



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #SAC-12-071

TITLE: Enforcement of the Indian Child Welfare Act through “Government-to-Government” Consultation Relative to Any and All States Rule Changes that Affect Notice Procedures Pursuant to Section § 1912. *Pending court Proceedings*

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the Indian Child Welfare Act was enacted 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 to maintain connections within tribal communities; and

WHEREAS, on March 29, 2012 the state of Idaho, through the Idaho Legislative body, approved Idaho Department of Health and Welfare (IDHW) to implement a rule change to streamline the “Notice of Pending Proceedings” that clearly dilutes the intent of the Indian Child Welfare Act; and

WHEREAS, effective immediately, all 566 tribes whose children may be subject to the federal Indian Child Welfare Act (ICWA) will be affected by this rule change, disregarding the notice procedures in the federal law; **Section § 1912. *Pending court proceedings (a) Notice.*** ... “by registered mail with return receipt requested, of the pending proceedings and of their right of intervention”...; and

WHEREAS, according to the IDHW new rules, IDAPA 16.06.01; 051, Notice Requirements for ICWA. “Notices of Pending Proceedings” will be sent to the ICWA Designated Agent for the Indian child’s Tribe via Certified Mail, Return Receipt Requested”, not “registered mail” added quote mark as mandated in the ICWA; and

WHEREAS, the lack of non-compliance with the Indian Child Welfare Act by the State of Idaho, dilutes the intent of the Act, jeopardizing the accountability of tribal sovereigns, necessitating tribal governments, within the boundaries of Idaho, to react to the approved state statutes, with no established recourse within the state, after the fact; and

WHEREAS, the State of Idaho did not provide for a “government to government” consultation process within the State of Idaho and throughout Indian Country, with tribal governments, before these changes were made; and

WHEREAS, tribal leaders and Indian Child Welfare advocates must continue to adhere to the spirit of the Indian Child Welfare Act, to protect Indian children and families since its enactment in November 1978.

NOW THEREFORE BE IT RESOLVED, that the NCAI request, that the state of Idaho overturn this 2012 Legislative decision, that approved the Idaho Department of Health and Welfare to change their ICWA procedures, and that the Administration for Child and Family Services insist that all public or private child welfare agencies to abide by the Indian Child Welfare Act of 1978 specifically;

“(a) Notice; time for commencement of proceedings; additional time for preparation in any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child’s tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention.” ...; and

BE IT FURTHER RESOLVED, that, this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2012 Annual Session of the National Congress of American Indians, held at the Sacramento Convention Center from October 21-26, 2012 in Sacramento, California, with a quorum present.



 President

ATTEST:



 Recording Secretary