**Federal Laws Governing**

**Child Abuse & Neglect Cases**

THE CHILD ABUSE PREVENTION &

TREATMENT ACT OF 1974 (PL 93-247),

AMENDED IN 1996 (PL 104-235)

*Background*

From a historical perspective, we are still relatively

new to the concepts of protecting abused and

neglected children and developing appropriate

systems, methods, and programs to cope with

the problems of these children and their families.

Although every state had enacted a child abuse

reporting law by 1965, the child welfare system was

not adequately protecting children and their families.

During the 1970s, the United States Congress became

aware of this problem and enacted the Child Abuse

Prevention and Treatment Act of 1974 (CAPTA).

This legislation earmarked federal funds for states

to establish special programs for child victims of

abuse or neglect. It also mandated the appointment

of guardians ad litem to represent children. Since its

enactment in 1974, CAPTA has been amended

several times.

*Summary*

The federal Child Abuse Prevention and Treatment

Act, along with its implementing regulations, requires

states that receive federal funds for their state child

protective services programs to adhere to the

following requirements:

1. The state must have a statute mandating the

reporting of child abuse and neglect.

2. Upon receipt of a report of suspected abuse/

neglect, the state (a) must determine if the

report meets the definition of child abuse/neglect

under state law, (b) conduct an assessment of

the safety of all children under the care of the

suspected abuser, (c) begin a prompt investigation

of the report, and (d) take steps to ensure the

safety of all children under the care of the

suspected abuser, including removal of them to a

safe environment.

Though most of the law governing child protection,

foster care, adoption, and juvenile court proceedings

originates with state legislatures, state law is

influenced significantly by several federal statutes

enacted since 1974. Under these federal laws, states

receive billions of dollars each year for the support of

their child protective services system, foster care, and

adoption services. They are required to comply with

the provisions set out in the Child Abuse Prevention

and Treatment Act of 1974 (CAPTA), the Adoption

Assistance and Child Welfare Act of 1980 (AACWA),

and the Adoption and Safe Families Act of 1997

(ASFA) as a condition of receiving these federal funds.

Under AACWA, states receive federal funds to offset

the costs of providing a wide range of child welfare

services to families and children. These funds may

be used for, among other things, family support,

preservation, and reunification services. States also

are reimbursed for a substantial portion of the

money they pay to foster parents and other care

providers for the “maintenance” (primarily room and

board) of a child in foster care. Federal funds pay

a portion of the staff training costs, administrative

costs, adoption assistance payments to parents of

special needs children, and the information systems

developed by state agencies for their child welfare

systems. The following federal laws will be examined

in greater depth:

• The Child Abuse Prevention and Treatment Act

of 1974 (amended in 1996)

• The Indian Child Welfare Act of 1978

• The Adoption Assistance and Child Welfare Act

of 1980

• The Multi-Ethnic Placement Act of 1994

• The Adoption and Safe Families Act of 1997

• The Foster Care Independence Act of 1999

• The Volunteer Protection Act of 1997

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3. The state must have specific procedures or

programs for responding to reports of medical

neglect, including instances of withholding

medically indicated treatment from disabled

infants with life-threatening conditions.

4. The state must define “child abuse” and

“neglect” in accordance with federal statutes

and regulations.

5. The state must submit a state program plan to

the federal government every five years to remain

eligible for federal funding.

6. The state must provide a guardian ad litem to

every abused or neglected child whose case results

in a judicial proceeding. The guardian ad litem

may be an attorney or CASA (or both) whose

responsibilities include completing an independent

investigation of the child’s situation and needs,

determining what actions are in the best interest

of the child, and making recommendations to

the court.

7. The state must maintain the confidentiality of

child protective services records but make them

available to persons who are the subject of the

report, government agencies overseeing the state’s

child protective services program, child abuse

citizen review and fatality review panels, a grand

jury or court, and other agencies or persons

authorized by state law. The state may refuse to

disclose the identity of the person who made the

report of suspected abuse unless a court has found

that the reporter knowingly made a false report.

8. State law must provide immunity from

prosecution for persons who make good faith

reports of suspected abuse/neglect.

9. Records of false or unsubstantiated reports

of suspected abuse must be deleted from any

database accessible to the public or used for

employment or background checks. However, a

child protective services agency may keep this

information in its files for use in risk and safety

assessments.

10. State law must not require reunification of a

surviving child with a parent who is convicted of

murder of one of his/her children or an assault

resulting in serious bodily injury to a child. In

addition, state law must provide that conviction

of one of these crimes against children is sufficient

grounds for terminating parental rights.

11. State law must establish at least three citizen

review panels whose role is to determine if

state and local agencies are carrying out their

responsibilities for child protection under state law

and professional standards.

12. State law must provide a procedure whereby

persons with an official finding of substantiated or

founded abuse can appeal that finding.

13. State law must require the disclosure to the

general public of information about individual

cases of child abuse or neglect that resulted in a

child’s death or near death.

Synopsis prepared in October 1995 by Jill Moore,

UNC law student. Updated in May 2000 by William L. Grimm,

staff attorney, National Center for Youth Law.

THE INDIAN CHILD WELFARE ACT

OF 1978 (PL 95-608)

*Background*

The Indian Child Welfare Act (ICWA) was a response

to Congressional findings that there was a need for a

federal law to prevent state courts and social workers,

as well as private agencies, from further destruction of

the American Indian family caused by unwarranted

removal of Indian children from their tribes and

families. ICWA acknowledges the loss of Indian

culture resulting from historical government policies,

such as separating Indian children completely from

their tribe, placing them in boarding schools, and

forbidding them to speak their native language. In

an effort to “civilize” and assimilate Indians into

the mainstream, a decision was reached in the early

1800s to start with the children. Bureau of Indian

Affairs (BIA) agents and social workers were given

cash incentives based on the head count of children

taken away from their tribes and placed in non-

Indian institutions and adoptive homes—usually far

from home. The Indian Civilization Act was passed

in 1810 to facilitate the removal of children in an

attempt to assimilate them into Anglo-America.

Subsequently, non-Indian caseworkers, courts, and

agencies continued to see the Indian family structure

as alien, foreign, and undesirable, so the process

of adoptions by non-Indians occurred in wholesale

numbers. The sense of loss and devastation not only

tore away the child’s heritage and foundation, it

nearly destroyed the Indian family unit and the tribal

government structure.

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The Indian Child Welfare Act was established to

strengthen the participation by Indian tribes when

placement of Indian children is being considered. It

establishes requirements for child-placing agencies to

follow when placing Indian children.

*Summary*

Children who are members of an Indian tribe, or

who are the biological children of a member of an

Indian tribe and are eligible for membership in the

tribe themselves, may only be placed in foster care

or for adoption according to the requirements of

the Indian Child Welfare Act. The child’s tribe is the

final determinant of who is a member of the Indian

community entitled to ICWA coverage. When ICWA

coverage applies in a child’s case, it takes precedence

over other federal or state legislation.

If a state agency initiates an Indian child custody

proceeding on the reservation, jurisdiction belongs

exclusively with the tribe. When the proceeding

is off-reservation, the case must be transferred to

the tribe upon the request of the tribe unless there

is “good cause to the contrary,” as set forth in the

Department of the Interior’s 1979 BIA “Guidelines

for State Courts,” Indian Child Custody Proceedings.

Some of the reasons not to transfer include the

following: parents object; child is over twelve and

he/she objects; or the case is at an advanced stage

and all witnesses are off-reservation. The state court

cannot look at the economics of the family or tribe in

making the decision not to transfer. Likewise, the state

court cannot look at what it might deem “in the best

interest of the child,” since the law presumes that it is

always in the best interest of an Indian child to have

his/her own people determine what is proper for his/

her future.

ICWA sets forth the following requirements:

1. State court proceedings for foster care placement

or termination of parental rights that involve an

Indian child must be transferred to the jurisdiction

of the tribe unless they meet one of the exceptions

outlined in the 1979 BIA “Guidelines for State

Courts.”

2. A state court faced with pending proceedings for

the foster care placement of an Indian child or

the termination of parental rights must notify

the child’s parent, custodian, or tribe of the

proceedings.

3. An Indian child may not be placed in foster care

unless there is a determination, supported by

clear and convincing evidence, that the child will

likely suffer serious emotional or physical damage

if left in the custody of his/her parent or Indian

custodian.

4. An Indian child’s parents may not have their

parental rights terminated unless there is a

determination, supported by evidence beyond a

reasonable doubt, that the child is likely to suffer

serious emotional or physical damage if left in the

custody of his/her parent or Indian custodian.

5. Voluntary consents to foster care placement or

termination of parental rights that involve Indian

children are not valid unless executed in writing

before a judge and accompanied by the judge’s

certificate that the terms and consequences of

the consent were fully explained to and fully

understood by the parent or Indian custodian.

• Voluntary consents to foster care placement

may be withdrawn at any time.

• Voluntary consents to termination of parental

rights or adoption may be withdrawn at any

time before the final decree of termination

or adoption is issued—and up to two years

thereafter upon a showing of fraud or duress.

6. In adoptions of Indian children, preferences for

placement must be accorded as follows: (1) to

a member of the child’s extended family; (2) to

other members of the child’s tribe; and (3) to other

Indian families.

7. In foster care or preadoptive placements of Indian

children, preferences for placement must be

accorded as follows: (1) to a member of the child’s

extended family; (2) to a foster home licensed or

approved or specified by the child’s tribe; (3) to

an Indian foster home licensed or approved by

an authorized non-Indian licensing authority;

and (4) to an institution for children approved

by an Indian tribe or operated by an Indian

organization that has a program suited to the

child’s needs.

Synopsis prepared in October 1995 by Jill Moore,

UNC law student. Updated in May 2000 by

Evelyn M. Stevenson, tribal attorney, Confederated Salish

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THE ADOPTION ASSISTANCE & CHILD

WELFARE ACT OF 1980 (PL 96-272)

*Background*

This law is a blueprint for combined efforts to preserve

families and, if necessary, to build new families for

children. It was adopted because insufficient services

were being provided to keep families together,

inappropriate placements of children were being

made, disincentives for adoption existed, foster care

was prolonged resulting in a lack of permanency

for children, and there was a lack of information

about children in foster care. The intention of the law

was to prevent the breakup of families and provide

permanency planning for children.

*Summary*

The federal Adoption Assistance and Child Welfare

Act, along with its implementing regulations, requires

states that receive federal funds for assistance with

foster care maintenance and adoption assistance to

adhere to the following requirements:

1. The state must have a plan for child welfare

services that:

• Provides for the diligent recruitment of

potential foster and adoptive families that

reflect the ethnic and racial diversity of the

children needing such care

• Describes the measures taken by the state to

comply with the Indian Child Welfare Act

• Provides assurances that: (1) the state has

completed an inventory of all foster children

who have been in care for six months or

more; (2) the state is operating a statewide

information system regarding children in

foster care; (3) the state is operating a case

review system for children in foster care; (4)

the state is operating a service program to

help children return to their families or be

placed permanently; (5) the state is operating

a program designed to help children at risk

of being placed in foster care remain with

their families; and (6) the state has reviewed

its policies and procedures for children

abandoned at or shortly after birth

2. The state agency administering the state plan

must report known or suspected cases of abuse

or neglect among children receiving foster care

maintenance payments or adoption assistance aid

to the appropriate state agency.

3. The state must establish standards for foster

family homes and review the standards

periodically.

4. In its state plan, the state must set specific goals

as to the maximum number of children who

will be in foster care for more than twenty-four

months, and describe the steps it will take to

meet the goal of decreasing the length of stay for

children in care.

5. The state must make “reasonable efforts” (a)

prior to the placement of a child in foster care,

to prevent or eliminate the need for removal of

the child from his/her home, and (b) to make it

possible for the child to return to his/her home.

There is a greater burden to prove “reasonable

efforts” when the Indian Child Welfare Act

applies. *(Note: Under the Adoption and Safe Families*

*Act of 1997, the safety of the child must be of*

*paramount concern when making decisions regarding*

*reasonable efforts.)*

6. The state must develop a case plan for every child

in foster care who receives foster care maintenance

payments and must provide a case review system.

7. Under the case review system, the status of each

child must be reviewed at least every six months,

either by a court or by administrative review.

8. The state must have a procedure or system by

which parents may revoke voluntary placement

agreements and the child may be returned to them.

9. The state must provide a dispositional hearing for

every child in foster care no later than eighteen

months after the original placement and every

twelve months thereafter while the child’s foster

care continues. *(Note: Under the Adoption and*

*Safe Families Act of 1997, the hearings are called*

*permanency hearings and must be held within twelve*

*months after the date of the initial order removing*

*custody and at least every six months thereafter.)*

10. The state must have a data collection and reporting

system that includes information about children in

foster care and children placed for adoption.

Synopsis prepared in October 1995 by Jill Moore,

UNC law student. Updated in May 2000 by William L. Grimm,

staff attorney, National Center for Youth Law.

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THE MULTI-ETHNIC PLACEMENT ACT

OF 1994 & INTER-ETHNIC ADOPTION

PROVISIONS

*Background*

Increasing awareness of the damage done to children

when they are moved from one non-permanent

placement to another brought attention to children

whose placements were determined solely, or

primarily, on the basis of race. Additionally, public

attention was focused on the high percentage of

children of color who come into care and who remain

in care for long periods of time. Federal law set out

guidelines meant to respect the importance of a child’s

culture and heritage while reducing the time that

children wait for homes. This legislation also focused

on increasing the numbers and diversity of the pool of

available foster and adoptive families.

*Summary*

The Howard Metzenbaum Multi-Ethnic Placement Act

of 1994 (MEPA) prohibits denial or delay of placement

for foster care or adoption by any agency that receives

federal funds because of the child’s or foster/adoptive

parent’s race, color, or national origin. The law was

intended to:

• Decrease the time children wait to be adopted

• Prevent discrimination in the placement of

children on the basis of race, color, or national

origin

• Prevent discrimination on the basis of race, color,

or national origin when selecting foster and

adoptive placements

• Facilitate the development of a diverse pool of

foster and adoptive families

In August 1996, Congress amended MEPA with the

Inter-Ethnic Adoption Provisions (IEP) in order to

strengthen its nondiscriminatory provisions and to

provide stiff penalties for violation of the act. The

antidiscrimination provisions of MEPA-IEP now state

that any public or private agency or entity that

receives federal assistance cannot:

• Deny to any person the opportunity to become

an adoptive or foster parent on the exclusive

basis of the race, color, or national origin of the

adoptive or foster parent or the race, color, or

national origin of the child involved in the foster

or adoptive placement

• Delay or deny the placement of a child for

adoption or into foster care on the basis of the

race, color, or national origin of the adoptive or

foster parent or the race, color, or national origin

of the child involved in the foster care or adoptive

placement

MEPA was enacted to encourage transracial

placements of children when appropriate same-race

placements are not available. The act specifically

permits the consideration of a child’s cultural, ethnic,

or racial background and the ability of a potential

foster parent to meet the child’s related needs as

one of many factors to consider in determining the

best interest of a child. The Department of Health

and Human Services published a policy guideline in

the Federal Register on April 25, 1995, to be used as

guidelines for compliance by agencies. An updated

policy guideline related to the amendment was made

available in June 1997.

Noncompliance with this act is a violation of Title

VI of the Civil Rights Act of 1964. Any person who

believes that he/she has been a victim of a violation

of the act has a right to bring an action for relief in

the appropriate U.S. district court. Any entity found

in violation of the law will lose considerable federal

matching funds. MEPA does not affect the Indian

Child Welfare Act of 1978.

Summary prepared for the Alaska Citizens’ Foster Care Review

Board. Author unknown. Updated in May 2000 by William L.

Grimm, staff attorney, National Center for Youth Law.

THE ADOPTION & SAFE FAMILIES ACT OF

1997 (PL 105-89)

*Background*

While major provisions of federal child welfare law

were enacted in 1980 (AACWA) and 1997 (ASFA),

there were important amendments to the federal

law in the interim. An Independent Living Initiative

was added in 1986, which was then replaced with

the John Chafee Foster Care Independence Program

in 1999. In 1989, as part of the Omnibus Budget

Reconciliation Act, the definition of “case plan” was

modified to require that health and education records

be included in the case plan and shared with the

child’s foster parents. As part of the welfare reform act

(the Personal Responsibility and Work Opportunities

Reconciliation Act) of 1996, states were directed to

consider giving preferences to relatives over a nonrelated caregiver when placing a child in foster care.

That same act contained a provision allowing federal

funds to be used to pay for the care of children in

private, for-profit institutions.