of the law is to preserve American Indian tribal heritage, as well as mitigate the cultural and psychological harm of previous U.S. policies for the removal, assimilation, and acculturation of American Indian children.

These results demonstrate that there is still room for ICWA placement preferences to be realized for American Indian children, but some of the findings suggest active efforts to keep American Indian children in their home may be occurring. Despite higher levels of family risk, families with American Indian children are more likely to receive child welfare services in the home than children of other ethnicities. The safety of American Indian children in all types of arrangements and the effectiveness of in-home services for preventing the recurrence of maltreatment and promoting child well-being warrant further investigation and are beyond the scope of this paper.

This analysis does not and cannot ascertain or claim that ICWA compliance is being achieved, in full or in part. Given the dearth of research on ICWA compliance—and American Indian children in child welfare, more generally—this analysis takes advantage of publicly available data to provide a small window through which to examine one aspect of ICWA.

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Lastly, this broad inquiry highlights the need for further information on and measurement of ICWA compliance to achieve the goals of ICWA, ensure child safety, and promote children's well-being. To fully adhere to ICWA, the field needs:

- Ongoing training on the importance of ICWA and its key provisions
- A culturally competent workforce
- Clear identification of American Indian children
- Improved notice to tribes about American Indian children in out-of-home placement
- Support in recruiting caregivers who align with the out-of-home placement preferences for American Indian children
- Culturally appropriate in-home services
- Timely support services for kin to ensure placement stability<sup>16</sup>

## Acknowledgements

The authors would like to thank Dolores Bigfoot, associate professor and director of the Native American programs at the Center on Child Abuse and Neglect at the University of Oklahoma's Health Sciences Center, and Jill Tompkins, President of the National American Indian Court Judges Association, for their review and contributions.

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Casey Family Programs' Indian Child Welfare Program, a national expert in the area, and best practices as described in the following sources:  
  
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