

## **Tribal and State Relations Committee**

Wednesday, October 16, 2013  
Roughrider Room, State Capitol

North Dakota Court System  
Catherine Palsgraaf

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Good morning Mr. Chairman and Committee members. My name is Catie Palsgraaf and I am the Research Analyst for the Court Improvement Project Committee of the North Dakota Supreme Court. The purpose of the Court Improvement Project Committee is to assess and implement improvements in the roles, responsibilities and effectiveness of state courts in court supervised foster care and adoption cases. One of the Committee's subcommittees is the Indian Child Welfare Act Subcommittee. The overarching purpose of the subcommittee is to enhance Indian Child Welfare Act, or ICWA, compliance in court proceedings statewide.

I am here today to provide you with the status of an ICWA audit of the North Dakota court system. First, I'll provide some background and an overview of ICWA requirements.

ICWA is a federal law enacted in 1978 after years of congressional hearings relating to federal Indian policies and their impact on the stability and security of Native American tribes and families. In general, these federal policies favored removing children from reservations and placing them in boarding schools or with non-Native American families. According to testimony at the congressional hearings, by 1978 more than 17% of school-age Native American children lived in Bureau of Indian Affairs institutional facilities, and one of every four Native American children under age one had been adopted. Congress enacted ICWA to protect Native American families and to give tribes a role in making child welfare decisions for children protected by ICWA.

In order for ICWA to apply in state court proceedings, a child must meet certain requirements. An "Indian child" under ICWA must be under 18, unmarried and either already a member of a federally recognized tribe or eligible for membership and the biological child of a tribal member. ICWA applies in state court cases where custody is involved and a parent or guardian cannot regain custody upon demand. Specifically, the cases are foster care placements, termination of parental rights, pre-adoptive placements, adoptive placements, juvenile delinquency where termination of parental rights may occur and unruly offenses with out of home placement. Unruly offenses are those that would not be a crime if committed by an adult, such as truancy or runaway.

If a child protected by ICWA resides on the reservation or is a ward of tribal court, the tribe has exclusive jurisdiction and state courts do not have jurisdiction except in emergency proceedings. Otherwise, the tribe and state courts share jurisdiction. ICWA requires state courts to transfer proceedings to tribal court unless a parent or guardian objects, the tribal court declines

the case, or the state court determines there is good cause to keep the case in state court. In all foster care and termination of parental rights proceedings in state court, the tribe has the right to intervene at any point when a child is protected by ICWA. This allows the tribe to become a party to the case due to the tribe's stake in the outcome.

Foster care placement and termination of parental rights proceedings of children protected under ICWA are held to high burdens of proof. The party asking for foster care placement must prove that active efforts were made to prevent the breakup of the Native American family and the efforts were unsuccessful. Foster care can only be ordered if supported by clear and convincing evidence that continued custody by the parent or guardian is likely to result in serious emotional or physical damage to the child. Termination can only be ordered if supported by evidence beyond a reasonable doubt that continued custody by the parent or guardian is likely to result in serious emotional or physical damage to the child.

Once foster care or termination is ordered, ICWA requires courts to follow specific placement preferences for foster care, pre-adoptive and adoptive placements. ICWA placement preferences can only be deviated from if the court finds good cause or the child's tribe establishes a different preference order by tribal resolution.

In an effort to measure state court compliance with ICWA requirements, the Court Improvement Project Committee, at the suggestion of the ICWA Subcommittee, undertook an ICWA audit project. This is a three year project beginning with an initial audit the first year to set a baseline and target improvements. Audits will be conducted in the second and third years to measure whether the targets were met. Initially, the project will measure compliance with notice given to parents; notice given to the tribe for each proceeding; parents informed of the right to appointed counsel for each proceeding; court findings that ICWA applies; court findings regarding active efforts; use of a qualified expert witness at applicable proceedings; and court findings that culturally relevant services were offered or provided. The project will be evaluated each of the three years to determine whether the audit parameters are sufficient and gathering useful data. The project will also establish an audit process so an annual ICWA audit can be conducted after the third year of the project is completed.

UND Department of Social Work contracted with the court system to conduct the project. Currently, the project is focused solely on court compliance with ICWA and will not address compliance within social services entities. However, the UND Department of Social Work houses the Children and Family Training Center, which is responsible for training all new child welfare workers across North Dakota. If potential social services compliance issues are identified during the court audit, they will be shared with the training center and incorporated into the training curriculum as needed.

Staff from the Department of Social Work is currently conducting the first audit of statewide ICWA cases. This first year audit consists of cases from 2010 that were either

identified as ICWA cases or included a child reporting Native American heritage, but not identified as ICWA. The results of the audit will be submitted to the Court Improvement Project Committee in December 2013 for review. Based on the audit, the Committee will determine the next steps to take to address issues that come out of the audit. The results of the audit will also be used in court system training throughout the year.

This concludes my comments. Are there any questions?