

April 2005

# INDIAN CHILD WELFARE ACT

## Existing Information on Implementation Issues Could Be Used to Target Guidance and Assistance to States





Highlights of [GAO-05-290](#), a report to congressional requesters

# INDIAN CHILD WELFARE ACT

## Existing Information on Implementation Issues Could Be Used to Target Guidance and Assistance to States

### Why GAO Did This Study

In the 1960s and 1970s, American Indian children were about six times more likely to be placed in foster care than other children and many were placed in non-American Indian homes or institutions. In 1978, the Congress enacted the Indian Child Welfare Act (ICWA) to protect American Indian families and to give tribes a role in making child welfare decisions for children subject to ICWA. ICWA requires that (1) tribes be notified and given an opportunity to intervene when the state places a child subject to ICWA in foster care or seeks to terminate parental rights on behalf of such a child and (2) children be placed if possible with relatives or tribal families. This report describes (1) the factors that influence placement decisions for children subject to ICWA; (2) the extent to which, if any, placements for children subject to ICWA have been delayed; and (3) federal oversight of states' implementation of ICWA.

### What GAO Recommends

GAO recommends that the Department of Health and Human Services' Administration for Children and Families (ACF) consider using ICWA compliance information available through its existing child welfare oversight activities to target guidance and assistance to states. HHS disagreed with our recommendation. We continue to believe that ACF could use the information it gathers to help states improve their ICWA compliance.

[www.gao.gov/cgi-bin/getrpt?GAO-05-290](http://www.gao.gov/cgi-bin/getrpt?GAO-05-290).

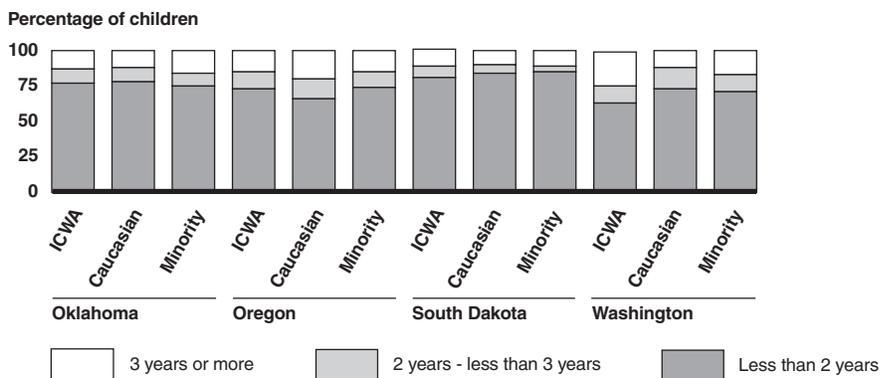
To view the full product, including the scope and methodology, click on the link above. For more information, contact Cornelia Ashby at (202) 512-8403 or [ashbyc@gao.gov](mailto:ashbyc@gao.gov).

### What GAO Found

Placement decisions for children subject to ICWA can be influenced by how long it takes to determine that ICWA applies, the availability of American Indian foster and adoptive homes, and the level of cooperation between states and tribes. While these factors are unique to American Indian children, other factors can affect decisions similarly for all children. Many states, for example, place all children with relatives if possible and may consider changing placements for all children—regardless of ICWA status—when relatives are identified after initial placement. Our survey showed few differences between children subject to ICWA and other children in how often states had to decide whether to move a child to another home.

National data on children subject to ICWA are unavailable; data that were available from four states showed no consistent pattern in how long children subject to ICWA remained in foster care or how often they were moved to different foster homes compared to other children. In general, most children leaving foster care in fiscal year 2003 in the four states were reunified with their families, although children subject to ICWA were somewhat less likely to be reunified or adopted and were somewhat more likely to leave through a guardianship arrangement.

**Length of Stay for Children Exiting Foster Care in FY 2003 in Four States**



Source: Data provided by child welfare agencies in these states.

ACF does not have explicit oversight responsibility for states' implementation of ICWA and the information the agency obtains through its general oversight of state child welfare systems sometimes provides little meaningful information to assess states' efforts. For example, the ICWA information states provided in their 2004 progress reports varied widely in scope and content and many states did not report on the effect of their implementation efforts. Further, while limited information from ACF's reviews of states' overall child welfare systems indicate some ICWA implementation concerns, the process does not ensure that ICWA issues will be addressed in states' program improvement plans.

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## Abbreviations

ACF	Administration for Children and Families
AFCARS	Adoption and Foster Care Analysis and Reporting System
APSR	Annual Progress and Services Report
ASFA	Adoption and Safe Families Act
BIA	Bureau of Indian Affairs
CFSR	Child and Family Services Review
FY	fiscal year
HHS	Department of Health and Human Services
ICWA	Indian Child Welfare Act
PIP	program improvement plan

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United States Government Accountability Office  
Washington, DC 20548

April 4, 2005

The Honorable Tom DeLay  
Majority Leader  
House of Representatives

The Honorable Wally Herger  
Chairman  
Subcommittee on Human Resources  
Committee on Ways and Means  
House of Representatives

The Honorable Pete Stark  
House of Representatives

In the 1960s and 1970s, American Indian children were roughly six times more likely to be separated from their families and placed in foster care than other children and many were placed in non-American Indian homes or institutions. A lack of understanding of tribal cultures and child-rearing practices by state child welfare agencies and courts was a significant factor in this widespread removal of American Indian children from their homes. In 1978, the Congress enacted the Indian Child Welfare Act (ICWA) (Pub. L. No. 95-608) to protect American Indian families from the unwarranted removal of their children and to give tribes a role in making child welfare decisions for children subject to the law. According to the most recently available HHS data, American Indian children represented about 3 percent of the over 800,000 children who were in foster care in fiscal year 2003. The Census Bureau estimates that American Indian children comprised 1.8 percent of the total U.S. population under the age of 18 in 2003.

ICWA established criteria for determining whether the tribe or the state should have custody of a child and make placement decisions. Specifically, ICWA gives tribes exclusive jurisdiction for tribal children who reside on a tribal reservation (unless a state has previously been given jurisdiction by federal law) and gives both states and tribes jurisdiction for tribal children who do not live on the reservation. In addition, ICWA established requirements for child welfare proceedings involving an American Indian child in state custody. For example, whenever state officials are concerned about the possible abuse or neglect of a child who is, or is eligible to be, a tribal member and seek custody of

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the child, ICWA requires that the tribe be notified of any court hearings involving the child and given the right to intervene in the proceedings. In addition, the law requires that efforts be made to place children subject to ICWA with relatives or tribal families, unless a good reason exists not to follow these placement preferences. While ICWA did not explicitly grant any federal agency oversight authority regarding states' implementation of ICWA, the Department of Health and Human Services' (HHS) Administration for Children and Families (ACF) monitors state compliance with federal child welfare laws.

Proponents of ICWA believe that the law promotes the well-being of American Indian children by keeping them connected to their families, tribes, and cultural heritage. Others are concerned that ICWA's procedural requirements could result in American Indian children staying longer in foster care than they would in the absence of the law, working against the goals of more recent child welfare legislation. In 1997, the Congress enacted the Adoption and Safe Families Act (ASFA) (Pub. L. No. 105-89) to help states more quickly move children in foster care to safe and permanent homes. One key provision of the law requires states, with some exceptions, to file a petition to terminate parental rights for children who have been in foster care for 15 of the most recent 22 months—a requirement that could conflict with the belief expressed by many tribes that a parent's relationship with a child can never be severed.

Because of your interest in how ICWA affects the foster care experiences of children subject to the law, as well as how ICWA is working in conjunction with ASFA, we examined the following: (1) the factors that influence placement decisions for these children, particularly as they relate to ASFA's goals of safety, permanency, and well-being of children; (2) the extent to which delays, if any, have occurred in the foster or adoptive placement of children subject to ICWA due to issues related to the implementation of ICWA and how any such delays have affected children's experiences in care; and (3) the federal government's role in overseeing states' implementation of ICWA. We have not included information about children who are under exclusive tribal jurisdiction because they reside on a reservation.

To answer these questions, we surveyed state child welfare agency officials in all 50 states and the District of Columbia regarding their implementation of ICWA and their views on how ICWA's provisions affected children's experiences in foster care. We received responses from 47 states and the District of Columbia. We checked for obvious errors and asked some states follow-up questions, but did not independently verify

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states' responses. We also surveyed officials in all 50 states and the District of Columbia to determine which states could identify children who were subject to ICWA in fiscal year 2003 using their automated systems. Only five states—Oklahoma, Oregon, Rhode Island, South Dakota, and Washington—were able to provide these data. Because Rhode Island had so few children subject to ICWA who left foster care, we dropped this state from our comparative analysis. To obtain tribal input, we conducted nine tribal panels in four states and conducted telephone interviews with nine regional intertribal organizations. Furthermore, we sent a letter to 591 federally recognized tribal governments soliciting their input for our study and received responses from 74 tribes. We visited five states—California, Oklahoma, Oregon, South Dakota, and Rhode Island—where we interviewed state and local child welfare agency officials, state court officials, and officials from at least two tribes (except in Rhode Island, which has only one federally recognized tribe) to obtain more detailed information on ICWA implementation. We selected these states to represent a diversity of geographic locations, child welfare systems, and state-tribal relationships. Finally, we reviewed applicable laws and regulations; interviewed headquarters and regional officials from both ACF and the Department of the Interior's Bureau of Indian Affairs (BIA); reviewed results from ACF's assessments of state child welfare agencies, known as Child and Family Services Reviews (CFSR); reviewed program improvement plans (PIP) states submitted as part of the CFSR process; and reviewed annual reports that states are required to submit to ACF about their child welfare systems. We conducted our work between December 2003 and January 2005 in accordance with generally accepted government auditing standards. A more detailed discussion of our scope and methodology appears in appendix I.

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## Results in Brief

Decisions regarding the placement of children subject to ICWA as they enter and leave foster care can be influenced by how long it takes to determine whether a child is subject to the law, the availability of American Indian foster and adoptive homes, and the level of cooperation between states and tribes. According to several child welfare officials, these factors, which are unique to American Indian children, can play an important role in placement decisions, including the characteristics of the foster home in which the child will be placed, the number of placements a child will have, and the duration of the stay. For example, if the ICWA status of a child subject to the law is not known or if no American Indian foster homes are available when such a child first enters foster care, the state may not be able to place the child initially with a tribal family and may subsequently move the child to another foster home. However, other

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factors can influence placement decisions similarly for all children regardless of whether they are subject to the law. For example, ICWA requires that children subject to ICWA be placed with relatives, unless good reason exists not to do so, but many states have a similar policy for all children. In both cases, the state may face decisions about whether to change a child's initial placement when a relative is identified or comes forward after a child's initial foster care placement. Our survey results from 19 states responding to a relevant question showed that states face decisions to change a child's foster or adoptive placement with similar frequency, regardless of a child's ICWA status. Decisions about how children subject to ICWA leave foster care are also influenced by how well states and tribes work together to blend ICWA and ASFA requirements for moving a child through the foster care system. While cultural beliefs of many tribes conflict with ASFA's provision to move a child to adoption within certain time frames, results from the 15 states responding to a relevant survey question showed little difference in how frequently children subject to ICWA were exempted from ASFA's provision compared to other children.

Data from four states that could identify children subject to ICWA in their information systems showed no consistent differences when comparing the length of time they spent in foster care compared to Caucasian or other minority children who exited foster care in fiscal year 2003. In two states, these groups of children stayed in foster care for similar periods of time; in Washington, however, children subject to ICWA who exited care were less likely than other children to leave foster care within 2 years, while those in Oregon were more likely to leave foster care within this time period. While not showing consistent differences in the length of time in foster care, data showed some different experiences among children when comparing how often they were moved to different foster homes or how they left the foster care system. For example, children subject to ICWA who exited care lived in a similar number of foster homes as other children in two of the three states having such data, but experienced a higher number of placements in Washington. In addition, while the data from the four states showed that most children who left foster care in 2003 were reunified with their families, children subject to ICWA were somewhat less likely to leave foster care through reunification or adoption, and somewhat more likely to leave foster care through a guardianship arrangement compared to other children.

While ICWA did not give any federal agency direct oversight responsibility for states' implementation of the law, ACF reviews some limited information reported by states under the agency's general oversight of

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state child welfare systems and its formal assessments of these systems in its Child and Family Services Reviews; however, the information is insufficient for ACF to assess states' efforts to implement the law's requirements. For example, while states are required to discuss ICWA implementation in their overall 5-year child and family services plans and in subsequent annual progress and services reports, ACF noted in its 2003 guidance that states were having difficulties reporting on ICWA adherence and reiterated that states needed to provide a description of the specific measures taken to comply with the law. While ACF's Child and Family Services Reviews have identified some ICWA concerns in states, the structure of this oversight tool was designed to review the overall performance of a state's child welfare system, rather than any particular law or program. As a result, it does not ensure that ICWA concerns will be addressed or that identified problems will be included and monitored in states' program improvement plans. For example, our review of 51 CFSR reports showed that 10 reports, generally from states with small American Indian populations, had no discussion of ICWA implementation, while 32 raised some concerns with how the law was implemented in the state, such as caseworkers receiving inadequate ICWA training or not consistently determining a child's ICWA status. Similarly, our review of 47 improvement plans provided by ACF as of December 2004 showed that 12 of the 32 states with ICWA implementation concerns identified during the CFSR review did not report any planned corrective actions.

To improve the usefulness of the information states are required to provide on their ICWA compliance efforts, we are recommending that the Secretary of HHS direct the Administration for Children and Families to review ICWA implementation information available through the CFSRs and require states to discuss in their annual progress and services reports any significant ICWA issues not addressed in their program improvement plans. In addition, ACF should consider using the information on ICWA implementation in the Child and Family Services Reviews, annual progress reports, and program improvement plans to target guidance and assistance to states in addressing any identified issues. HHS disagreed with our recommendation, stating that it does not have the authority, resources, or expertise to address GAO's recommendation. Our report recognizes HHS's limited authority with respect to ICWA and our recommendation offers a way for the agency to assist states within its existing authority and resources as part of its current process for overseeing states' child welfare systems.

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## Background

When the Congress enacted ICWA in 1978, it created certain requirements for child welfare proceedings involving American Indian children and established a number of protections for American Indian families. This differential treatment of American Indian children is not based on race, but on the child's political affiliation as a member or potential member of a tribe. As shown in table 1, the main ICWA provisions determine who is subject to the law and to which child custody proceedings the law applies. These provisions also address jurisdiction issues, tribal notification of child custody proceedings, and placement preferences for American Indian children entering foster and adoptive homes.

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**Table 1: Main ICWA Provisions**

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**Definition of a child subject to ICWA**

ICWA defines a child as Indian if he or she is a member of a federally recognized tribe or if he or she is eligible for tribal membership and is the biological child of a tribal member. A child who has some American Indian blood, but not enough to qualify for membership in a federally recognized tribe, or who is a member only of a state recognized tribe, is not subject to ICWA.

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**Definition of child custody proceedings**

ICWA applies to the following child custody proceedings: (1) involuntary foster care placements; (2) petitions to terminate parental rights; (3) pre-adoptive placements; and (4) adoptive placements. ICWA does not apply to custody arrangements arising from divorce proceedings or placements by the juvenile justice system when a child commits an act that would be deemed a crime if committed by an adult.

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**Jurisdiction**

American Indian tribes with active tribal courts have exclusive jurisdiction over child welfare proceedings for an American Indian child who resides on the tribal reservation.

States and tribes share jurisdiction over child welfare proceedings involving a child subject to ICWA who does not reside on the tribal reservation. If a tribe or parent requests that a child custody proceeding be transferred to the jurisdiction of the tribe, the proceeding should be transferred to tribal jurisdiction, unless either parent objects to the transfer or good cause exists to not transfer the case. The tribal court has the right to decline any transfer request.

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**Notification and intervention**

A tribe must be notified about any involuntary child welfare proceeding in state courts involving a child subject to ICWA and has the right to intervene in such cases.

A tribe also has the right to intervene in cases in which a parent voluntarily relinquishes custody of a child subject to ICWA, but ICWA does not specifically require that tribes be notified about these cases.

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**Placement in foster care**

A child subject to ICWA cannot be placed in foster care unless clear and convincing evidence exists that continued custody by the parent is likely to result in serious damage to the child.

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**Placement preferences<sup>a</sup>**

An American Indian child placed in foster care or a pre-adoptive placement shall be placed in the least restrictive, most family-like setting in which the child's special needs, if any, may be met. The child shall be placed within reasonable proximity to his or her home and preference shall be given, absent good cause to the contrary, to a placement with:

1. a member of the child's extended family;
2. a foster home licensed, approved, or specified by the tribe;
3. an American Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
4. an institution approved by a tribe or operated by an American Indian organization that has a program suitable to meet the child's needs.

When placing an American Indian child for adoption, preference shall be given, absent good cause to the contrary, to a placement with:

1. a member of the child's extended family,
2. other member's of the child's tribe, or
3. other American Indian families.

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Source: Pub. L. No. 95-608.

<sup>a</sup>States are prohibited by law from delaying or denying a foster or adoptive placement in order to place a child with a family of the child's race or cultural background, but children subject to ICWA are excluded from this prohibition. 42 U.S.C. § 1996b.

ICWA also established other requirements for children subject to the law that differ from the requirements that apply to other children in foster care. As shown in table 2, ICWA requires states to provide active efforts to keep American Indian families together and to use more stringent legal standards for placing an American Indian child in foster care and terminating parental rights.

**Table 2: Comparison of Legal Standards for Children Subject to ICWA and for Children Not Subject to ICWA**

	<b>Standard for Children Subject to ICWA</b>	<b>Standard for Children Not Subject to ICWA</b>
To Prevent Break Up of Family and/or To Reunify Family	ICWA requires states to make “active efforts” to provide services designed to prevent the break up of an American Indian family before an American Indian child can be placed in foster care or the parental rights of an American Indian parent can be terminated. However, the state can place an American Indian child in foster care if the child is in immediate danger and then must make active efforts to reunify the child with the family.	To receive foster care maintenance payments under Title IV-E of the Social Security Act, states must provide reasonable efforts to prevent the need for removing a child from his or her family and to reunify a child in foster care with his or her family. States are allowed to bypass reasonable efforts in certain egregious situations, such as when a parent has subjected a child to torture or sexual abuse.
To Terminate Parental Rights	Termination of parental rights cannot be granted unless the evidence indicates beyond a reasonable doubt that continued custody is likely to result in serious damage to the American Indian child.	State statutes have a variety of different legal grounds for terminating parental rights on behalf of non-American Indian children. Four of the five states we visited required that the statutory grounds be proven by clear and convincing evidence, a lower standard than required by ICWA.

Source: Pub. L. No. 95-608, Title IV-E of the Social Security Act, and state laws.

Note: Beyond a reasonable doubt is the highest possible evidence standard and requires proof of such a convincing character that a person would be willing to rely and act upon it without hesitation in the most important of his or her own affairs. To establish a finding by clear and convincing evidence, which is the next highest evidence standard, requires proof that the particular facts are highly probable or create a firm belief that the allegation in question is true.

ICWA also authorizes grant funding to American Indian tribes for operating child and family service programs. In fiscal year 2004, BIA administered an estimated \$10.9 million in ICWA grants to tribes. These grants generally range from about \$26,000 to \$750,000, with the average being \$60,000.

## Interaction of ICWA with ASFA

While ICWA requires states to provide active efforts to reunify families, ASFA requires states to move children more quickly through the child welfare system. Enacted in 1997, ASFA created fundamental changes in the nation’s child welfare system and established two major goals for all children: (1) to make a child’s safety the most important consideration in child welfare decisions and (2) to compel child welfare systems to make

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timely decisions regarding adoption or other permanent arrangements for children who cannot safely return home. One key ASFA provision (the “15 of 22” provision) requires states to file a petition to terminate parental rights if a child has been in foster care for 15 of the most recent 22 months unless (1) it is not in the child’s best interests, (2) the state has not provided necessary reunification services, or (3) the child is in the care of a relative.

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### Key Participants in State Child Welfare Systems

State and local child welfare agencies and courts that hear child welfare cases all play a role in making placement decisions for children in foster care. Child welfare caseworkers receive and investigate reports of suspected maltreatment and recommend and locate appropriate social services. They also make recommendations to the court about whether a child should be removed from home, where the child should be placed, and where the child will ultimately reside. The judge assesses the information presented about a case and makes the placement decisions for children. For cases involving children subject to ICWA, the judge will review the recommendations of all parties involved in a case—the child welfare agency, the parents, the tribe, and any advocate appointed to represent the child’s best interests—and determine the best placement option for the child.

When placing a child in foster care, the state must ensure that the foster family can provide a safe environment that can meet a child’s needs. To do this, each state develops its own standards and procedures for licensing foster homes. For example, a state may require foster parents to be emotionally stable and have no significant criminal or child abuse history. In addition, a state may require a home to meet certain physical requirements for safety purposes, such as having a smoke detector and being free of health and fire hazards. ICWA does not require American Indian homes to be licensed by the state. However, to be eligible to receive foster care maintenance payments under Title IV-E, families must meet state foster care standards or, for homes on or near Indian reservations, licensing standards established by the tribe.

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### Federal Oversight of Child Welfare Programs

ACF is responsible for the administration and oversight of federal funding to states for child welfare services under Titles IV-B and IV-E of the Social Security Act. Title IV-B authorizes funds to states to provide a wide array of services to prevent the occurrence of abuse and neglect and to prevent the need for foster care placements. Some tribes are eligible for Title IV-B grants as well. Title IV-E provides an open-ended individual entitlement for

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foster care maintenance payments to cover a portion of the food, housing, and incidental expenses for all foster children whose parents meet certain federal eligibility criteria and for whom certain judicial findings have been made. States can also be reimbursed for related administrative and child placement costs, including the recruitment and licensing of foster homes. Title IV-E also provides payments to adoptive parents of eligible children with special needs that can make it difficult for a child to be adopted, such as emotional, physical, or mental disabilities; emotional disturbance; being older than an age specified by the state; or being a member of a minority race. Under current law, ACF cannot provide Title IV-E funds directly to tribes. Some states have, however, established agreements with tribes to distribute Title IV-E funds to the tribes for tribal children who meet the Title IV-E eligibility requirements. As of June 2001, according to one study, 14 states and 75 American Indian tribal governments had Title IV-E agreements in place nationally.<sup>1</sup>

To receive funds from Titles IV-B or IV-E, a state child welfare agency (or a tribe receiving Title IV-B funds) must submit the following reports, which are reviewed by ACF regional staff for compliance with all reporting requirements:

- A 5-year child and family services plan (5-year plan) that describes the state's goals and objectives with regard to the needs and well being of children and families and the scope and adequacy of services available for children and families.
- A description, developed in consultation with tribes and tribal organizations, of the specific measures taken by the state to comply with ICWA, which must be included in the state's 5-year plan, as required by amendments to the Social Security Act enacted in 1994 (Pub. L. No. 103-432).
- An annual progress and services report (APSR) to discuss the state's progress in meeting the goals outlined in its 5-year plan and to revise the 5-year plan goals if necessary.

In 2000, ACF established a new federal review system to monitor state compliance with Titles IV-B and IV-E requirements. One component of this

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<sup>1</sup>See Eddie F. Brown and others, "Using Tribal/State Title IV-E Agreements to Help American Indian Tribes Access Foster Care and Adoption Funding," *Child Welfare*, vol. LXXXIII, no. 4 (2004).

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system is the CFSR, which assesses state performance in achieving safety and permanency for children, along with well-being for children and families. The CFSR process includes a self-assessment by the state, an analysis of state performance in meeting national standards established by HHS, and an on-site review by a joint team of federal and state officials. Based on a review of statewide data, interviews with community stakeholders and some families receiving services, and a review of a sample of 50 child welfare cases, HHS determines whether a state achieved substantial conformity with: (1) outcomes related to safety, permanency, and well-being, such as keeping children protected from abuse and neglect and achieving permanent, stable living situations for children; and (2) key systemic factors, such as having an adequate case review system and an adequate array of services. States are required to develop program improvement plans to address identified shortcomings. ACF conducted its first state review in March 2001 and completed on-site reviews in all 50 states and the District of Columbia by March 2004. States found to be operating in substantial conformity with Titles IV-B and IV-E must complete a full CFSR every 5 years, while states that are not in substantial conformity must begin a full CFSR review two years after approval of their program improvement plans.

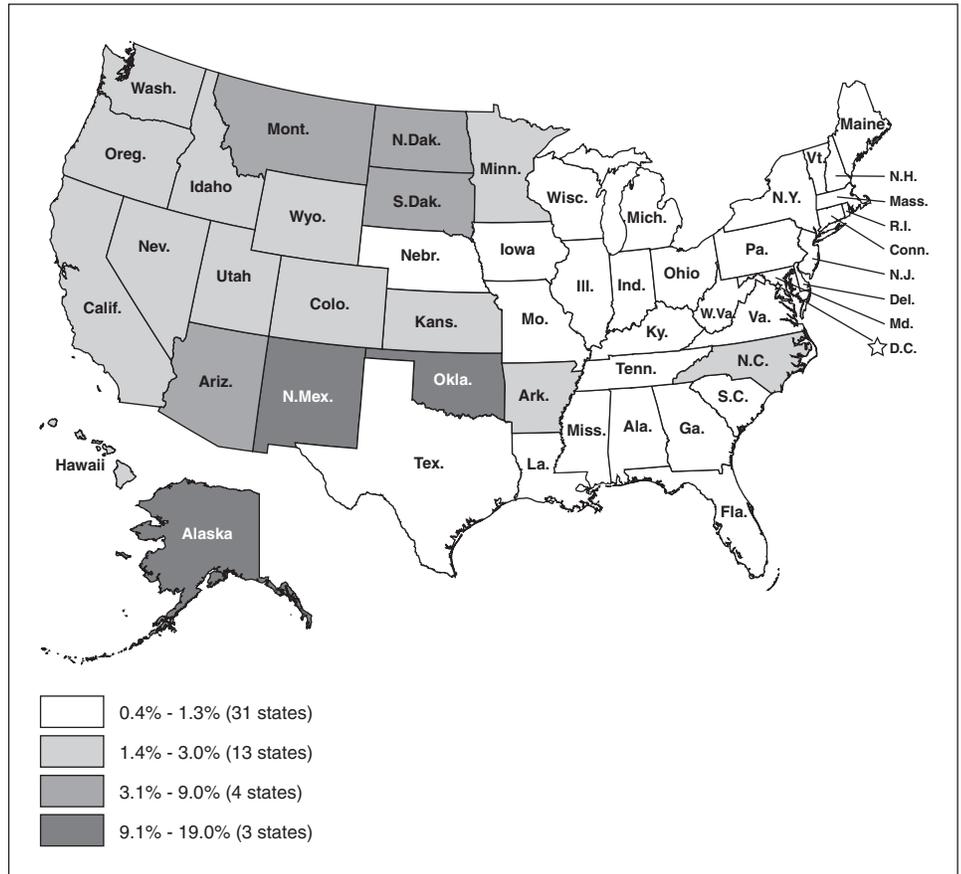
ICWA provides BIA with responsibility for administering grants to tribes for a variety of child welfare purposes and assisting states in identifying the tribal affiliation of a child upon request. However, BIA has no oversight authority in terms of how state child welfare agencies or state courts implement the law for American Indian children in state custody.

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## American Indian Demographics and Tribal Membership Requirements

According to Census estimates for 2003, approximately 4.4 million people in the United States report having some American Indian heritage, comprising 1.5 percent of the total population. This population includes individuals who may not be members or eligible for membership in a tribe, as well as individuals who are members of state recognized tribes. As shown in figure 1, the American Indian population is heavily concentrated in the West. In some cases, tribal members live in the same state as their tribe's reservation, and may live on or near the reservation. In other cases, tribal members live in states other than those where the tribe's lands are located. In other words, while a tribe's land may be located in a particular state, tribal members may live in many states around the country.

**Figure 1: American Indian Population Density by State**



Source: 2000 U.S. Census data.

ACF collects information on the number of American Indian children in state foster care in its Adoption and Foster Care Analysis and Reporting System (AFCARS); however, states are not required to identify children who are subject to ICWA. According to the most recent AFCARS data provided by ACF, the percentage and number of American Indian children reported in foster care in fiscal year 2003 varied considerably from state to

state.<sup>2</sup> In 23 states, for example, American Indian children represented less than 1 percent of all children served in foster care in fiscal year 2003. In five states, however, at least one-quarter of the foster care population was American Indian, as shown in table 3. In addition, while Oklahoma and California reported serving over 3,000 American Indian children in foster care in 2003, Delaware, Vermont, and the District of Columbia reported serving fewer than five American Indian children each.

**Table 3: States with (1) Highest Percentage of Children Served in Foster Care Who Are American Indian and (2) Highest Number of American Indian Children Served in Foster Care, FY 2003**

Percentage of children served in foster care who were American Indian		Number of American Indian children served in foster care	
State	Percentage	State	Number
Alaska	62	Oklahoma	3,689
South Dakota	61	California	3,646
Montana	35	Minnesota	2,292
North Dakota	30	Alaska	1,735
Oklahoma	25	Washington	1,690
Minnesota	15	South Dakota	1,603
New Mexico	13	Oregon	1,219
Washington	11	Montana	1,028
Nebraska	9	Nebraska	825
Idaho	9	Arizona	798

Source: AFCARS data from HHS's Children's Bureau.

Not all American Indian children who enter foster care are subject to ICWA. In Washington, for example, of the 1,690 American Indian children identified in foster care in fiscal year 2003, the state reported that about 450 were subject to ICWA. American Indian children are only subject to ICWA if they are members of, or eligible for membership in, 1 of the over

<sup>2</sup>However, previous GAO work indicates that the race and ethnicity data reported in AFCARS are not always accurate. See GAO, *Child Welfare: Most States Are Developing Statewide Information Systems, but the Reliability of Child Welfare Data Could be Improved*, GAO-03-809 (Washington, D.C.: July 31, 2003). In addition, while AFCARS data do not usually include American Indian children in tribal custody, these children are included in the AFCARS data for some states, affecting the comparability of state data on American Indian children. For example, when a tribe receives Title IV-E payments for children in tribal custody, these children are also included in a state's AFCARS data.

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500 federally recognized tribes. Federal recognition means that a tribe is formally recognized as a quasi-sovereign entity with a government-to-government relationship with the United States. With federal recognition, tribes become eligible to participate in federal assistance programs and can be exempt from state and local jurisdiction. About 40 other tribes are recognized by individual states, while other American Indian communities are not formally recognized as tribes by the United States or any individual state; children from these tribes are not subject to ICWA. Thirty-four states, most of which are located in the western portion of the United States, have federally recognized tribes. Five states, generally located in the eastern half of the country, have state recognized tribes, but no federally recognized tribes. Twelve states, also in the eastern half of the country, have no federally or state recognized tribes.

As quasi-sovereign entities, tribes establish their own membership requirements, which can vary considerably, as shown in table 4. Two common conditions for enrollment are lineal descendency from a person named on a tribe's historical membership list (sometimes known as a "base roll") or a minimum amount of tribal blood (known as blood quantum). For example, to be eligible for membership in the Navajo Nation, individuals must have at least  $\frac{1}{4}$  Navajo blood, meaning that they may have one grandparent who is full-blooded Navajo or two grandparents who are each half Navajo. Other conditions may include residing on the tribe's reservation or having continued contact with the tribe.

**Table 4: Tribal Membership Requirements for Selected Tribes, as Reported by Tribal Officials**

<b>Tribe</b>	<b>Requirement</b>
Mooretown Rancheria (California)	Descendency from 1 of 3 individuals responsible for distributing tribal assets when the tribe was terminated in 1958 (federal recognition of the tribe was subsequently restored in 1983)
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation (California)	A 1/8 blood quantum <b>and</b> one parent enrolled in the Morongo tribe
Cherokee Nation of Oklahoma	Descendency from 1899-1906 base rolls
Pawnee Indian Tribe of Oklahoma	A 1/8 blood quantum
Confederated Tribes of the Grand Ronde Community of Oregon	A 1/16 blood quantum <b>and</b> a parent enrolled at the time of the child's birth and at the time the child applies for enrollment (unless the parent is deceased)
Confederated Tribes of the Umatilla Reservation (Oregon)	One enrolled parent or grandparent <b>and</b> 1/4 blood quantum in any federally recognized tribe
Narragansett Indian Tribe (Rhode Island) <sup>a</sup>	Descendency from 1880-1884 base roll
Crow Creek Sioux Tribe of the Crow Creek Reservation (South Dakota)	A 1/4 blood quantum in a Sioux tribe <b>and</b> some Crow Creek blood
Rosebud Sioux Tribe of the Rosebud Indian Reservation (South Dakota)	A 1/4 blood quantum in a Sioux tribe <b>and</b> one parent is a member of the tribe

Source: GAO interviews with tribal officials.

<sup>a</sup>Since 1995, the tribe has closed its enrollment to all individuals older than 12 months.

Tribes may change their tribal membership criteria, thereby changing a child's eligibility for ICWA. For example, an official from the Pawnee Indian Nation said that the tribe had recently lowered its blood quantum requirement from 1/4 to 1/8. Since 1995, the Narragansett tribe has closed its enrollment for most individuals.

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**Time Needed to Determine a Child’s ICWA Status, Availability of American Indian Foster and Adoptive Homes, and Cooperation between Tribes and States Influence Placement Decisions for Children Subject to ICWA**

Placement decisions for children subject to ICWA—including where a child should live upon entering foster care, how long the child should remain in care, and where the child should live permanently—can be influenced by the length of time it takes to determine a child’s ICWA status, the availability of American Indian foster and adoptive homes, and how states and tribes work together to follow the provisions of ICWA and ASFA. These factors are unique to children subject to ICWA, but other factors—such as the timeliness in identifying relative caregivers and the availability of foster and adoptive homes—can influence placement decisions similarly for children who are not subject to the law. Similarly, while the cultural beliefs of many tribes may conflict with state implementation of ASFA provisions to move a child to adoption within certain time frames, our survey results from 15 states responding to a relevant question showed little difference in how frequently children subject to ICWA were exempted from ASFA’s provision compared to other children.

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**Identification of a Child’s ICWA Status Can Be Challenging and Can Influence Placement Decisions**

Before a child can be placed in accordance with ICWA’s placement preferences, the state has to identify the child as being subject to the law. A number of state and tribal officials emphasized the identification of a child’s ICWA status as an important factor in placement decisions, while some state officials also reported challenges in making such determinations in a timely manner. According to several child welfare officials, determining that a child is subject to ICWA after initial placement decisions have already been made can sometimes lead to a child having more placements or spending more time in foster care, because, as some of these officials explained, they have to process the new information about a child’s ICWA status, rethink decisions already in place, and possibly make new placement decisions.

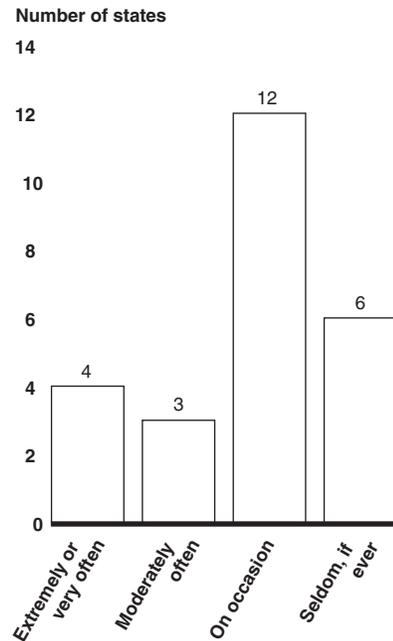
States report that they are making efforts to encourage the appropriate determination of children’s ICWA status. The five states we visited have policies and procedures intended to ensure that social workers properly identify children subject to ICWA. For example, all of these states except Rhode Island have special forms to help them collect information about a child’s family history needed by tribes to determine a child’s tribal membership status. Many, although not all, state child welfare officials

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surveyed also reported having policies and procedures to help social workers identify children subject to ICWA. Of the 48 states responding to our survey, 33 indicated that they provided ICWA guidelines to social workers, while 27 indicated that they provided mandatory ICWA training for newly hired social workers.

However, tribes and states report that the appropriate determination of a child's ICWA status does not always occur. Several tribal representatives we spoke with reported that state caseworkers do not always accurately determine a child's ICWA status, noting that appropriate identification varies widely from state to state and among localities within a state. Similarly, our survey of state child welfare officials indicates that state child welfare workers sometimes fail to collect the information necessary to accurately identify whether a child is subject to ICWA (see fig. 2). Of the 25 state child welfare agencies that could answer the relevant survey question, 7 reported that they often requested insufficient information to accurately identify a child's tribal membership, while 12 states reported that this happened on occasion. Child welfare officials and tribal representatives from California reported that some caseworkers may incorrectly assume that children with certain characteristics—such as blond hair or blue eyes or a Hispanic surname—are not subject to ICWA and do not ask if they have American Indian heritage.

**Figure 2: Responses from 25 State Child Welfare Agencies on the Frequency with Which the State Requested Insufficient Information to Accurately Determine ICWA Status, FY 2003**



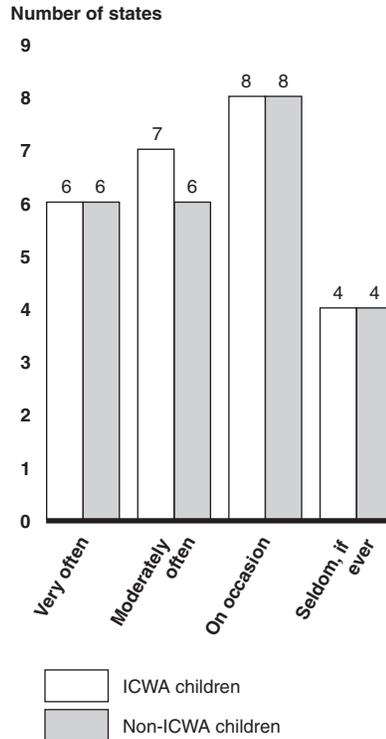
Source: GAO survey.

Notes: The survey question was as follows: In fiscal year 2003, how often did your state experience any of the following circumstances related to identifying a child's ICWA status: state requested insufficient information to accurately identify a specific tribe?

Eighteen states responded "data not available" or "do not know."

Child welfare officials told us that their ability to identify a child's ICWA status can depend on the receipt of complete information from families and the timely response from tribes to states' inquiries about a child's tribal affiliation. They noted that families are not always forthcoming with information about a child's American Indian heritage, either because they lack the information or are reluctant to share it. When families provide imprecise information, social workers may need to contact multiple tribes to try to confirm a child's ICWA status. As shown in figure 3, 13 states reported that family members often provided imprecise information about their American Indian heritage and 12 states reported often contacting multiple tribes to determine whether a child was subject to ICWA.

**Figure 3: State Child Welfare Agencies Reporting the Frequency with Which Families Provided Information That Was Too Imprecise to Identify a Child’s Specific Tribe, Requiring States to Send Membership Inquiries to Multiple Tribes, FY 2003**



Source: GAO survey.

Notes: The survey questions were as follows: In fiscal year 2003, how often did your state experience any of the following circumstances related to identifying a child’s ICWA status: (1) family or caregiver provided imprecise information to identify any specific tribe; and (2) family or caregiver provided imprecise information, requiring state to notify multiple tribes to determine if child was eligible for membership in one of them?

Eighteen states responded “data not available” or “do not know” about the inability to identify a specific tribe, while 19 reported “data not available” or “do not know” about the need to send inquiries to multiple tribes.

During our site visits, child welfare officials provided several reasons why parents are sometimes unable to provide information about a child’s American Indian heritage. In some cases, according to an Oklahoma official, the mother may not know that the father is American Indian. A South Dakota social worker explained that a mother may not provide information about paternal relatives if she does not want the child placed with them. In other cases, officials from California and Oklahoma told us that families report that a relative may have American Indian heritage, but they do not know which tribe, making it difficult for child welfare workers

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to determine which tribe to contact. A county court worker in California, for example, said she has had parents who claimed some Sioux heritage, but did not know which Sioux tribe was involved. In these cases, she said she has to send inquiries to 16 tribes to determine if the child is eligible for membership in any of them. Social workers can ask BIA to assist them in identifying the appropriate tribe of a child; however, BIA does not have tribal membership lists and both tribal and state officials explained that BIA can do little to help identify a child's tribal affiliation.

Once a social worker believes a child might be American Indian, an inquiry is usually sent to the tribe with whom the child might be affiliated to determine if the child is a tribal member or eligible for membership. Officials from all of our site visit states except Rhode Island told us that tribes vary in how quickly they respond to inquiries about a child's membership status. They noted that some tribes do not respond to inquiries in a timely manner, which can increase the time it takes to determine whether the child is subject to ICWA, although they acknowledged that some tribes lack staff and resources to respond more promptly. When a tribe does not respond, child welfare staff have to make additional phone calls or send additional letters to encourage the tribe to provide the requested information. However, several tribal officials reported that some ICWA inquiries from child welfare agencies do not contain sufficient information for the tribe to determine a child's membership status. They explained, for example, that tribes may need to know the names and birthdates of a child's family members in order to determine if a child is eligible for tribal membership, but the child welfare agency does not always obtain this information from families and include it in their inquiry letters.

Even if sufficient information is gathered to determine that a child meets ICWA's requirements, some state courts may invoke the "existing Indian family exception" to determine that a child is not subject to the law. Some judges have ruled that the law does not apply when neither the child nor the child's parents have maintained significant social, cultural, or political ties with the tribe, although ICWA does not include this language. Without this exception, these judges reason that ICWA is unconstitutionally discriminatory because it treats American Indian children differently based solely on their ethnicity, as opposed to the family's political affiliation with the tribe. While courts in some states use this exception, courts in other states have explicitly rejected it, reasoning that such an exception is not included in the language of ICWA and that it undermines ICWA's purpose by allowing state courts to impose their own subjective values in determining what constitutes American Indian culture and who

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is an American Indian. Several tribal officials stated that this exception hinders the effective implementation of ICWA because state courts can invoke the doctrine to disregard placement preferences under the act. Legislation was introduced in the Congress to amend ICWA to eliminate this exception, but it was not enacted.

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### Availability of American Indian Foster and Adoptive Homes Is a Key Factor Influencing Placement Decisions for Children Subject to ICWA

State and tribal officials noted that the availability of American Indian foster and adoptive homes is a key factor in making placement decisions for children subject to ICWA that follow the law's placement preferences. When these children are initially placed with non-American Indian families, states and tribes have to make difficult decisions about whether to move the child if an American Indian foster or adoptive family later becomes available. However, many states have policies to place children with relatives whenever possible and, according to officials in two states, they face similar decisions about changing placements for children who are not subject to ICWA when relative caregivers become available after a child's initial placement with another foster family.

### Availability of American Indian Foster and Adoptive Homes

The availability of American Indian foster and adoptive homes influences whether states place children subject to ICWA with a tribal family, as preferred by law. However, child welfare officials in the five states we visited described having a shortage of American Indian homes because families do not meet state licensing standards or pass state background checks required to become eligible for federal financial support in caring for a foster child. For example, a social worker in a local child welfare office in California told us that some American Indian homes that do not meet the physical standards required of state licensed foster homes, such as having no more than two children share a bedroom or ensuring that each child has a separate bed, are not approved as foster homes. Several tribal officials said, however, that state licensing standards do not always recognize the communal living situations common in American Indian communities and exclude appropriate American Indian caregivers. State officials in South Dakota and California also noted that tribes can license foster parents themselves using their own licensing standards.

Similarly, child welfare officials said that some American Indian families have previous criminal convictions or reports of possible child abuse or neglect, which preclude the state from approving them as possible foster or adoptive parents. Several tribal officials, however, stated that criminal background checks sometimes disqualify an otherwise appropriate American Indian relative from caring for a child subject to ICWA. In some cases, these offenses occurred many years ago and do not impact an

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individual's fitness to serve as a potential foster or adoptive parent. A child welfare official we visited in Oregon noted that these background checks may exclude potential caretakers. Officials from Rhode Island and California stated that they will make exceptions in certain cases for homes that do not pass the required background check. For example, potential foster parents in California with a criminal background (that does not include serious offenses such as murder, kidnapping, or rape) may be approved if they prove they are rehabilitated. State child welfare officials and others have previously noted that background checks required by the federal government sometimes exclude otherwise appropriate caregivers without regard to whether they are American Indian or of other races.

Tribal officials described other obstacles to recruiting American Indian foster families. Several tribal officials told us that American Indian families sometimes view the state licensing process as intrusive and insensitive. Child welfare officials in South Dakota told us that they believe that some American Indian families distrust state agencies and are not willing to complete the process to become approved caretakers. One of these officials also said that some American Indian families are already providing informal kinship care for American Indian children and cannot care for additional foster children. In addition, a few tribal officials said that states rely on the tribe to find relatives and tribal foster families for children subject to ICWA; however, some officials stated that tribes have limited resources to conduct such searches and to recruit tribal foster families themselves. Some tribal officials pointed out that, without direct access to Title IV-E funds, many tribes do not have the resources to reimburse foster families. ICWA authorizes federal grants to tribes for providing child welfare services, including licensing foster homes, but several tribal child welfare officials said that they need funds directed for this specific purpose to efficiently recruit American Indian foster homes.

On our survey, more states reported difficulties locating American Indian foster homes for children subject to ICWA compared to locating other foster homes (see table 5). Of the state child welfare agencies responding to a relevant survey question, 15 reported that an American Indian foster home was often not available for the placement of a child subject to ICWA, while 6 states reported that they often did not have any type of foster home available for these children. Eight states faced similar problems finding appropriate foster homes for children who were not subject to ICWA.

**Table 5: State Child Welfare Agencies Reporting Challenges Related to the Availability of Foster Homes, FY 2003**

	For children subject to ICWA		For children not subject to ICWA
	American Indian foster home was not available	Foster home (of any background) was not available	Foster home was not available
Extremely often	2	0	0
Very often	8	3	2
Moderately often	5	3	6
On occasion	6	11	12
Seldom, if ever	2	8	6
<b>Total states that could answer the question</b>	<b>23</b>	<b>25</b>	<b>26</b>
Do not know or data not available	19	17	16

Source: GAO survey of state child welfare agencies.

Note: The survey question was as follows: How frequently in fiscal year 2003 did your state encounter each of the following challenges: (a) appropriate foster home (of any ethnic background) for an ICWA child was not available; (b) appropriate American Indian foster home for an ICWA child was not available; and (c) appropriate foster home for a non-ICWA child was not available?

Of the state child welfare agencies responding to a relevant survey question, 14 reported that American Indian homes for adoption or long-term guardianship were often not available, and an additional 8 states reported that they often did not have any type of home available, as shown in table 6. However, 9 states faced similar problems finding homes for adoption or guardianship of children who were not subject to ICWA.

**Table 6: State Child Welfare Agencies Reporting Challenges Related to the Availability of Homes for Adoption or Long-Term Guardianship, FY 2003**

	For children subject to ICWA		For children not subject to ICWA
	American Indian adoptive or long-term guardianship home was not available	Adoptive or long-term guardianship home (of any background) was not available	Adoptive or long-term guardianship home was not available
Extremely often	2	0	0
Very often	4	1	1
Moderately often	8	7	8
On occasion	5	9	13
Seldom, if ever	4	7	5
<b>Total states that could answer the question</b>	<b>23</b>	<b>24</b>	<b>27</b>
Do not know or data not available	20	18	17

Source: GAO survey of state child welfare agencies.

Note: The survey question was as follows: How frequently in fiscal year 2003 did your state encounter each of the following challenges: (a) appropriate adoptive or long-term guardianship home (of any ethnic background) for an ICWA child was not available; (b) appropriate American Indian adoptive or long term guardianship home for an ICWA child was not available; (c) appropriate adoptive or long-term guardianship home for a non-ICWA child was not available?

The availability of a foster home that provides services for a special needs foster child can also influence the placement of a child subject to ICWA. Some tribal and child welfare officials noted that some children are placed with non-American Indian families when they have special needs and require services that cannot be provided by most tribal homes. As social workers in a South Dakota child welfare office told us, tribes often agree that children with special needs, such as those stemming from fetal alcohol syndrome or reactive attachment disorder (a complex psychiatric illness that can affect young children and is characterized by serious problems in emotional attachments to others) should be placed within reach of the services they need, even if it means placing them with non-American Indian families.

### Decisions to Change a Child's Placement

A child subject to ICWA may be placed with a non-American Indian family if relatives or American Indian foster or adoptive homes are not available or if the child's ICWA status was not determined when the child first entered foster care. If, after a placement decision has been made, the state learns that a child is subject to ICWA or that a relative or an American Indian foster or adoptive home has become available, the state and tribe face the difficult decision regarding whether to change a child's foster or pre-adoptive placement. Late identification of relatives also occurs for

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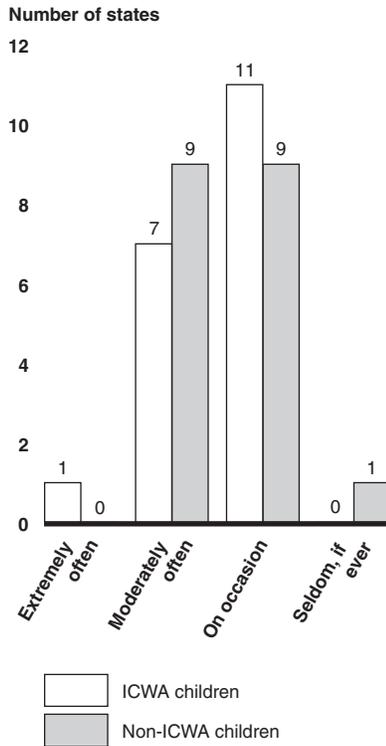
non-American Indian children. Almost all states, including the five we visited, have a policy to place all children with relatives, if possible.<sup>3</sup> Child welfare officials in three of these states said that relatives are sometimes reluctant to care for children initially and may only come forward once the state stops its efforts to reunify the family and begins to seek an adoptive family. Officials in these three states also noted that families coming forward later can occur with relatives of all children, regardless of their ICWA status.

Our survey data indicate that states face decisions to change placements with similar frequency for children subject to ICWA and those not subject to ICWA. As shown in figure 4, 8 of the 19 states responding to a relevant question reported often having to make decisions about whether to keep children subject to ICWA with their current foster family compared to 9 states often facing these decisions for other children.

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<sup>3</sup>Urban Institute, *The Continuing Evolution of State Kinship Care Policies* (Washington, D.C., 2002).

**Figure 4: Survey Results from 19 Child Welfare Agencies Reporting on How Often They Face Decisions about Moving a Child from a Foster Home to Another Placement When a Relative Came Forward Late in a Case**



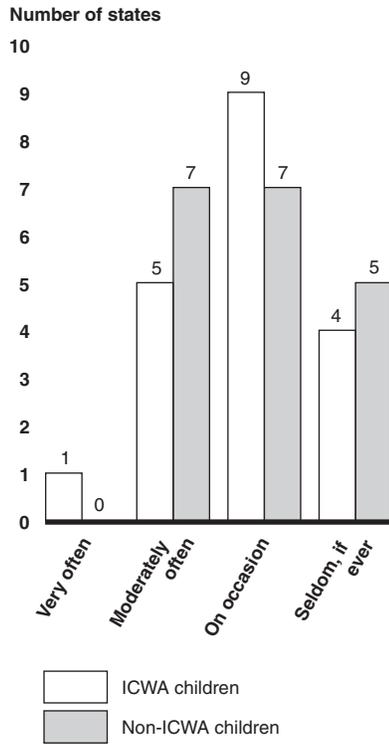
Source: GAO survey.

Notes: The survey question asked: to what extent did your state face the following challenges, situations, or events for ICWA and non-ICWA children: relative came forward late in a case, prompting need to decide between current foster placement and placement with a relative?

Twenty-three states responded “data not available” or “do not know” for ICWA children, while 18 states responded “data not available” for non-ICWA children.

Our survey showed that fewer of these same 19 states were likely to face decisions about whether to change a child’s pre-adoptive home to place the child with a relative and that these decisions occurred about as often for children subject to ICWA as for other children not subject to the law. As shown in figure 5, six states reported often facing decisions about whether to keep children subject to ICWA with their current pre-adoptive family, while seven states reported often facing these decisions for other children.

**Figure 5: Survey Results from 19 Child Welfare Agencies Reporting on How Often They Face Decisions to Move a Child from a Pre-adoptive Placement to Another Placement When a Relative Came Forward Late in a Case**



Source: GAO survey.

Notes: The survey question asked: to what extent did your state face the following challenges, situations, or events for ICWA and non-ICWA children: relative came forward late in a case, prompting need to decide between current adoptive placement and placement with a relative?

Twenty-three states responded “data not available” or “do not know” for ICWA children, while 18 states responded “data not available” for non-ICWA children.

Child welfare officials said that when facing decisions to change a child’s placement, they would generally move a child to a home that was more in accordance with ICWA’s preferences, unless this would create emotional problems for the child. For example, an assistant district attorney in Oklahoma said that she had a case in which the child had serious emotional issues as a result of witnessing a sibling’s homicide at the hands of her mother. The attorney recommended against moving the child to a relative’s home after 2 years of doing well living with a non-American Indian family. However, a few tribal officials said that they sometimes had difficulties getting state child welfare and court officials to move a child from an initial placement with a non-American Indian family, regardless of

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the circumstances. An Oklahoma tribe, for example, said a judge refused to move a child to an American Indian home after 3 days in a non-American Indian foster home because the child had already bonded with the foster family.

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### Relationships with Tribes Can Affect Placement Decisions and How They Align with ASFA Provisions

How well states and tribes work together can also affect placement decisions, particularly in agreeing on the appropriate permanency plan for a child. For example, while ASFA encourages states to move children into permanent homes quickly and emphasizes adoption for children who cannot return to their families, many tribes do not believe in terminating parental rights and do not support adoption. When tribes are not satisfied with placement decisions being made by the state, they can seek tribal jurisdiction of a case, which gives the tribe authority to make placement decisions for a child. However, officials in the five states we visited reported that tribes do not frequently seek jurisdiction of children subject to ICWA. Differences in opinion between tribes and private adoption agencies about how ICWA's placement preferences apply to children who are voluntarily relinquished for adoption can also affect placement decisions.

### Tribal and State Relationships

The level of cooperation between tribes and states can affect placement decisions, particularly in agreeing on the appropriate permanency plan for a child. Tribal and state officials we interviewed described varying levels of communication and cooperation between tribes and child welfare agencies. In Oregon, for example, tribal, state, and local officials consistently reported that they worked closely together to make key placement decisions for children subject to ICWA. Social workers at the two local offices we visited emphasized that they consult with tribal staff about children subject to ICWA, work closely with them throughout a case, and give deference to the tribe's wishes about where the child should be placed and what the child's permanency goal should be. Because they work so closely with the tribes, some tribal and child welfare officials explained that they are generally successful in placing children subject to ICWA with relatives or American Indian families.

Several tribal officials told us that they worked well with caseworkers in offices near the tribe, but not as well with social workers elsewhere. In Cherokee County in Oklahoma, for example, which includes the headquarters of the Cherokee Nation, state court and child welfare officials reported that they generally worked well with tribal officials and agreed on placements for children in foster care. Officials with the Cherokee child welfare program agreed that they had a good relationship

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Tribal Cultural Beliefs and ASFA

with the local county child welfare staff, but stated that social workers in other counties and other states did not always work collaboratively with the tribe. Several other tribal officials added that some caseworkers will not involve the tribe in placement decisions and do not listen to the tribe's recommendations. Tribal officials said that when tribes and states work well together, children subject to ICWA are more likely to be placed with relatives or American Indian families.

Tribal cultural beliefs can also influence decisions about a child's permanent placement. These cultural beliefs sometimes conflict with ASFA's 15 of 22 provision, which requires states to file a petition to terminate parental rights for a child who has been in foster care for 15 of the last 22 months. Officials from many tribes told us that their tribes do not believe that the connection between a parent and child can be severed and, therefore, they do not believe in the termination of parental rights. They expressed concern that states interpret ASFA to overemphasize adoption as a permanency goal when parents cannot reunify with their children. According to one tribal official, if a child is living with family members in a stable, long-term situation, the tribe considers that a permanent placement. Other tribal officials said that they would agree to adoption under certain circumstances, such as when relatives are adopting the child or if a parent has had no contact with a child in 2 years.

Many of the tribal officials we spoke with also expressed concern that ASFA does not provide sufficient time for parents to reunify with their children. Some pointed out that ASFA's 15-month time frame for filing a petition to terminate parental rights does not provide sufficient time for American Indian parents to address difficult issues such as substance abuse. A previous GAO study reported on some of the difficulties state child welfare officials faced when applying ASFA's 15 of 22 provision to any family dealing with substance abuse issues.<sup>4</sup>

While a state can determine that tribal cultural beliefs is a compelling reason to exempt children subject to ICWA from ASFA's 15 of 22 provision, our survey results, as well as previous work, indicate that children not subject to ICWA can also be exempted when adoption is not an appropriate plan. In our survey, for example, results from the 15 states

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<sup>4</sup>See GAO, *Foster Care: Recent Legislation Helps States Focus on Finding Permanent Homes for Children, but Long-Standing Barriers Remain*, GAO-02-585 (Washington, D.C.: June 28, 2002).

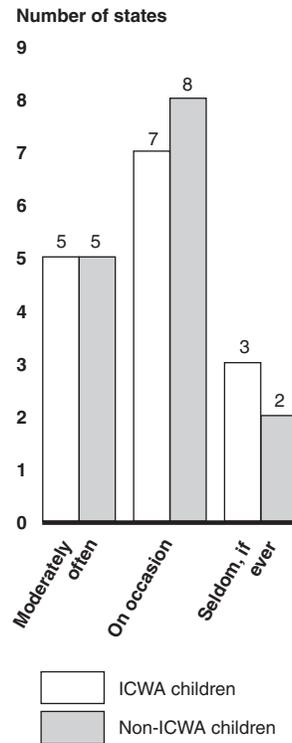
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that could answer a relevant question show little difference in how frequently they exempt children subject to ICWA from the 15 of 22 provision compared to children not subject to ICWA (see fig. 6). Similarly, in two previous GAO reports, data from a limited number of states indicated that many of these states exempted numerous children from ASFA's requirement to file a petition to terminate parental rights after a child has been in foster care for 15 of the most recent 22 months.<sup>5</sup> According to two Oregon court officials we interviewed, all children who are unlikely to be adopted, such as those who have severe behavioral or mental health issues, are also exempted from this provision. One of these officials also said that both children subject to ICWA and those not subject to ICWA may be exempt when a child has been placed with grandparents who do not want to be part of terminating the parental rights of their own children.

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<sup>5</sup>See GAO, *Foster Care: States' Early Experiences Implementing the Adoption and Safe Families Act*, [GAO/HEHS-00-1](#) (Washington, D.C.: Dec. 22, 1999) and [GAO-02-585](#).

**Figure 6: Survey Results from 15 State Child Welfare Agencies Reporting on How Often They Exempt Children from ASFA's 15 of 22 Provision, FY 2003**



Source: GAO survey.

Notes: The survey question was as follows: In fiscal year 2003, how often did the following situations or events occur with ICWA and non-ICWA children: state decided to exempt child who had been in foster care for 15 of the most recent 22 months from ASFA's requirement to file a petition to terminate parental rights?

Twenty-six states responded "data not available" or "do not know" for ICWA children, while 22 states responded "data not available" or "do not know" for non-ICWA children.

## Tribal and State Jurisdiction Decisions

While several tribal officials told us that they will seek jurisdiction of a case and the associated authority to make placement decisions for a child if a tribe is not satisfied with the placement decisions being made by the state, officials from five states we visited told us they receive relatively few transfer requests for children subject to ICWA. Officials from many tribes we interviewed concurred that they do not request jurisdiction in many cases and discussed some factors they consider when deciding whether to transfer ICWA cases to tribal court. Tribal officials explained that they lack the resources to effectively provide for the needs of all children subject to ICWA and that states can generally offer more services for children than the tribes. However, officials from some tribes also said

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they will not request jurisdiction if the parent lives far from the reservation because the tribe will not be able to provide services or monitor the family. Officials from some tribes also told us that they allow children to remain in state custody with the state providing services if the state is working cooperatively with the tribe and if the tribe is satisfied with the decisions the state is making, but will seek a transfer if they have any concerns.

When tribes do request a transfer of jurisdiction to tribal court, state, court, and tribal officials in four of the states we visited did not report any significant problems with tribal requests to transfer jurisdiction. However, child welfare and tribal officials in South Dakota described tensions relating to transfer requests. State, local, and court officials in the state expressed concerns that some tribal requests to transfer jurisdiction occur late in the case and often after the state has moved to terminate parental rights. Judges we interviewed in South Dakota said they would generally deny these requests as untimely. Officials from two South Dakota tribes we visited acknowledged that sometimes a parent who does not want to cooperate with the state will seek to transfer a case to the tribal court; one tribal official also noted that sometimes state courts do not provide a good reason for denying tribal transfer requests. During our tribal panels, tribal officials from other states also reported resistance at times from states with regard to transferring cases to tribal courts.

### Placement Decisions for Children Voluntarily Relinquished for Adoption

While ICWA's placement preferences also apply to children who are voluntarily relinquished by their parents for adoption, tribal and private adoption agency officials we spoke to reported varying practices in implementing the preferences for these children. We discussed voluntary adoptions with tribal officials and representatives from private adoption agencies in the five states we visited and they reported different perspectives about how ICWA placement preferences should be applied in these circumstances and whether tribal or parental preferences should prevail if the two are in conflict. Officials with some tribes indicated that when they are informed about a voluntary adoption case involving a child who is a member or potential member of their tribe, they generally do not become involved in the private adoption proceedings. Officials in other tribes reported that they will intervene in these types of cases and oppose adoption placements that do not follow ICWA's placement preferences. Several tribal officials expressed concern that the tribe loses many potential tribal members through voluntary adoptions.

Most of the private adoption officials we spoke with reported that tribes frequently accept a birth parent's choice of a non-American Indian

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adoptive family. In some cases, however, they said a tribe will insist that a child subject to ICWA be placed with relatives or with a family from the tribe. Several private adoption officials reported that many birth parents do not want to place their child with a tribal family or relatives on the reservation; if a tribe opposes the parent's choice of adoptive family, the birth parent frequently chooses to parent the child. In the opinion of some of these officials, a parent's wishes should constitute good cause for not following ICWA's placement preferences. However, officials from two Oklahoma tribes told us that private agencies do not have many American Indian adoptive families because many American Indian families cannot afford the sizeable adoption fees they charge; as a result, American Indian mothers are generally not given an opportunity to choose an American Indian adoptive family when they seek to voluntarily relinquish a child through a private agency.

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## Limited Data Show No Consistent Differences in Length of Stay or Other Foster Care Experiences for Children Subject to ICWA and Other Children

Limited data from four states showed that children subject to ICWA in some of these states had similar foster care experiences as children not subject to ICWA, while in other states, they had different experiences. In two of four states that could identify children subject to ICWA in their information systems, these children stayed in foster care for lengths of time similar to those of Caucasian children. In Washington, however, children subject to ICWA were less likely to leave foster care within 2 years compared to Caucasian and other minority children, while in Oregon children subject to ICWA and other minority children were somewhat more likely to do so compared to Caucasian children. In addition, differences in the number of placements and the exit destinations of children subject to ICWA compared to other children were evident. Many states reported in our survey that they did not have the information necessary to comment on children's experiences in foster care, but only 3 of the 10 states responding to a relevant question reported that following ICWA's requirements lengthened a child's stay in foster care by 5 months or more. Data were not available from these states to determine whether these longer time periods resulted in children experiencing a higher number of foster care placements or differences in how children left the foster care system—whether through adoption, transfer to another agency, or by other means.

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Data from the four states—which may not reflect the experiences of other states—have some limitations.<sup>6</sup> For example, while the percentage of missing data was small for most of these states, Oregon was unable to determine the race, ethnicity, or ICWA status of about 15 percent of children exiting foster care in fiscal year 2003. In addition, the data from Oklahoma, Oregon, and South Dakota include some children in tribal custody, while children in tribal custody are not included in the data from Washington (see apps. I and II for more information about the data provided by these states). In addition, our analyses are based on children exiting foster care, which can influence the measurement of foster care outcomes.<sup>7</sup> We have only reported differences between groups that are statistically significant.<sup>8</sup>

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### Data from the Four States and Survey Results Show Different Patterns in the Length of Time Children Subject to ICWA Stay in Foster Care

While no national data exist, data from four states showed different patterns in the length of time children subject to ICWA spent in foster care compared to other children in fiscal year 2003. As shown in figure 7, children exiting foster care who were subject to ICWA in two states (Oklahoma and South Dakota) stayed in foster care for about the same period of time as Caucasian and other minority children. In Washington, however, children subject to ICWA who exited care were more likely to have longer foster care stays in comparison; in Oregon, they had shorter stays compared to Caucasian children, but similar stays compared to other minority children.<sup>9</sup> Differences in lengths of stay can also be observed

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<sup>6</sup>Rhode Island also provided data on children subject to ICWA. However, we are not reporting this information because so few children subject to ICWA left foster care in Rhode Island in fiscal year 2003 and this data may not be representative of the experiences of children subject to ICWA in the state.

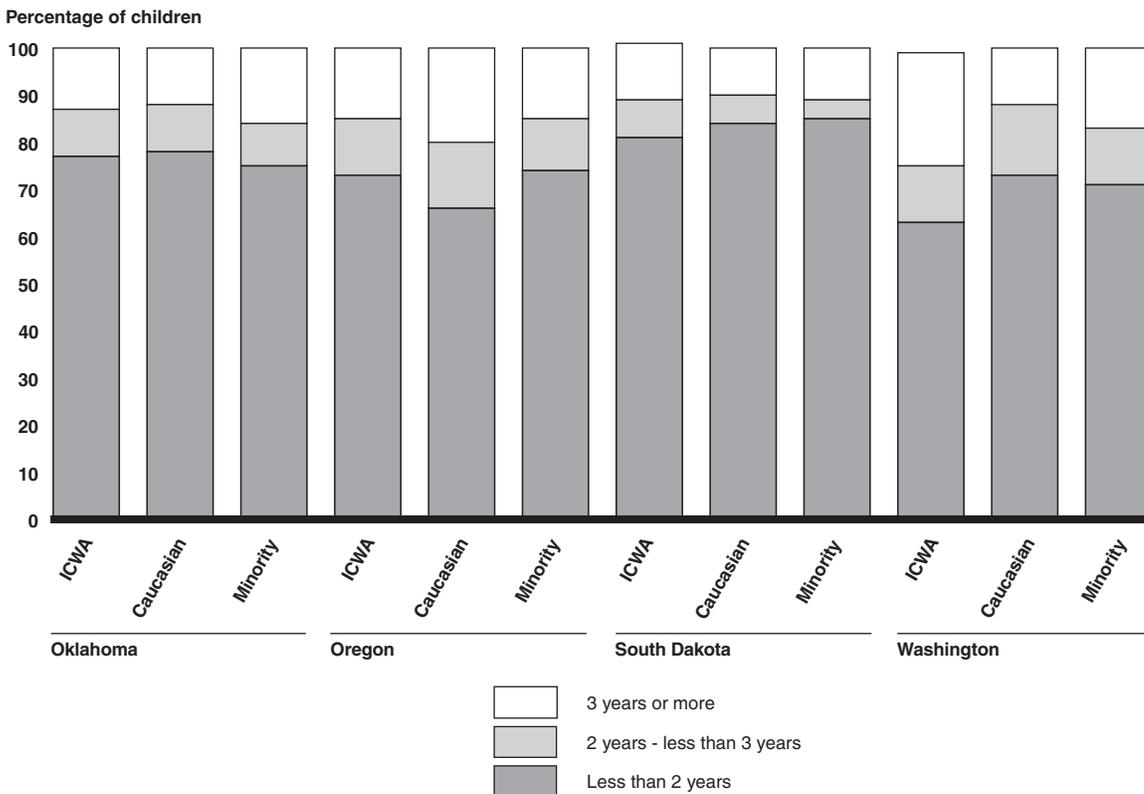
<sup>7</sup>When collecting data on children who exit care, data on children currently in foster care are not included and children with shorter foster care stays are overrepresented, biasing the measured outcomes. For example, the overall lengths of stay for children exiting care tend to appear shorter due to this overrepresentation.

<sup>8</sup>We tested the data for statistical significance using the chi square test and have reported differences between groups that are statistically significant at the 95 percent confidence level.

<sup>9</sup>According to Washington officials, children who are subject to ICWA in their state are less likely to exit foster care within 30 days than other children, but are slightly more likely to exit care when they remain in care for more than 30 days. Oregon officials noted that children subject to ICWA in their state are less likely to exit care during their first month of foster care than other children. However, by the 24<sup>th</sup> month of care, the percentage of children subject to ICWA and other minority children exiting foster care exceeds the percentage of Caucasian children exiting foster care.

among states. For example, in South Dakota, 81 percent of children subject to ICWA who exited care spent 2 years or less in foster care compared to 63 percent of children subject to ICWA in Washington.

**Figure 7: Length of Stay for Children Exiting Foster Care in Four States, FY 2003**



Source: Data provided by child welfare agencies in these states.

Notes: The number of children subject to ICWA exiting care in fiscal year 2003 was 214 in Oregon, 1,534 in Oklahoma, 592 in South Dakota, and 169 in Washington.

Minority children can include American Indian children who are not subject to ICWA.

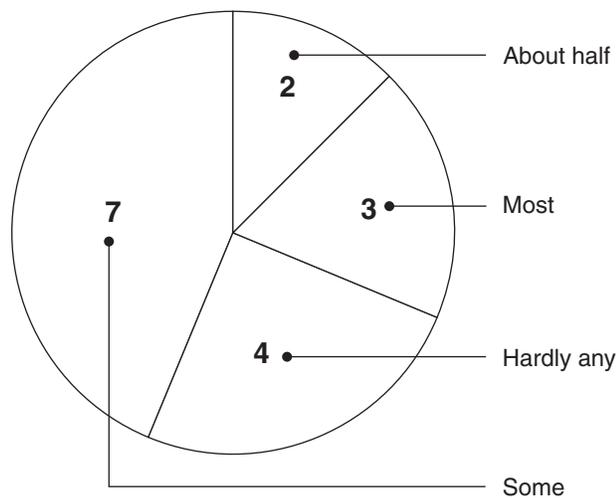
Three of the states were not able to identify the race or ethnicity for all children exiting foster care and these children were not included in our analysis. The percentage of children with unknown ethnicity who exited foster care in 2003 was small in two of the states (0.2 percent in South Dakota and 1.7 percent in Washington), but was higher in Oregon (14.7 percent).

The data from Washington do not include any children who are in the custody of a tribal court. In Oregon, Oklahoma, and South Dakota, children who are in the custody of a tribal court and whose tribe has a Title IV-E agreement with the state are included in the state's data. In addition, the South Dakota data include some children who are in the custody of a tribal court, but for whom the state provides services and supervision.

Due to rounding, figures may not add to 100 percent.

Most states were unable to respond to our survey questions about the effect of following ICWA procedures on the amount of time children stay in foster care. However, of the 16 state child welfare agencies that answered this survey question, 4 states reported that hardly any children experienced longer stays in foster care as a result of following ICWA procedures, while 7 reported that only some children remained longer in foster care. The remaining 5 states reported that half or more of the children were affected by the law's requirements (see fig. 8).

**Figure 8: Survey Results from 16 State Child Welfare Agencies Reporting How Many Children Remain in Foster Care Longer as a Result of Following ICWA Procedures, FY 2003**



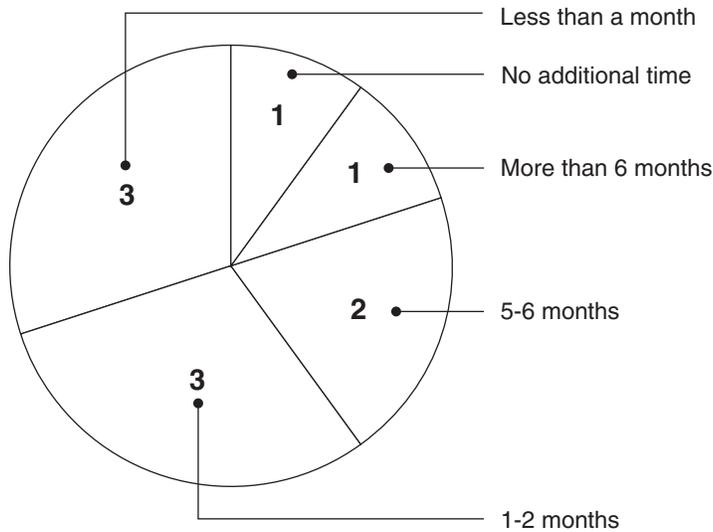
Source: GAO survey.

Notes: The survey question was as follows: Compared to children not subject to ICWA, overall, for about how many children subject to ICWA has following ICWA procedures increased the amount of time required to be placed in a permanent home?

Twenty-six states responded "data not available" or "do not know."

Of the 10 states in our survey that reported on the estimated increase in the amount of time to place a child in a permanent home as a result of following ICWA, most reported that the additional time was minimal. As shown in figure 9, officials in seven states reported that, on average, children experienced no more than 1 to 2 additional months in foster care. Only three states said that following ICWA requirements delayed a child's permanent placement 5 months or more.

**Figure 9: Survey Results from 10 State Child Welfare Agencies Reporting on the Estimated Increased Time That Following ICWA Procedures Adds to a Child’s Time in Foster Care, FY 2003**



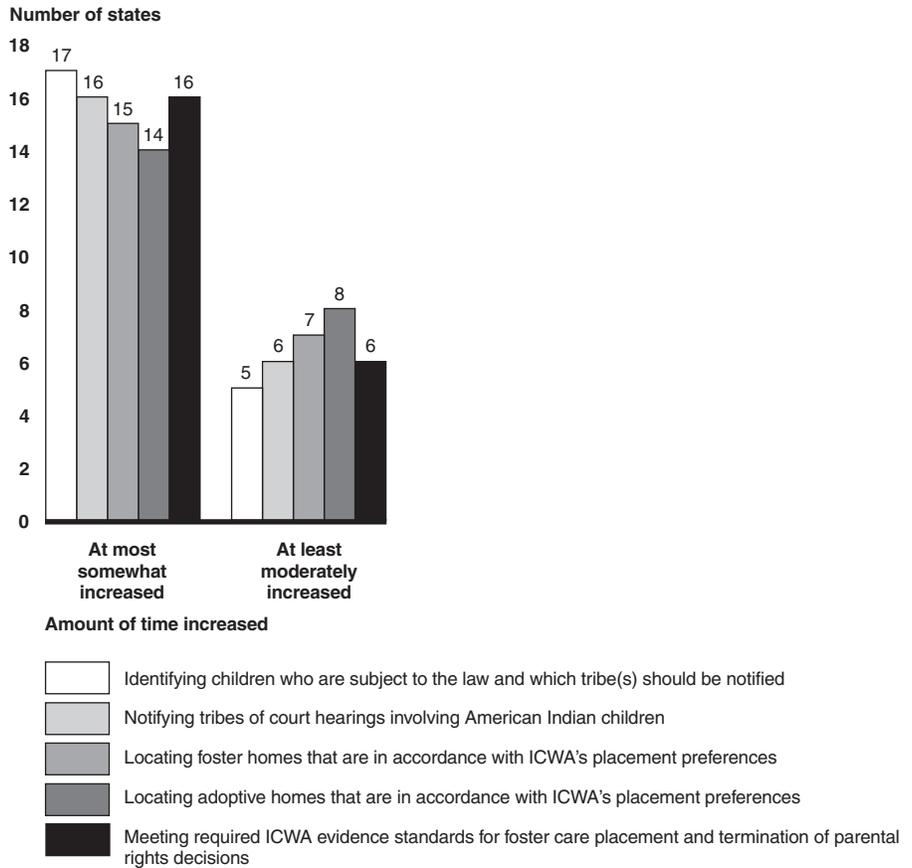
Source: GAO survey.

Notes: The survey question was as follows: On average, how much additional time does following ICWA procedures collectively add to the time it takes to place a child subject to ICWA in a permanent placement, compared to children not subject to ICWA?

Thirty-two states responded “data not available” or “do not know.”

When asked about the effect of individual ICWA requirements, officials in most of the 22 responding states reported that following each of five ICWA requirements did not increase, or only somewhat increased, the time needed to place a child in a permanent home, as shown in figure 10. No more than eight states reported that following a specific ICWA procedure was responsible for a moderate or larger increase in the time children spend in foster care. While responses were fairly similar for the five ICWA requirements, more states reported that finding foster and adoptive homes in accordance with ICWA’s placement preferences influenced a child’s time in foster care.

**Figure 10: Survey Results from 22 State Child Welfare Agencies Reporting on the Effect of Specific ICWA Procedures on the Time to Place a Child in a Permanent Home Compared to Other Children in Foster Care, FY 2003**



Source: GAO survey.

Notes: The survey question was as follows: On average, how much have each of these required ICWA procedures increased, if at all, the total amount of time it takes to place ICWA children in a permanent placement compared to non-ICWA children?

Nineteen states responded “data not available” or “do not know” about the effect of locating foster homes that are in accordance with ICWA placement preferences, while 21 states responded “data not available” or “do not know” to the remaining questions regarding identifying children who are subject to ICWA, notifying tribes, locating adoptive homes, and meeting ICWA evidence standards.

For the “at most somewhat increased” category, the following response categories were grouped together: hardly or not at all increased and somewhat increased.

For the “at least moderately increased” category, the following response categories were grouped together: moderately increased, greatly increased, and very greatly increased.

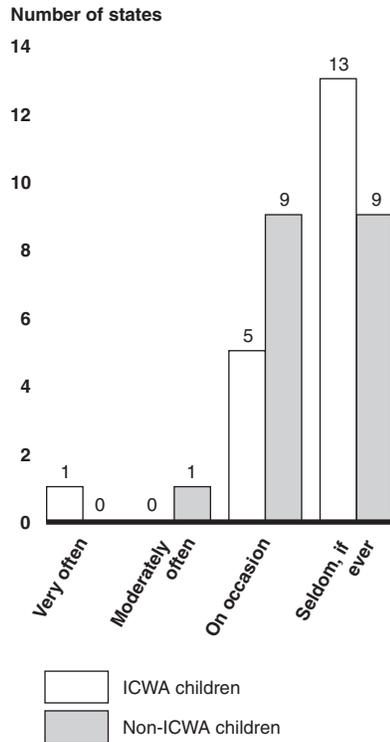
One reason that some states may report few differences in length of stay for children subject to ICWA and other children is that officials in state

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child welfare agencies and courts may use similar standards that apply to all children, despite differences outlined in the law.

- **Active Efforts:** ICWA requires states to provide “active efforts” to prevent the break up of an American Indian family, while states are only required to provide “reasonable efforts” for other children to receive federal funds. According to some state officials, as part of providing active efforts, caseworkers may offer extra assistance, such as transportation assistance or culturally-relevant services to American Indian families, and may spend more time trying to reunify the family, which can, in some cases, lead to a child remaining in foster care for a longer period of time. However, other state officials told us that the level of services offered to the general child welfare population has been increasing, blurring the line between active efforts and the “reasonable efforts” states are required to provide to all families whose children are taken into state custody. Officials in four states attributed this similarity to the influence of ASFA, noting that ASFA’s time frames require states to provide more services upfront in order to decide after 15 months whether to reunify a family or terminate parental rights. Some tribal officials disagreed and told us that social workers do not always provide active efforts to children subject to ICWA. In some cases, they said, state caseworkers simply refer parents to services without providing any additional assistance—essentially providing the same level of services as they would for a non-American Indian family.
- **Evidence Standard for Terminating Parental Rights:** Some child welfare officials we interviewed in one state believe that ICWA’s higher evidence standard for terminating parental rights can make it more difficult to terminate parental rights and prolong a child’s stay in foster care in some cases. Other child welfare officials, however, do not consider ICWA’s evidence standard to be a significant factor in placement decisions, because they believe that judges and juries use a similar evidence standard for all children. Our survey results also suggest that petitions to terminate parental rights are not often rejected for children subject to ICWA due to the higher evidence standard. As shown in figure 11, most of the 19 states responding to a relevant question reported that petitions on behalf of children subject to ICWA are seldom, if ever, rejected by the courts due to insufficient evidence. In fact, these states reported that courts rejected these petitions due to insufficient evidence more often on behalf of children not subject to ICWA.

**Figure 11: Survey Results from 19 State Child Welfare Agencies Reporting on How Often Courts Reject State Requests to Terminate Parental Rights for Children in Foster Care Because Evidence Does Not Meet Applicable Legal Standards, FY 2003**



Source: GAO survey.

Notes: The survey question was as follows: In fiscal year 2003, how often did the following situations or events occur with ICWA and non-ICWA children: court rejected the state’s request to terminate parental rights because the state’s case did not meet the appropriate legal sufficiency standard for evidence?

Twenty-four states responded “data not available” or “do not know” for ICWA children, while 19 states responded “data not available” or “do not know” for non-ICWA children.

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## Data from Four States Show Some Differences in How Children Subject to ICWA Move through Foster Care

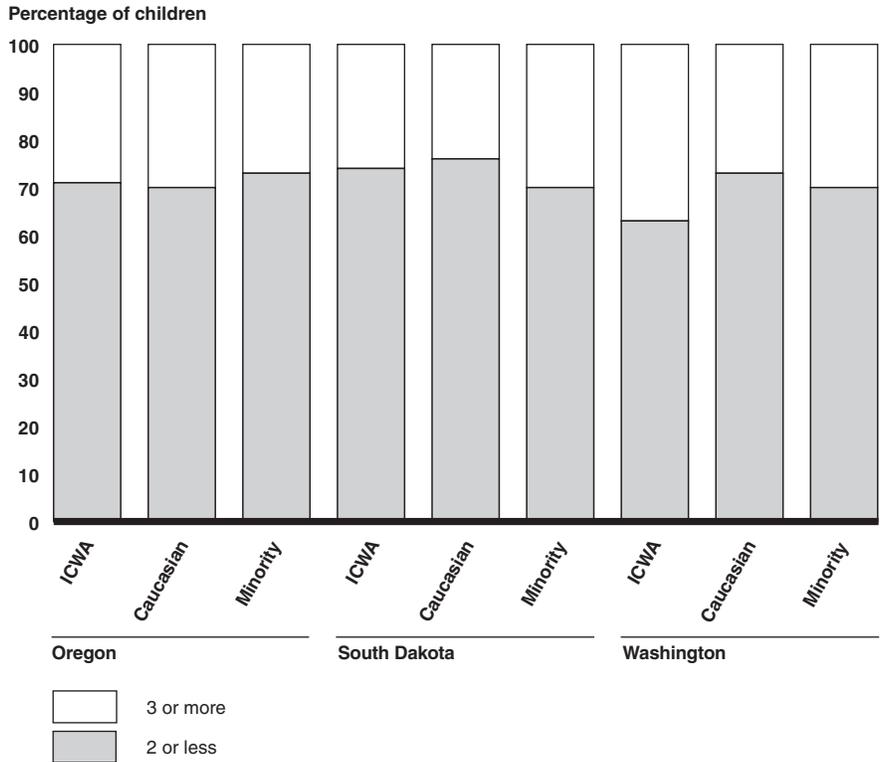
While only three of the four states provided placement information, data from two of these states showed no differences in the number of placements experienced by children subject to ICWA and other children who exited foster care.<sup>10</sup> In Washington, however, children exiting care who were subject to ICWA were more likely to have a greater number of placements than Caucasian or other minority children, as shown in figure 12. Additional statistical analyses of the state placement data showed children subject to ICWA in Washington were less likely than other children to have one or two placements and more likely to have four or more placements than Caucasian children. The analyses also showed that Oregon children subject to ICWA were less likely than Caucasian children to have four or more placements.<sup>11</sup> These data also indicate differences among states in the number of placements. For example, South Dakota reported that 26 percent of children exiting foster care who were subject to ICWA had three or more placements while in foster care compared to 37 percent in Washington.

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<sup>10</sup>Oklahoma did not include data on number of placements for children subject to ICWA in response to our data request.

<sup>11</sup>Oregon officials explained that, compared to children subject to ICWA, a higher percentage of Caucasian children remain in foster care for more than 24 months, which may be a factor in Caucasian children being more likely to have four or more placements. They said that their data show that children subject to ICWA and Caucasian children have a similar number of placements during their first 12 months in foster care.

**Figure 12: Number of Placements for Children Exiting Foster Care in Three States, FY 2003**



Source: Data provided by child welfare agencies in these states.

Notes: The number of children subject to ICWA exiting care in fiscal year 2003 was 214 in Oregon, 592 in South Dakota, and 169 in Washington.

Minority children can include American Indian children who are not subject to ICWA.

Washington could not identify the number of placements for two Caucasian children (less than 1 percent) and six minority children (less than 1 percent).

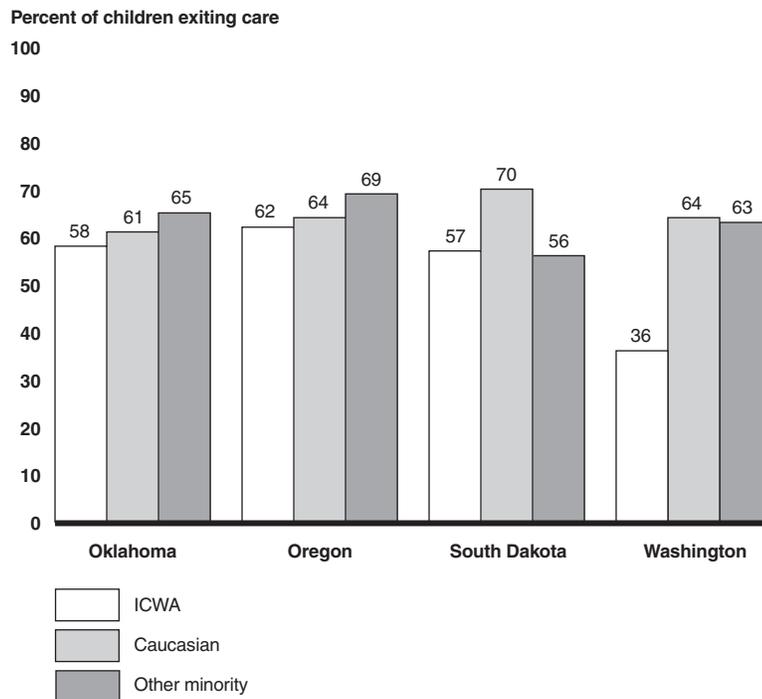
Three of the states were not able to identify the race or ethnicity for all children exiting foster care and these children were not included in our analysis. The percentage of children with unknown ethnicity who exited foster care in 2003 was small in two of the states (0.2 percent in South Dakota and 1.7 percent in Washington), but was higher in Oregon (14.7 percent).

The data from Washington do not include any children who are in the custody of a tribal court. In Oregon and South Dakota, children who are in the custody of a tribal court and whose tribe has a Title IV-E agreement with the state are included in the state's data. In addition, the South Dakota data include some children who are in the custody of a tribal court, but for whom the state provides services and supervision.

Data from the four states showed some differences in how children subject to ICWA left foster care compared to other children. When comparing whether they left the foster care system to reunify with their

families, left under another type of permanent arrangement (such as adoption or guardianship), or left under different circumstances, most children in these states who left the foster care system in 2003 were reunified with their families. However, some significant differences can be observed. In Washington, for example, reunification rates for children subject to ICWA were significantly lower compared to Caucasian or other minority children. In Oklahoma, children subject to ICWA and Caucasian children were less likely to be reunified than other minority children. Differences were also found based on the state where children lived. For example, the reunification rate for children subject to ICWA was 58 percent in Oklahoma, but only 36 percent in Washington.

**Figure 13: Percentage of Children Exiting Foster Care in FY 2003 by Reunification in Four States**



Source: Data provided by child welfare agencies in these states.

Notes: The number of children subject to ICWA exiting care in fiscal year 2003 was 214 in Oregon, 1,534 in Oklahoma, 592 in South Dakota, and 169 in Washington.

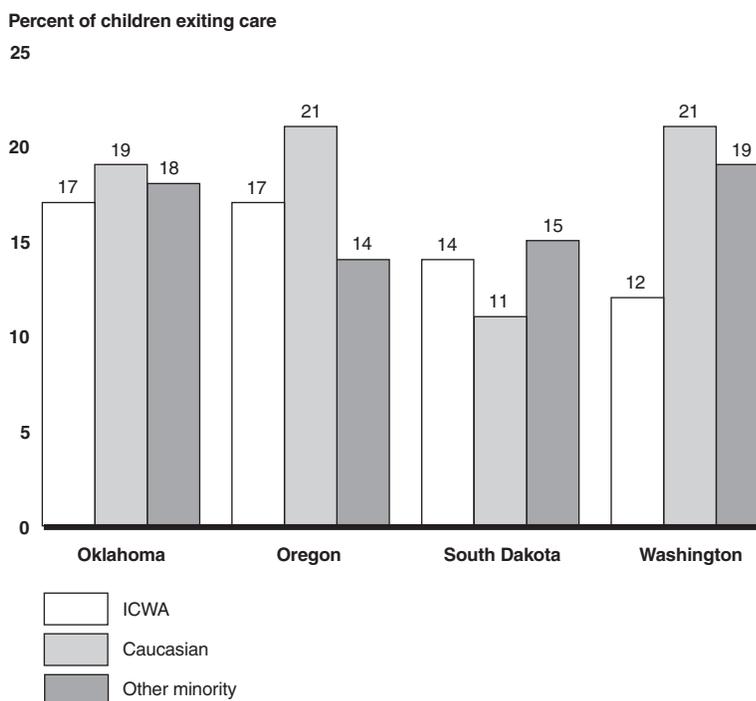
Minority children can include American Indian children who are not subject to ICWA.

Three of the states were not able to identify the race or ethnicity for all children exiting foster care and these children were not included in our analysis. The percentage of children with unknown ethnicity who exited foster care in 2003 was small in two of the states (0.2 percent in South Dakota and 1.7 percent in Washington), but was higher in Oregon (14.7 percent).

The data from Washington do not include any children who are in the custody of a tribal court. In Oregon, Oklahoma, and South Dakota, children who are in the custody of a tribal court and whose tribe has a Title IV-E agreement with the state are included in the state's data. In addition, the South Dakota data include some children who are in the custody of a tribal court, but for whom the state provides services and supervision.

Children subject to ICWA were somewhat less likely than Caucasian children, and about as likely as other minority children, to leave foster care through adoption in the four states, as shown in figure 14. Adoption rates for children subject to ICWA were fairly comparable among the states, ranging from 12 percent to 17 percent.

**Figure 14: Children Exiting Foster Care through Adoption, FY 2003 in Four States**



Source: Data provided by child welfare agencies in these states.

Notes: The number of children subject to ICWA exiting care in fiscal year 2003 was 214 in Oregon, 1,534 in Oklahoma, 592 in South Dakota, and 169 in Washington.

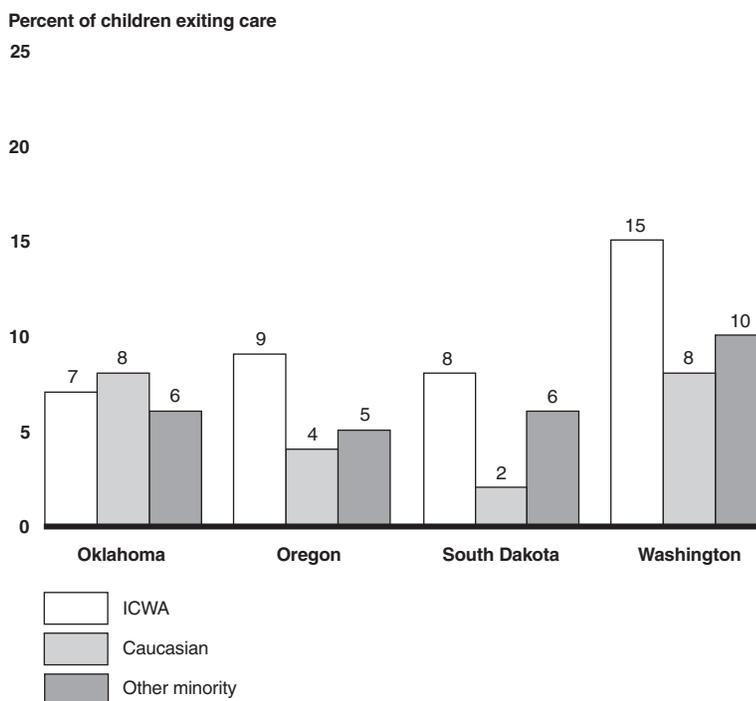
Minority children can include American Indian children who are not subject to ICWA.

Three of the states were not able to identify the race or ethnicity for all children exiting foster care and these children were not included in our analysis. The percentage of children with unknown ethnicity who exited foster care in 2003 was small in two of the states (0.2 percent in South Dakota and 1.7 percent in Washington), but was higher in Oregon (14.7 percent).

The data from Washington do not include any children who are in the custody of a tribal court. In Oregon, Oklahoma, and South Dakota children who are in the custody of a tribal court and whose tribe has a Title IV-E agreement with the state are included in the state's data. In addition, the South Dakota data include some children who are in the custody of a tribal court, but for whom the state provides services and supervision.

Children subject to ICWA were somewhat more likely to exit foster care through a guardianship arrangement than either Caucasian or minority children, as shown in figure 15. Guardianship rates for children subject to ICWA were fairly similar in three states, ranging from 7 percent to 9 percent, but were higher in Washington.

**Figure 15: Percentage of Children Exiting Foster Care in FY 2003 by Guardianship in Four States**



Source: Data provided by child welfare agencies in these states.

Notes: The number of children subject to ICWA exiting care in fiscal year 2003 was 214 in Oregon, 1,534 in Oklahoma, 592 in South Dakota, and 169 in Washington.

Minority children can include American Indian children who are not subject to ICWA.

Three of the states were not able to identify the race or ethnicity for all children exiting foster care and these children were not included in our analysis. The percentage of children with unknown ethnicity who exited foster care in 2003 was small in two of the states (0.2 percent in South Dakota and 1.7 percent in Washington), but was higher in Oregon (14.7 percent).

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The data from Washington do not include any children who are in the custody of a tribal court. In Oregon, Oklahoma, and South Dakota, children who are in the custody of a tribal court and whose tribe has a Title IV-E agreement with the state are included in the state's data. In addition, the South Dakota data include some children who are in the custody of a tribal court, but for whom the state provides services and supervision.

While most children who exit foster care are placed in permanent homes, many leave foster care under different circumstances—for example, when they turn 18, run away, or are transferred to another agency. Children subject to ICWA in three states were significantly more likely than Caucasian children to be transferred to another agency. According to a child welfare official in South Dakota, the state does not have information to determine what type of agency these children were transferred to, but said that other agencies could include tribal courts, juvenile justice facilities, and agencies for the developmentally disabled. Officials in Oklahoma and Washington reported that most children subject to ICWA in this category are transferred to tribal court.

While transfer rates for children subject to ICWA were generally 11 percent or less, in Washington, transfer rates were nearly three times as high, and this was the second most common way for children subject to ICWA to leave foster care. Washington officials explained that the state seeks to identify a child's tribal affiliation and transfer a child to tribal jurisdiction whenever appropriate. They noted a relationship between the higher transfer rate and the lower reunification rate for children subject to ICWA in their state, pointing out that if the percentage of children reunified and the percentage transferred are combined, the total percentage is similar for all groups of children. We reviewed exit data using an alternative methodology that excluded transfers and found that differences among children subject to ICWA, Caucasian children, and other minority children were somewhat less. However, children subject to ICWA were still somewhat less likely to leave foster care through adoption and somewhat more likely to leave under a guardianship arrangement than other children.

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## ACF Obtains Limited Information on ICWA Implementation through Its Oversight of States' Child Welfare Systems

While ICWA did not give ACF direct oversight responsibility for states' implementation of ICWA, the agency reviews limited information as part of its general oversight of states' child welfare systems; however, the monitoring processes in place sometimes provide little information that ACF can use to assess states' efforts to implement the law's requirements. States are required to discuss ICWA implementation in their overall 5-year child and family services plan and in their annual progress and services reports, but states are not required to use a standard reporting format and some states provide little meaningful information with respect to ICWA

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implementation. ACF's reviews of states' overall child welfare systems through its CFSR process have greater potential to identify state implementation issues, but the structure of this oversight process does not ensure that ICWA issues will be addressed in the various aspects of the review itself or that identified problems will be addressed and monitored in states' program improvement plans or through other means.

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### ACF Has Limited Oversight Authority and Some States Report Little Information on ICWA Implementation

ICWA did not give any federal agency explicit oversight responsibilities with respect to states' implementation of the law nor did it require states to report on their implementation efforts. Recognizing the lack of reporting requirements, the Congress amended Title IV-B to require state child welfare agencies to report to ACF on their efforts to comply with ICWA in their 5-year plans and to develop these plans in consultation with tribal organizations in the state. This reporting requirement provides ACF with some limited oversight authority, since it monitors states' compliance with Title IV-B requirements. ACF officials emphasized that the agency does not administer ICWA and is not authorized to take any enforcement actions for failure to comply with the act, although they encourage states to comply with ICWA. ACF guidance issued for developing the 5-year plans covering fiscal years 2000 through 2004 required states to provide a description of the specific measures to be taken to comply with ICWA, which, at a minimum, must provide for (1) the identification of American Indian children, (2) the notification of tribes, and (3) giving preference to American Indian caregivers when determining out-of-home or permanent placements for American Indian children. Additional guidance issued in 2000 (1) required states to discuss ICWA implementation in their annual progress and services reports, which discuss progress made in implementing the 5-year plans; (2) emphasized the need for states to consult with tribal organizations; and (3) recommended that states with no federally recognized tribes consult with urban or national American Indian organizations in the development of their plans.

In its guidance for states' 2003 annual progress and services reports, ACF noted that states appeared to be having difficulties reporting on ICWA adherence and reiterated that states needed to provide a description of the specific measures taken to comply with the law. However, as of December 2004, ACF had not established standard guidelines or tools for reviewing and evaluating the completeness of state ICWA compliance activity in these reports. Reviews of state reports have shown that they do not always include information that ACF would need to monitor states' implementation of the law, because they either do not include ICWA implementation information or do not explicitly address progress made to

implement the law. A study of the 1999 5-year plans and the 2000 annual progress and services reports by researchers from Washington University in St. Louis found that three-quarters of the states did not address all three of ACF's required measures and over half of the states failed to address any of the required measures.<sup>12</sup> Our more recent review of 48 states' annual progress and services reports submitted to ACF in 2004 showed similar results in addressing all three areas (see table 7), although only 4 states did not address ICWA at all. While all states have the same reporting requirements, we noted that states having higher concentrations of American Indians were somewhat more likely to address all three ACF reporting requirements than other states.

**Table 7: States Explicitly Addressing ICWA Compliance Requirements in Their 2004 Annual Progress and Services Reports**

Tribal Population Density Category <sup>a</sup>	All 3 required areas addressed	2 required areas addressed	1 required area addressed	Addressed ICWA compliance, but not any required areas explicitly	Did not address ICWA	Total
I	3	0	1	8	0	12
II	3	0	1	6	0	10
III	1	1	2	6	0	10
IV	2	4	4	2	4	16
<b>Total</b>	<b>9</b>	<b>5</b>	<b>8</b>	<b>22</b>	<b>4</b>	<b>48<sup>b</sup></b>

Source: GAO review of states' 2004 annual progress and services reports.

<sup>a</sup>Category I represents states with the highest tribal population densities and Category IV represents states with the lowest tribal population densities. See appendix I for more information about the creation of these categories and which states are included in each.

<sup>b</sup>Approved annual progress and services reports for three states were not available at the time of our review.

Even when states do provide ICWA information on the three required areas, our review revealed that the reports varied widely in scope and content, making it sometimes difficult to determine what progress states were making in implementing the law. For example, North Dakota's report discussed numerous ICWA-related topics, including contacting tribes to elicit suggestions for increasing relative or tribal placements. However, the state did not provide information on the extent to which it was successful in giving preference to American Indian caregivers when placing American

<sup>12</sup>Brown, E. F.; Limb, G. E.; Munoz, R.; and Clifford, C. A.; *Title IV-B Child and Family Services Plans: An Evaluation of Specific Measures Taken by States to Comply with the Indian Child Welfare Act* (Seattle, Wash.: Casey Family Programs, 2001).

Indian children. In other cases, reports are missing information on state actions taken to implement ICWA. During our site visit to Oregon, for example, we noted that the state had procedures to identify ICWA children, notify tribes, and follow ICWA's placement preferences that were not reflected in the state's 2004 annual progress and services report submitted to ACF.

ACF guidance issued in 2000 lists several suggested ICWA activities that states may choose to address in their 5-year plans. Addressing these activities is not required, but could provide a better picture of efforts states are taking to improve how ICWA is being implemented. These activities include training programs, development of caseworker expectations, recruitment of American Indian foster homes, and agreements to recognize and use tribal foster homes. While some states included information on some of these suggested activities in their annual progress and services reports, they often did not discuss the relative success of their efforts, which limited the usefulness of this information for oversight purposes. For example, while table 8 shows that 31 states discussed their ICWA training efforts, our review showed that only 2 states reported how many staff were trained.

**Table 8: States Reporting the Use of Activities Suggested by ACF to Comply with ICWA**

Suggested ICWA Activities in ACF Guidance	Number of states
Training programs for state employees	31
Forms/procedures that include tribal affiliation and notification	36
Development of state caseworker compliance expectations or measures	1
ICWA-related collaborations with local agencies to provide services to American Indian children	12
State partnership agreements with tribes	23
Culturally appropriate standards for foster home licensing	1
Recruiting of American Indian foster homes	14
Promotion of relative placements for American Indian children	5
Recognition and use of foster homes licensed by tribes	4
Other <sup>a</sup>	32

Source: GAO review of states' 2004 annual progress and services reports.

<sup>a</sup>Other activities states reported include hiring ICWA specialists and holding ICWA conferences.

As shown in table 9, on average, states with higher American Indian population densities discussed more ICWA activities in their annual progress and services reports than states with lower population densities.

**Table 9: Relationship between ICWA Topics Discussed in States' 2004 Annual Progress and Services Reports and Density of States' American Indian Population**

American Indian population density category <sup>a</sup>	Average number of ICWA measures discussed in APSR
I	4.0
II	4.1
III	3.5
IV	2.2

Source: GAO review of 2004 annual progress and services reports.

<sup>a</sup>The states included in each category are listed in appendix I. Category I includes states with the highest densities of American Indians in their populations, while category IV includes states with the lowest densities.

The range of ICWA information included in the annual progress and services reports may also be related to how closely ACF regional staff review states' activities for information related to ICWA implementation. ACF's regional offices are responsible for reviewing the ICWA information that states report in their 5-year plans and in their annual progress and services reports to ensure that states have followed ACF guidance, including whether they contain information on how tribes or tribal organizations were consulted in the development of these documents. If information initially submitted by states about their consultation with tribes or efforts to comply with ICWA is lacking or unclear, regional officials said they generally require states to provide additional clarification concerning their ICWA activities prior to approving the state's 5-year plan or annual progress reports. Four regions had a staff member designated as the tribal liaison for the region (two others designated a tribal liaison during the course of our review). ACF staff in some regions reported conducting some additional oversight activities with regard to ICWA or tribal issues. In one ACF region with 69 tribes, the tribal child welfare specialist told us that she checked the policy and procedures manuals for each state to ensure that they included guidance on following ICWA. In another region with some tribes but relatively few children subject to ICWA, the tribal program specialist has sponsored several ICWA training sessions for state child welfare and judicial staff, in part because of continued resistance to ICWA on the part of some state child welfare and judicial staff. In other regions, ACF staff reported relying on reviews

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of states' plans and annual progress reports, with no additional monitoring activities.

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### ACF's Child and Family Services Reviews Do Not Focus on ICWA and Do Not Ensure That States Address ICWA Problems

The structure of ACF's CFSR reviews of states' overall child welfare systems does not ensure that ICWA issues will be addressed in the various aspects of the review itself or that identified problems will be addressed and monitored in states' program improvement plans. Information about states' ICWA efforts may be obtained in three different parts of the review process:

- **In the CFSR statewide assessment process:** A state must discuss how effective it has been in implementing ICWA.
- **In interviews with stakeholders by the CFSR review team:** These interviews may discuss how the child welfare agency complies with ICWA provisions concerning notification of tribes, observing placement preferences, and working with tribes and courts concerning decisions for American Indian children in foster care.
- **As part of the onsite review of child welfare case files:** The review determines if the case involves an American Indian child and if so, will then determine if (1) the state notified the tribe of the child's placement in a timely manner and (2) the child was placed with extended family or with an American Indian family.

Our review of the self-assessments submitted by 51 states showed that all but 2 states addressed their efforts to implement ICWA, but the submitted information was somewhat limited to assess states' performance. One state, for example, noted that it had American Indian children in state custody, but did not discuss any ICWA compliance measures. In general, states with higher concentrations of American Indians were more likely to discuss a greater number of ICWA implementation efforts in their statewide assessments.

Our review of CFSR final reports disclosed that 32 of 51 state reports raised some concerns about ICWA implementation, as shown in table 10. CFSR reports for 10 states—generally those with low densities of American Indians—had no discussion of ICWA implementation. Concerns raised in the reports included inadequate training of state social workers, shortages of American Indian homes for foster and adoptive placements, and identification and notification issues. For example, the Alaska CFSR final report notes that stakeholders commented on the lack of sufficient

tribal involvement in ICWA training, despite a 5-year emphasis on this training. The Arizona report noted that compliance with ICWA is not always consistent with the intent or spirit of the law from district to district, and that efforts are not made to determine the applicability of ICWA in all cases. Similarly, in the Nevada report, some stakeholders expressed concern that some judges in the state do not follow the provisions of ICWA. In Utah, reviewers noted that stakeholders expressed different opinions about the consistency with which caseworkers identified American Indian children and notified tribes when these children are in state custody. Montana’s report stated that stakeholders noted that the child welfare agency is in need of American Indian foster homes, but does not do any specific recruiting for these homes.

**Table 10: ICWA Concerns Raised in CFSR Final Reports and Program Improvement Plans by State**

Tribal population density category	State	ICWA discussed in final CFSR report?	ICWA implementation concerns raised in final CFSR report?	ICWA concerns in CFSR addressed in PIP?
I	Alaska	Y	Y	Y
	Arizona	Y	Y	N
	Idaho	Y	Y	Y
	Minnesota	Y	Y	N
	Montana	Y	Y	N
	New Mexico	Y	N	NA
	North Dakota	Y	Y	N
	Oklahoma	Y	Y	Y
	Oregon	Y	N	NA
	South Dakota	Y	Y	Y
	Washington	Y	Y	Y
	Wyoming	Y	Y	Y
	II	California	Y	N
Colorado		Y	Y	N
Kansas		Y	N	NA
Maine		Y	Y	Y
Michigan		Y	Y	N
Mississippi		Y	Y	Not received <sup>b</sup>
Nebraska		Y	Y	Y
Nevada		Y	Y	N
North Carolina		Y	N	NA
Rhode Island		Y	Y	Not received <sup>b</sup>
Utah		Y	Y	Y

Tribal population density category	State	ICWA discussed in final CFSR report?	ICWA implementation concerns raised in final CFSR report?	ICWA concerns in CFSR addressed in PIP?
III	Wisconsin	Y	Y	Y
	Alabama	Y	N	NA
	Connecticut	Y	N	NA
	Florida	Y	Y	N
	Iowa	Y	Y	Y
	Indiana	NA	N	NA
	Louisiana	Y	Y	N
	Massachusetts	Y	Y	N
	New York	Y	Y	N
	South Carolina	Y	Y <sup>c</sup>	NA
Texas	Y	Y	N	
IV	Arkansas	Y	Y	Y
	Delaware	N <sup>a</sup>	N	NA
	District of Columbia	N	N	NA
	Georgia	N <sup>a</sup>	N	NA
	Hawaii	N <sup>a</sup>	N	NA
	Illinois	Y	Y	Not received <sup>b</sup>
	Kentucky	N <sup>a</sup>	N	NA
	Maryland	Y	Y	Not received <sup>b</sup>
	Missouri	Y	Y	Y
	New Hampshire	N	N	NA
	New Jersey	Y	N	NA
	Ohio	Y	Y	Y
	Pennsylvania	Y	Y	Y
	Tennessee	Y	N	NA
	Vermont	N <sup>a</sup>	N	NA
	Virginia	N <sup>a</sup>	N	NA
West Virginia	N <sup>a</sup>	N	NA	

Source: GAO review of Child and Family Services Review final reports and available state program improvement plans.

<sup>a</sup>Only ICWA related statement was that the state has no federally recognized tribes.

<sup>b</sup>ACF had not provided GAO with approved plan as of December 31, 2004.

<sup>c</sup>Report notes that concern was resolved.

The CFSR process is not designed to ensure that these types of ICWA problems are addressed. ACF requires states to develop program improvement plans to address problems identified during the CFSR process, specifically, areas in which ACF determines that the state is not in

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compliance with the CFSR standards. An issue can be discussed in the CFSR report without ACF necessarily finding that the state was not in compliance with these standards. The goal of the CFSR is for states to address the most pressing problems that are contributing to poor outcomes for children. ACF does not specifically review or rate ICWA implementation as part of the CFSR process; instead, ICWA issues are formally addressed as part of the CFSR measure relating to preserving family relationships and community connections. If a state is able to pass this overall measure based on performance on other aspects of the measure, ACF would not generally require states to address ICWA implementation issues in their program improvement plan. For example, Michigan's CFSR final report noted that the state did not have enough Native American foster homes and that the procedures used to identify Native American children and notify tribes were insufficient. However, because the "preserving connections" factor was assessed as a strength, the state did not discuss any specific corrective actions concerning identification of American Indian children, notification of tribes, or recruitment of Native American foster homes.

While states may voluntarily address ICWA implementation issues in their program improvement plans, our review of 47 approved plans provided to us by ACF as of December 2004 showed that states did not always identify corrective actions they would take to improve ICWA compliance. As shown in table 10, 12 of the 32 states with ICWA implementation concerns identified during the CFSR did not report plans to address ICWA implementation problems in their program improvement plans.

Similarly, the reviews of case files during the CFSR do not ensure that ICWA implementation is reviewed because cases involving American Indian children are not always included. During CFSR onsite visits, ACF requires officials to visit three sites in a state and randomly select a total of 50 case files for their review. During these case reviews, if a child appears to have American Indian heritage, the CFSR reviewers are then to determine if the tribe was notified and if the child was placed with the tribe or extended family. Under this methodology, states with fewer children subject to ICWA in the child welfare system are less likely to have an ICWA case selected for review of their compliance with the law. In some states, however, sites where tribes were located were intentionally selected to increase the probability that cases involving American Indian children would be selected for review.

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The limited information gathered from the case file reviews may not accurately reflect a state's implementation of ICWA. In the CFSRs conducted from 2002 to 2004,<sup>13</sup> ACF's review of 72 cases involving American Indian children in foster care showed that states often did not implement one or more ICWA provisions, but whether these children were actually subject to ICWA is unknown. As shown in table 11, CFSR reviewers concluded that the child's tribe was not notified in over one-fourth of the cases reviewed and the child was not placed with a relative or the tribe over one-half of the time. The reviewers made these determinations for all American Indian cases reviewed, whether or not the children were subject to ICWA. Most of the states that had cases with identified ICWA issues did include efforts to improve ICWA implementation in their improvement plans, including four of the states with the highest concentrations of American Indians.

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<sup>13</sup>ACF does not have case specific data on tribal notification and placement for cases involving American Indian children for CFSRs completed in 2001.

**Table 11: Review of Tribal Notification and Placements in Cases Involving American Indian Children during Child and Family Services Reviews, 2002-2004**

Tribal population density category	State	Number of cases reviewed involving American Indian children <sup>a</sup>	Cases where child's tribe was not notified	Cases where child was not placed with relative or tribe	If tribe not notified or child not placed with relative or tribe, ICWA issues in PIP?
I	Alaska	16	2	9	Y
	Idaho	6	1	1	Y
	Montana	13	3	5	N
	Oklahoma	3	0	0	Not applicable
	Washington	5	1	3	Y
	Wyoming	4	3	3	Y
II	California	1	0	1	Y
	Colorado	1	0	0	Not applicable
	Michigan	1	0	0	Not applicable
	Mississippi	2	2	2	PIP not received
	Nebraska	2	1	1	Y
	Nevada	1	0	1	N
	Rhode Island	1	1	1	PIP not received
	Utah	4	0	2	Y
	Wisconsin	3	2	1	Y
III	Connecticut	1	0	0	Not applicable
	Iowa	2	0	1	Y
IV	Hawaii	1	1	1	N
	Maryland	1	1	1	PIP not received
	Missouri	2	1	2	Y
	Ohio	2	1	2	Y
<b>Total</b>		<b>72 (100%)</b>	<b>20 (27.8%)</b>	<b>37 (51.4%)</b>	

Source: GAO review of state program improvement plans and data provided by James Bell Associates, which is under contract with ACF to compile Child and Family Services Review results.

Notes: ACF does not have case specific data on tribal notification and placement for cases involving American Indian children for CFSRs completed in 2001.

These cases involve American Indian children who may or may not be formally subject to ICWA.

<sup>a</sup>Includes children who are part American Indian.

The case review questions involving tribal notification and placement are included as part of the CFSR's assessment of how well the state preserves the child's connections with family members and the child's community. Based on the responses to these and other questions, ACF rates the area either as a strength, as needing improvement, or not applicable. Of the

2,600 total case files ACF reviewed during the CFSRs conducted from 2001 through 2004, 87 cases from 20 states involved children who were American Indian as shown in table 12. The CFSR reviewers judged 23 of the 87 cases as needing improvement with regard to preserving a child's connections in half of these states. While most of the states that had cases rated as needing improvement addressed ICWA implementation issues in their program improvement plans, two states having higher concentrations of American Indians did not report any planned corrective action.

**Table 12: American Indian CFSR Cases Where Item Related to Preserving a Child's Connections Was Judged "Needing Improvement" During Child and Family Services Reviews, 2001-2004**

Tribal population density category	State	American Indian CFSR cases reviewed <sup>a</sup>	American Indian CFSR cases rated needing improvement in preserving a child's connections	If case(s) needing improvement, ICWA implementation issues in PIP?
I	Alaska	14	4	Y
	Idaho	5	0	-
	Minnesota	10	1	N
	Montana	10	2	Y
	North Dakota	2	0	-
	New Mexico	4	0	-
	Oregon	2	0	-
	South Dakota	21	6	Y
	Washington	1	0	-
	Wyoming	2	1	Y
II	Maine	1	0	-
	Michigan	1	0	-
	Nebraska	2	1	Y
	Utah	2	0	-
	Wisconsin	3	3	N
III	Iowa	1	0	-
	Louisiana	1	1	Y
IV	Arkansas	2	2	Y
	Missouri	1	0	-
	Ohio	2	2	Y
<b>Total</b>	<b>20</b>	<b>87</b>	<b>23</b>	

Sources: James Bell Associates and GAO review of state program improvement plans.

<sup>a</sup>Does not include children of "two or more races."

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## Conclusions

ICWA created important protections to prevent state child welfare agencies and courts from inappropriately separating American Indian children from their families. More than 25 years after it was enacted, however, we know very little about the effect of this law on moving American Indian children in foster care to permanent homes in a timely manner, while ensuring their safety and well-being. The scarcity of data on outcomes for children subject to the law, along with variations in how individual states, courts, social workers, and tribes interpret and implement ICWA, make it difficult to generalize about how the law is being implemented or its effect on American Indian children. Our discussions with tribal officials, as well as our review of the limited information on ICWA implementation from the CFSRs, indicate that some problems with ICWA implementation are occurring, although we cannot estimate how extensive such problems are.

Gathering additional data from states about children subject to ICWA could provide a clearer picture about ICWA's effect on children's experiences in foster care and help determine the extent of any systemic problems with state implementation of the law. However, any new data collection effort would have to consider the differential burden and costs to the states of collecting this information, given that many states have few or no American Indians subject to the law in their child welfare systems. With clear oversight authority, ACF would be better able to directly monitor states' implementation of ICWA. However, even with its current authority, the agency has not made the most effective use of the relevant data it is able to gather as part of its oversight of states' overall child welfare systems. For example, ACF already collects some information on states' implementation of ICWA through the CFSRs as part of its assessment on how well states preserve the child's connections with family members and the child's community; a review of the findings related to ICWA implementation could provide an opportunity to further identify problems states are having implementing the law and any systemic problems existing across states that could be addressed with more specific guidance or technical assistance. Similarly, the existing annual progress and services reports provide an opportunity for states and tribes to address ICWA implementation issues raised during the Child and Family Services Reviews that have not already been addressed in states' program improvement plans.

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## Recommendation for Executive Action

To improve the usefulness of the information states are required to provide on their ICWA compliance efforts, the Secretary of HHS should direct the head of ACF to (1) review the ICWA implementation issues identified in its CFSRs, (2) require states to discuss in their annual progress reports any significant ICWA issues not addressed in their program improvement plans, and (3) consider using the information on ICWA implementation in the CFSRs, annual progress and services reports, and program improvement plans to target guidance and assistance to states in addressing any identified issues.

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## Agency Comments and Our Evaluation

We provided a draft of this report to HHS and the Department of the Interior for comments and their responses are reproduced in appendices III and IV, respectively. HHS also provided technical comments, which we incorporated as appropriate. The Department of the Interior's BIA stated that it had no comments on the report as it has no oversight authority for states' implementation of ICWA; however, it noted that the report's information on ICWA grant funding is accurate.

HHS disagreed with our conclusions and recommendation. While HHS stated that it shares GAO's concerns regarding states' implementation of ICWA, it emphasized that it does not have the authority, resources, or expertise to address GAO's recommendation. HHS also questioned GAO's assumption that ACF is the most appropriate oversight agency for ICWA instead of another federal agency, such as BIA. HHS further commented that there were limitations in data collection because we focused on states' implementation of ICWA, while HHS's Indian Health Service stated that there is inadequate knowledge on which to base a realistic improvement plan and proposed an expanded study examining both state and tribal ICWA issues.

Our report recognizes HHS's limited authority with respect to ICWA and our recommendation offers a way for the agency to assist states within its existing authority and resources as part of its current process for overseeing states' child welfare systems. While HHS does not have specific oversight authority with respect to ICWA, it is responsible for ensuring that states provide meaningful information about their ICWA compliance efforts as part of Title IV-B's reporting requirements and, in fact, has issued guidance to states on ICWA implementation. We continue to believe that HHS could better use the ICWA information it already gathers during its CFSR reviews to improve the usefulness of states' submissions on ICWA compliance. The information gathered by HHS, along with issues identified by tribes and states, suggest that some states

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could benefit from additional guidance on effective ICWA implementation. Given that the Department of the Interior does not have any authority with respect to states' implementation of ICWA and given HHS's child welfare expertise and its existing systems for analyzing child welfare data and providing assistance to states, we believe that HHS is in the best position to continue to assist states in their ICWA reporting and implementation efforts. Further, we believe that action to improve state efforts using existing information should not wait until further study of state and tribal issues provides more comprehensive information about ICWA implementation.

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We are sending copies of this report to the Secretary of HHS, the Secretary of the Department of the Interior, appropriate congressional committees, and other interested parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you have any questions or wish to discuss this report further, please call me at (202) 512-8403 or Lacinda Ayers at (206) 654-5591. Key contributors to this report are listed in appendix V.



Cornelia M. Ashby  
Director, Education, Workforce,  
and Income Security Issues

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# Appendix I: Scope and Methodology

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We used several different methodologies to examine the factors influencing placement decisions for children subject to ICWA, the foster care experiences of these children compared to those of other children, and federal oversight of states' implementation of ICWA. Specifically, we collected information by:

- Analyzing data from states with information systems that could identify children subject to ICWA;
- Surveying state child welfare officials through a web-based questionnaire;
- Conducting site visits to five states;
- Interviewing ACF and BIA central office and regional officials;
- Reviewing applicable laws and regulations;
- Reviewing 2004 Annual Progress and Services Reports for 50 states and the District of Columbia;
- Reviewing final CFSSR reports for all states and the District of Columbia and Program Improvement Plans for 47 states; and
- Soliciting input from federally recognized tribes by conducting tribal panels, interviewing regional intertribal organizations, and sending letters to federally recognized tribes requesting their input.

While our report focused on children involuntarily removed from their home and placed in state foster care due to abuse or neglect, we also gathered some limited information about how ICWA is implemented with regard to children who are voluntarily relinquished by their parents for adoption. In addition to discussing voluntary adoptions with tribal officials we interviewed, we interviewed officials at nine private adoption agencies that handle ICWA cases in the states we visited, interviewed attorneys with the American Academy of Adoption Attorneys (AAAA), and communicated with six other AAAA members who responded to our e-mail on the AAAA listserv regarding private adoptions.

We conducted our review between December 2003 and January 2005 in accordance with generally accepted government auditing standards.

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## Data on Children Subject to ICWA

To compare the experiences of children subject to ICWA with those of other children in foster care, we reviewed data from HHS' AFCARS database for federal fiscal years 2000-2003 to determine whether these data on American Indian children would be appropriate for the purposes of our review. However, these information systems do not collect data specifically on children subject to ICWA; instead, they only require states to report on the race and ethnicity of children in foster care—including American Indian/Alaskan Native—but not all American Indian children are

subject to ICWA. Furthermore, previous GAO work indicates that the race data reported in AFCARS are not always accurate.<sup>1</sup> As a result, we were unable to use these data to learn about the foster care experiences of children subject to ICWA. However, we did use AFCARS data for background information on American Indian children in foster care.

We then surveyed all 50 states and the District of Columbia to determine which states collected automated data on children subject to ICWA in fiscal year 2003. Only five states—Oklahoma, Oregon, Rhode Island, South Dakota, and Washington—were able to provide these data. Because so few children subject to ICWA left foster care in Rhode Island in fiscal year 2003, however, we are not reporting these data as they may not be representative of the experiences of children subject to ICWA in the state. We shared our analyses of the state data with each state to verify their accuracy. When appropriate, we adjusted the data to reflect comments from the states. We tested the data for statistical significance using the chi square test and only reported differences between groups that were statistically significant at the 95 percent confidence level.

The data provided by the four states have several limitations. Three of the states were unable to determine the ethnicity or ICWA status for all children who exited foster care in 2003. Table 13 shows that, except for Oregon, the number of unidentified children represented less than 5 percent of the total children exiting foster care in these states. Generally, states were able to provide the length of stay, number of placements, or exit destinations for children with known racial or ICWA characteristics who exited care in fiscal year 2003. When this did not occur, the unknown percentage for a specific group rarely exceeded 1 percent of those exiting care. The unknown percentages were higher in a few cases. For example, Oregon could not identify the exit destination for 4 percent of Caucasian children, 5 percent of other minority children, and 3 percent of children subject to ICWA.

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<sup>1</sup>GAO, *Child Welfare: Most States Are Developing Statewide Information Systems, but the Reliability of Child Welfare Data Could Be Improved*, [GAO-03-809](#) (Washington, D.C.: July 31, 2003).

**Table 13: Number and Percentage of Children with Unknown Ethnicity Who Exited Care in FY 2003 for Four States**

States	Number of children who exited foster care in FY 2003				Total
	ICWA	Caucasian	Minority	Ethnicity not specified/ICWA status unknown	
<b>South Dakota</b>	<b>592</b>	<b>401</b>	<b>117</b>	<b>2</b>	<b>1,112</b>
Percentage	53.2	36.1	10.5	0.2	100
<b>Washington</b>	<b>169</b>	<b>3,856</b>	<b>2,183</b>	<b>109</b>	<b>6,317</b>
Percentage	2.7	61.0	34.6	1.7	100
<b>Oregon</b>	<b>214</b>	<b>2,638</b>	<b>965</b>	<b>655</b>	<b>4,472</b>
Percentage	4.8	59.0	21.6	14.7	100
<b>Oklahoma</b>	<b>1,534</b>	<b>3,224</b>	<b>1,732</b>	<b>0</b>	<b>6,490</b>
Percentage	23.6	49.7	26.7	0.0	100

Source: Data provided by child welfare agencies in these states.

Note: Numbers may not add to 100 percent due to rounding.

In addition, the data from Washington includes only children who are subject to ICWA and who are in state custody. In contrast, the data from Oregon, Oklahoma, and South Dakota include some children who are in the custody of a tribal court. All three states had some tribal Title IV-E agreements in 2003 and, as a result, children who are in tribal custody and whose tribe has a Title IV-E agreement with the state are included in the state’s data. In addition, the South Dakota data also include some children who are in the custody of a tribal court, but for whom the state provides services and supervision.

## Survey of State Child Welfare Officials

To obtain information on states’ ICWA policies and procedures and their experiences with children subject to ICWA, we surveyed all 50 states and the District of Columbia using a web-based survey. To ensure the relevance and appropriateness of the survey questions and to test that they were consistently and reliably interpreted before they were administered, we pre-tested the survey instrument in Idaho, Oklahoma, Ohio, and Utah and received input from the Association on American Indian Affairs, Casey Family Programs, and the National Indian Child Welfare Association. In May 2004, we e-mailed a notification to the child welfare director in each state, alerting them that a survey was forthcoming. This notification was followed by our e-mail to the directors containing the web link to the survey and a unique user identification and password to access the survey. To encourage as many states as possible to complete the survey, we

conducted follow-up calls to states that did not respond to our survey by the initial deadline.

We received responses from 47 states and the District of Columbia; we did not receive responses from Kentucky, Hawaii, and Minnesota. However, many states were unable to respond to all of our survey questions and frequently responded that they did not know the answer or that the data requested was not available at the state level. The majority of states (28 of the 48) reported that their survey responses were for all American Indian children involved in the child welfare system, without regard to ICWA status. Two states reported that their responses were based on the state, rather than federal, definition of who is subject to ICWA. Only 14 states reported that their survey responses were for children who are subject to the federal law. We did not independently verify any information obtained through the survey. However, we conducted logic tests for certain responses to corroborate the consistency of responses within a state and contacted individual states to clarify all identified inconsistencies. The results we report for states that provided responses to our survey questions cannot be generalized to nonresponding states. In many cases, less than 50 percent of the states that completed the survey responded to an individual question, meaning that results could change to the extent that nonresponding states differed from those that responded.

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### State Categorizations by Tribal Population

We analyzed data according to the density of the tribal population in each state to determine the extent to which state responses or data findings were correlated with tribal density. As shown in table 14, these categories take into account the tribal population of a state as estimated by the Census and the tribal population within the state eligible for BIA services.

**Table 14: Criteria for Determining States' Tribal Population Density Categories**

Category	Criteria	No. of states
I	>1% Tribal enrollment density <b>or</b> >1% population eligible for BIA services density	12
II	0.1% –1% Tribal enrollment density	12
III	0% – 0.1% Tribal enrollment density	10
IV	0% Tribal enrollment density <b>and</b> 0% population eligible for BIA services density	17

Source: 2001 Census estimates and BIA data on the percentage of people within each state who are (1) enrolled in a tribe or (2) eligible for BIA services.

Notes: Indiana was placed in category III; although it had 0 percent tribal enrollment, it had a 0.1 percent population eligible for services. None of the other category II or III states had 0 percent tribal enrollment.

To be eligible for BIA services, an individual must be a member of a federally recognized tribe or possess one-half or more American Indian blood quantum from a tribe indigenous to the United States.

Each of the 50 states and District of Columbia was assigned to one of four population density categories, as shown in table 15. These categories allow us to factor in both individuals who self-identify as possessing American Indian heritage and individuals who are tribal members or have blood ties to a tribe. The categories were based on the maximum of either tribal population density or density of those eligible for services. Density was calculated as a percentage of state population (estimated by the Census Bureau).

Category I includes states that have the greatest tribal population density or population eligible for BIA services. States placed in Category I had tribal enrollment densities or population eligible for BIA services densities that exceeded 1 percent. States in categories II and III have between 0 and 1 percent tribal population in their states, while category IV consists of states that have no tribal population and no population eligible for BIA services.

**Table 15: Tribal Population Density Categorization by State**

Category	State	2001 Total tribal enrollment density	2001 Total population eligible for BIA services density
I	Alaska	18.88	21.38
	Arizona	4.78	4.04
	Idaho	0.77	1.35
	Minnesota	1.04	0.69
	Montana	7.02	5.03
	North Dakota	8.74	5.43
	New Mexico	8.95	6.58
	Oklahoma	18.19	13.26
	Oregon	0.59	1.40
	South Dakota	14.14	12.56
	Washington	0.81	1.45
	Wyoming	2.13	2.19
	II	California	0.15
Colorado		0.08	0.12
Kansas		0.36	0.25
Maine		0.57	0.26
Michigan		0.52	0.27
Mississippi		0.31	0.29
North Carolina		0.15	0.09
Nebraska		0.84	0.45
Nevada		0.65	0.58
Rhode Island		0.25	0.25
Utah		0.66	0.52
Wisconsin		0.98	0.63
III		Alabama	0.05
	Connecticut	0.06	0.06
	Florida	0.02	0.02
	Iowa	0.04	0.05
	Indiana	0.00	0.01
	Louisiana	0.06	0.02
	Massachusetts	0.02	0.00
	New York	0.10	0.10
	South Carolina	0.06	0.04

Category	State	2001 Total tribal enrollment density	2001 Total population eligible for BIA services density
IV	Texas	0.01	0.01
	Arkansas	0.00	0.00
	District of Columbia	0.00	0.00
	Delaware	0.00	0.00
	Georgia	0.00	0.00
	Hawaii	0.00	0.00
	Illinois	0.00	0.00
	Kentucky	0.00	0.00
	Maryland	0.00	0.00
	Missouri	0.00	0.00
	New Hampshire	0.00	0.00
	New Jersey	0.00	0.00
	Ohio	0.00	0.00
	Pennsylvania	0.00	0.00
	Tennessee	0.00	0.00
	Virginia	0.00	0.00
	Vermont	0.00	0.00
	West Virginia	0.00	0.00

Source: 2001 Census estimates based on 2000 Census data and BIA data on the percentage of people within each state who are (1) enrolled in a tribe or (2) eligible for BIA services.

### Site Visit to States

To obtain a more detailed understanding of how states implement ICWA, we conducted site visits to California, Oklahoma, Oregon, Rhode Island, and South Dakota. We selected states based on geographic diversity, the nature of state-tribal relations, the number of federally recognized tribes, and the size of the American Indian population. During our site visits, we interviewed state and local child welfare staff, tribal officials from at least two federally recognized tribes in each state (except in Rhode Island, which has only one federally recognized tribe), state court judges, and representatives from private adoption agencies that handle ICWA cases. We collected and reviewed relevant documentation from these site visits. In addition, we spoke with a variety of people in the child welfare field about their knowledge of the effect of states' implementation of ICWA on children subject to the law, including academic researchers, attorneys, child welfare advocates, and a state court judge from Utah.

### Federal Oversight

To learn about the federal government's role in overseeing states' implementation of ICWA, we examined relevant federal regulations and

guidelines, as well as ACF's program instructions to states and tribes related to ICWA. We interviewed officials from ACF's central office and all 10 of its regional offices. We also interviewed officials from BIA's central office and social workers from 8 of its regional offices. To examine the extent to which states report their progress in implementing ICWA to ACF, we also reviewed excerpts of the 2004 Annual Progress and Services Reports states submitted to ACF covering their ICWA compliance activities during federal fiscal years 2000-2004 for all 50 states and the District of Columbia.

To determine the extent to which the CFSRs evaluated ICWA activities in the states, we reviewed final CFSR reports for all 50 states and the District of Columbia. We also reviewed Program Improvement Plans from 47 states to determine the extent to which states attempted to correct ICWA weaknesses surfaced in the CFSR final reports.

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## Tribes and Tribal Organizations Contacted

During the course of this review, we communicated with 161 tribes and 20 tribal organizations about states' implementation of ICWA. We visited officials from 10 tribes as part of our site visits and spoke with representatives from 87 tribes and tribal organizations at multiple panel discussions we conducted at American Indian conferences and site visits (the number of tribes that participated in the panels may be undercounted because some participants did not sign in). We held two panel discussions during our site visit to Oklahoma in March 2004 at Norman and Tulsa; three panel discussions at the National Indian Child Welfare Association conference in April 2004 at Denver, Colorado; two panel discussions at the California State ICWA Conference in June 2004 at Lakeside, California; and two panel discussions at the National Congress of American Indians 2004 Mid-Year Session in June 2004 at Uncasville, Connecticut. In addition, we collaborated with 9 regional intertribal organizations to organize telephone conferences, during which we spoke to representatives from 44 tribes.

To ensure the receipt of sufficient tribal input, we sent a letter in July 2004 to 591 federally recognized tribal governments, informing them of our review and requesting their input. Representatives from 74 tribes and 5 tribal organizations called, wrote, or e-mailed us in response to this letter. We asked tribes to respond to four questions: (1) In general, how well does your state implement ICWA and how frequently do problematic situations arise? (2) What benefits does ICWA provide to Indian children in state custody in terms of safety, permanency, and well-being and in what ways, if any, does ICWA delay or hinder your state's ability to keep Indian

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children safe and to place them in permanent homes in a timely manner? (3) Are there any challenges that exist to the effective implementation of ICWA and do you have any suggestions for federal action that could improve the placement of Indian children in permanent homes in a more timely manner? (4) Is there any other information you would like to provide about your tribe's experiences with ICWA? Because we did not specify a particular format for tribes to use, the responses we received varied in length, type, and content.

Following are the names of the tribes and tribal organizations with whom we had contact through our site visits, tribal panels, telephone conferences, or our letter asking for tribal input.

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**Tribes**

Absentee-Shawnee Tribe of Indians of Oklahoma  
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California  
Apache Tribe of Oklahoma  
Arapahoe Tribe of the Wind River Reservation, Wyoming  
Asa'carsarmiut Tribe, Alaska  
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana  
Bay Mills Indian Community, Michigan  
Bear River Band of the Rohnerville Rancheria, California  
Berry Creek Rancheria of Maidu Indians of California  
Big Lagoon Rancheria, California  
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana  
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon  
Caddo Nation of Oklahoma  
Central Council of the Tlingit & Haida Indian Tribes, Alaska  
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California  
Cherokee Nation, Oklahoma  
Chevak Native Village, Alaska  
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota  
Cheyenne-Arapaho Tribes of Oklahoma  
Chickaloon Native Village, Alaska  
Chickasaw Nation, Oklahoma  
Chilkat Indian Village (Klukwan), Alaska  
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana  
Chitimacha Tribe of Louisiana  
Citizen Potawatomi Nation, Oklahoma  
Cocopah Tribe of Arizona

Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho  
Comanche Nation, Oklahoma  
Confederated Salish & Kootenai Tribes of the Flathead Reservation,  
Montana  
Confederated Tribes and Bands of the Yakama Nation, Washington  
Confederated Tribes of the Chehalis Reservation, Washington  
Confederated Tribes of the Colville Reservation, Washington  
Confederated Tribes of the Grand Ronde Community of Oregon  
Confederated Tribes of the Siletz Reservation, Oregon  
Confederated Tribes of the Umatilla Reservation, Oregon  
Cowlitz Indian Tribe, Washington  
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota  
Crow Tribe of Montana  
Delaware Nation, Oklahoma  
Dry Creek Rancheria of Pomo Indians of California  
Eastern Pequot Tribal Nation, Connecticut (Not a federally  
recognized tribe)  
Fort Belknap Indian Community of the Fort Belknap Reservation  
of Montana  
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt  
Indian Reservation, Nevada and Oregon  
Fort McDowell Yavapai Nation, Arizona  
Fort Mojave Indian Tribe of Arizona, California & Nevada  
Galena Village (aka Louden Village), Alaska  
Gila River Indian Community of the Gila River Indian Reservation, Arizona  
Gulkana Village, Alaska  
Havasupai Tribe of the Havasupai Reservation, Arizona  
Houlton Band of Maliseet Indians of Maine  
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona  
Ione Band of Miwok Indians of California  
Jamestown S'Klallam Tribe of Washington  
Karuk Tribe of California  
Kickapoo Tribe of Oklahoma  
Kiowa Indian Tribe of Oklahoma  
Klamath Indian Tribe of Oregon  
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation,  
California  
La Posta Band of Diegueno Mission Indians of the La Posta Indian  
Reservation, California  
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin  
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac  
du Flambeau Reservation of Wisconsin  
Little Traverse Bay Band of Odawa Indians, Michigan

Lumbee-Cheraw Tribe of North Carolina (Not a federally recognized tribe)  
Makah Indian Tribe of the Makah Indian Reservation, Washington  
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan  
Menominee Indian Tribe of Wisconsin  
Metlakatla Indian Community, Annette Island Reserve, Alaska  
Miami Tribe of Oklahoma  
Minnesota Chippewa Tribe, Minnesota (Leech Lake Band)  
Minnesota Chippewa Tribe, Minnesota (White Earth Band)  
Mooretown Rancheria of Maidu Indians of California  
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California  
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington  
Muscogee (Creek) Nation, Oklahoma  
Narragansett Indian Tribe of Rhode Island  
Native Village of Ambler, Alaska  
Native Village of Buckland, Alaska  
Native Village of Eyak (Cordova), Alaska  
Native Village of Kiana, Alaska  
Native Village of Kivalina, Alaska  
Native Village of Kotzebue, Alaska  
Native Village of Koyuk, Alaska  
Native Village of Kwinhagak (aka Quinhagak), Alaska  
Native Village of Larsen Bay, Alaska  
Native Village of Mekoryuk, Alaska  
Native Village of Noatak, Alaska  
Native Village of Port Graham, Alaska  
Native Village of Port Lions, Alaska  
Native Village of Ruby, Alaska  
Native Village of Selawik, Alaska  
Native Village of Tanacross, Alaska  
Native Village of Tazlina, Alaska  
Native Village of Unalakleet, Alaska  
Native Village of Venetie Tribal Government (Artic Village and Native Village of Venetie), Alaska  
Navajo Nation, Arizona, New Mexico & Utah  
Newhalen Village, Alaska  
Nez Perce Tribe of Idaho  
Ninilchik Village, Alaska  
Nisqually Indian Tribe of the Nisqually Reservation, Washington  
Noorvik Native Community, Alaska  
Oneida Nation of New York  
Oneida Tribe of Indians of Wisconsin

Organized Village of Kwethluk, Alaska  
Osage Tribe, Oklahoma  
Otoe-Missouria Tribe of Indians, Oklahoma  
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada  
Pala Band of Luiseno Mission Indians of the Pala Reservation, California  
Pascua Yaqui Tribe of Arizona  
Passamaquoddy Tribe of Maine  
Pawnee Nation of Oklahoma  
Penobscot Tribe of Maine  
Pokagon Band of Potawatomi Indians, Michigan and Indiana  
Ponca Tribe of Nebraska  
Pueblo of Acoma, New Mexico  
Pueblo of Laguna, New Mexico  
Pueblo of San Juan, New Mexico  
Quapaw Tribe of Indians, Oklahoma  
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona  
Quinault Tribe of the Quinault Reservation, Washington  
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin  
Reno-Sparks Indian Colony, Nevada  
Rincon Band of Luiseno Mission Indians of the Rincon Reservation,  
California  
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota  
Sac & Fox Nation, Oklahoma  
Saginaw Chippewa Indian Tribe of Michigan  
Salt River Pima-Maricopa Indian Community of the Salt River  
Reservation, Arizona  
Samish Indian Tribe, Washington  
San Carlos Apache Tribe of the San Carlos Reservation, Arizona  
Santa Ysabel Band of Diegueno Mission Indians of the Santa  
Ysabel Reservation, California  
Santee Sioux Nation, Nebraska  
Schaghticoke Tribal Nation, Connecticut (Not a federally recognized tribe)  
Seminole Nation of Oklahoma  
Shingle Springs Band of Miwok Indians, Shingle Springs  
Rancheria (Verona Tract), California  
Shoalwater Bay Tribe of the Shoalwater Bay Indian  
Reservation, Washington  
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho  
Smith River Rancheria, California  
St. Regis Band of Mohawk Indians of New York  
Standing Rock Sioux Tribe of North & South Dakota  
Stockbridge Munsee Community, Wisconsin  
Suquamish Indian Tribe of the Port Madison Reservation, Washington

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Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota  
Tohono O’odham Nation of Arizona  
Tulalip Tribes of the Tulalip Reservation, Washington  
United Keetoowah Band of Cherokee Indians in Oklahoma  
Upper Sioux Community, Minnesota  
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado,  
New Mexico & Utah  
Village of Crooked Creek, Alaska  
Village of Dot Lake, Alaska  
Village of Kalskag, Alaska  
Village of Old Harbor, Alaska  
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts  
Washoe Tribe of Nevada & California (Carson Colony,  
Dresslerville Colony, Woodfords Community, Stewart Community,  
& Washoe Ranches)  
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona  
Wichita and Affiliated Tribes (Wichita, Keechi, Waco &  
Tawakonie), Oklahoma  
Winnebago Tribe of Nebraska  
Wyandotte Nation, Oklahoma  
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona  
Yerington Paiute Tribe of the Yerington Colony & Campbell  
Ranch, Nevada  
Ysleta Del Sur Pueblo of Texas  
Yupit of Andreafski, Alaska  
Yurok Tribe of the Yurok Reservation, California

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**Tribal Organizations**

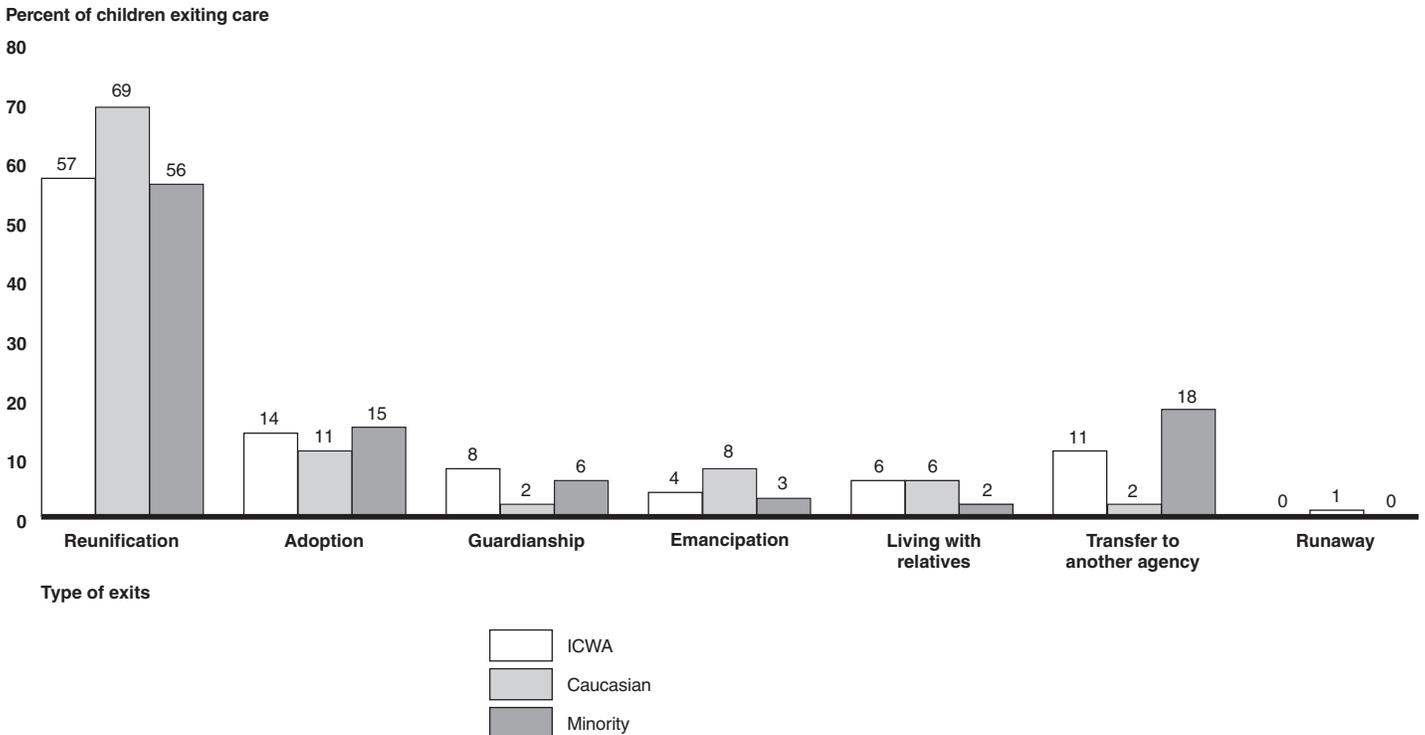
Affiliated Tribes of Northwest Indians  
Alaska Inter-Tribal Council  
Aleutian/Pribilof Islands Association  
All Indian Pueblo Council  
Association of Village Council Presidents, Inc.  
California Tribal TANF Partnership  
Great Lakes Intertribal Council  
Inter Tribal Council of Arizona, Inc.  
Inter-Tribal Council of Nevada  
Kodiak Area Native Association  
Maniilaq Association  
Midwest Alliance of Sovereign Tribes  
Montana-Wyoming Tribal Leaders Council  
National Indian Child Welfare Association  
Southern California Indian Center

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Tanana Chiefs Conference  
Two Feathers Native American Family Services  
United South and Eastern Tribes, Inc.  
United Tribes Technical College  
Urban American Indian Involvement, Inc.

# Appendix II: Children Exiting Foster Care in Four States, FY 2003

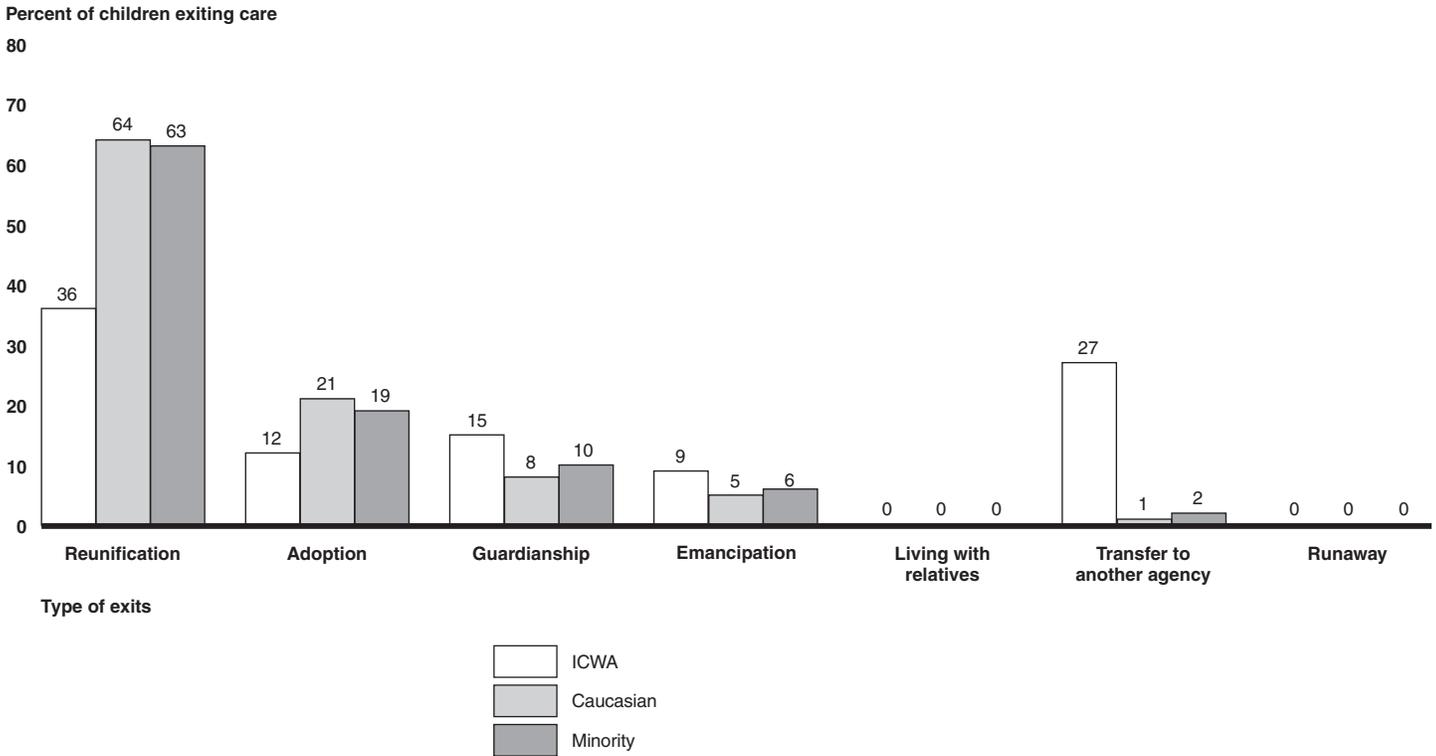
**Figure 16: FY 2003 Foster Care Exits in South Dakota**



Source: Data provided by the state child welfare agency in South Dakota.

Note: South Dakota was not able to identify the race or ethnicity for all children who exited foster care. The percentage of children with unknown ethnicity who exited foster care in fiscal year 2003 was less than 0.2 percent.

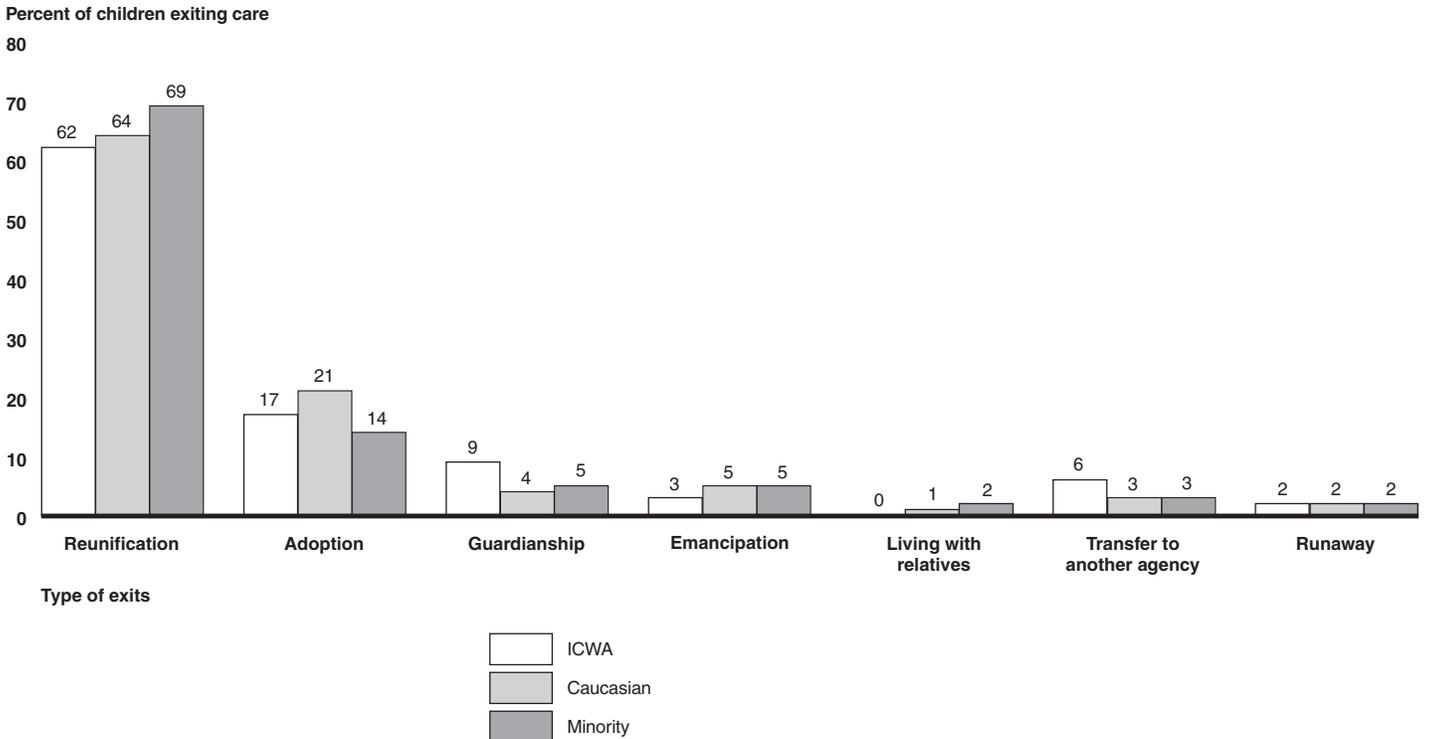
Figure 17: FY 2003 Foster Care Exits in Washington



Source: Data provided by the state child welfare agency in Washington.

Note: Washington was not able to identify the race or ethnicity for all children who exited foster care. The percentage of children with unknown ethnicity who exited foster care in fiscal year 2003 was 1.7 percent.

Figure 18: FY 2003 Foster Care Exits in Oregon

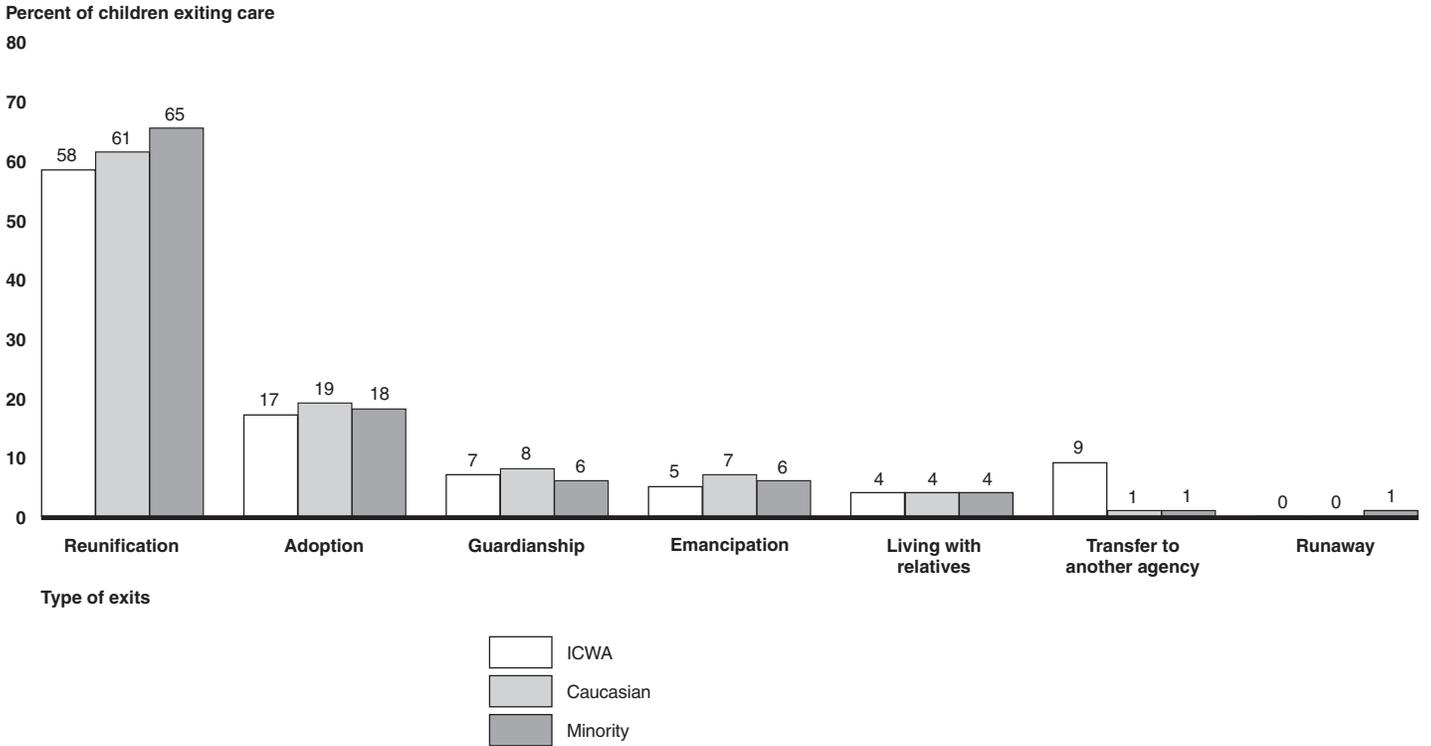


Source: Data provided by the state child welfare agency in Oregon.

Note: Oregon was not able to identify the race or ethnicity for all children exiting foster care. The percentage of children with unknown ethnicity who exited foster care in fiscal year 2003 was 14.7 percent.

Appendix II: Children Exiting Foster Care in Four States, FY 2003

Figure 19: FY 2003 Foster Care Exits in Oklahoma



Source: Data provided by the state child welfare agency in Oklahoma.

Note: Totals may not add to 100 percent due to rounding.

# Appendix III: Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

MAR 21 2005

Ms. Cornelia M. Ashby  
Director  
Education, Workforce, and Income Security Issues  
U.S. Government Accountability Office  
Washington, DC 20548

Dear Ms. Ashby:

Enclosed are the Department's comments on the U.S. Government Accountability Office's (GAO's) draft report entitled, "Indian Child Welfare Act—Existing Information on Implementation Issues Could Be Used to Target Guidance and Assistance to States" (GAO-05-290). The comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

The Department provided several technical comments directly to your staff.

The Department appreciates the opportunity to comment on this draft report before its publication.

Sincerely,

A handwritten signature in cursive script that reads "Daniel R. Levinson".

Daniel R. Levinson  
Acting Inspector General

Enclosure

The Office of Inspector General (OIG) is transmitting the Department's response to this draft report in our capacity as the Department's designated focal point and coordinator for U.S. Government Accountability Office reports. OIG has not conducted an independent assessment of these comments and therefore expresses no opinion on them.

**COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ON THE U.S. GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT, "INDIAN CHILD WELFARE ACT—EXISTING INFORMATION ON IMPLEMENTATION ISSUES COULD BE USED TO TARGET GUIDANCE AND ASSISTANCE TO STATES" (GAO-05-290)**

The Department of Health and Human Services (HHS) appreciates the opportunity to comment on the Government Accountability Office's (GAO's) draft report.

**GAO Recommendation**

*To improve the usefulness of the information States are required to provide on their Indian Child Welfare Act (ICWA) compliance efforts, the Secretary of HHS should direct the head of ACF to: (1) review the ICWA implementation issues identified in its Child and Family Service Reviews (CFSR); (2) require States to discuss in their annual progress reports any significant ICWA issues not addressed in their program improvement plans; and (3) consider using the information on ICWA implementation in the CFSRs, annual progress and services reports, and program improvement plans to target guidance and assistance to States in addressing any identified issues.*

**HHS Comments**

While we share GAO concerns regarding ICWA and how States are adhering to and implementing this mandate, HHS disagrees with the conclusions and recommendations of this report. HHS does not agree that merely identifying ICWA problems more systematically would better position HHS to provide guidance and technical assistance. GAO has clearly identified in its report that the primary issue with ICWA compliance, from a Federal perspective, is the lack of specific oversight authority and the attendant resources.

Some of GAO's recommendations for remedial action by Congress or HHS rely on the assumption that HHS, Administration for Children and Families (ACF), which monitors State compliance of Federal child welfare laws, is the most appropriate oversight agency for ICWA, rather than the Bureau of Indian Affairs in the Department of Interior. The report notes on page 2, first paragraph, line 4, that "...ICWA did not explicitly grant any Federal agency oversight authority regarding States' implementation of ICWA...." A similar statement appears in the last paragraph on page 4. The assumption of ACF's responsibility is a significant one, given the action items for ACF recommended in the report.

ACF does not have the authority, resources, or expertise to provide the level of effort to address the recommendations GAO identified. ACF's current "oversight" of ICWA is commensurate with ACF's authority, expertise, and resources.

Since this study was initiated to determine the States' implementation and compliance with ICWA, there were many limitations in the collection of meaningful data as well as in the survey's comprehensiveness. The study's primary contribution is in its validation of the need for further study.

The HHS, Indian Health Service feels that without an examination of both the State and Tribal issues involved, there is inadequate knowledge on which to base a realistic improvement plan on the issues of Indian Child Welfare.

The study's purposes should be expanded to include the following:

- (1) The interaction process involving the Tribal issues and the States' child welfare systems;
- (2) Determination of barriers to the Tribes' exercising their jurisdictional options to intervene in custody cases;
- (3) An assessment of Tribal foster care and adoption resources;
- (4) An assessment of the Tribal Title IV-E demonstration projects;
- (5) An evaluation of training of the States' child protection staff regarding ICWA; and
- (6) An assessment of the impact on Tribes' nonreceipt of Title IV-E funds in comparison to the States' receipt of this funding.

# Appendix IV: Comments from the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240



MAR 22 2005

Ms. Cornelia M. Ashby  
Director, Education, Workforce,  
and Income Security Issues  
Government Accountability Office  
Washington, D.C. 20548

Dear Ms. Ashby:

The Bureau of Indian Affairs appreciates the opportunity to provide comments on the draft report of the Government Accountability Office entitled *INDIAN CHILD WELFARE ACT: Existing Information on Implementation Issues Could Be Used to Target Guidance and Assistance to States*.

As discussed in the draft report, the Bureau's responsibilities under the Indian Child Welfare Act include administering grants to Indian tribes and tribal organizations for operating child and family service programs and assisting states in identifying the tribal affiliation of a child upon request. The Bureau has no oversight authority for a state's implementation of the Act. As such, the Bureau has no comments to offer on the report findings or recommendation, other than to note that the information regarding grant funding is accurate.

If you require additional information, please contact Mr. Larry Blair, Chief, Division of Human Services, at (202) 513-7621.

Sincerely,

Assistant Secretary – Policy, Management  
and Budget

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# Appendix V: GAO Contacts and Acknowledgments

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## GAO Contacts

Lacinda Ayers (206) 654-5591  
Michelle St. Pierre (617) 788-0558

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## Acknowledgments

In addition to those named above, Jerry Aiken, Elizabeth Caplick, Shirley Hwang, and Bob Sampson made key contributions to this report. Carolyn Boyce, Corinna Nicolaou, and Diana Pietrowiak provided key technical assistance; Daniel Schwimer provided legal assistance.

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