

Recommendations on Indian child care by AALA

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adoptive homes, or in boarding programs at a rate almost fourteen times (1400%) greater than that for non-Natives. Just as Indian children are exposed to these great hazards, their parents are too.

In some states the problem is getting worse: in Minnesota, one in every eight Indian children under eighteen years of age is living in an adoptive home; and, in 1971-72, nearly one in every four Indian children under one year of age was adopted. The number of Indian children adopted annually more than doubled over a five-year period.

In addition to the trauma of separation from their families, most Indian children in placement or in institutions have to cope with the problems of adjusting to a social and cultural environment much different than their own. In sixteen states surveyed in 1969, approximately 85 per cent of all Indian children in foster care were living in non-Indian homes. In Minnesota today, according to State figures, more than 90 per cent of non-related adoptions of Indian children are made by non-Indian couples. Only a few years ago there were just two licensed Indian foster homes in the State and, despite Indian protest, improvement is slow. A 1974 sample survey of 100 Indian wards of the state disclosed only one living in an Indian home. Few states keep as careful or as complete child-welfare statistics as does Minnesota, but informal estimates by welfare officials elsewhere suggest that this rate is the norm. A 1973 survey in Wisconsin shows that out of a total of 1,158 licensed foster homes, only four were Indian. In most federal and mission boarding schools, a majority of the parent substitutes are non-Indians.

What is to account for this disastrous situation? The reasons appear very complex, and they may never be perceived clearly and in their entirety. Some of the factors include a lack of rational federal and state standards governing childwelfare matters, a breakdown in due process, and the lack of remedial services in so many Indian communities.

Agencies of government, if they are to be of any real help in overcoming the Indian child-welfare crisis, must cease their intervention in Indian family life and try, instead, to afford India communities the opportunity to set their own

priorities, design and administer their own programs, allocate subsidies, and monitor all expenditures not under their direct control.

TRIBAL SOVEREIGNTY AND INDIAN COMMUNITY PARTICIPATION

Federal and state policy should uphold the sovereignty of Indian tribes, and, among other Indian rural and urban populations, provide for Indian community participation in all aspects of governmental action affecting them.

Recognizing that it is vital to the best interests of Indian children, they must be permitted to enjoy without government interference the right to establish their own cultural identity.

Tribes that currently exercise jurisdiction over the custody of their children should be permitted to keep this right. Tribes that have never had jurisdiction or have lost it by acts of Congress, such as Public Law 83-280, should be granted the option of acquiring jurisdiction.

Tribes not presently recognized as sovereignties by state or federal governments should be granted such recognition, at least for the purpose of establishing procedures to hear and determine child-custody cases.

States should give full force and effect to the orders of tribal courts.

Where jurisdiction does not rest in the tribe, then the tribe should be permitted to intervene in state custody proceedings as an interested party.

Where the Indian population does not constitute a tribal entity, as in urban areas, boards composed of members of the Indian community should be permitted to review custody petitions and make recommendations to the court, serve as advocates for Indian children or their parents, and be licensed to act as family-service and child-placement agencies.

Affirmative action should be taken to allow Indians to serve on appropriate state and local commissions and boards in proportion to the number of Indian children who are involved in custody proceedings.

Tribes should be authorized to license or approve homes for foster care and adoptive placement both on and off the reservation, and agencies using state and federal child-care funds should be required to give preference to such homes.

Federal, state and local child-care services and subsidies for the benefit of American Indian communities should be administered directly by Indian tribes or by local Indian child-care agencies; and an accounting should be made to them for all public monies spent for Indian child welfare not under their direct control. Appropriations for the benefit of Indian tribes should be made available to the tribes in the form of block grants to enable them to allocate resources according to their own priorities.

Federal boarding school placements should be made only in accordance with tribal ordinances.

STANDARDS

New standards should be established, with the cooperation and consent of Indian tribes, that comprehend the unique life ways, cultural values, child-rearing practices, and social structures of Indian communities as they vary from tribe to tribe and that respect the special needs of Indian children. Grounds for

intervention should be limited to demonstrable evidence supported by competent witnesses that the conduct of the parents is causing serious physical harm or severe emotional damage to the child. A degree in social work or mere employment by agencies of government should not per se constitute evidence of such competency. Poverty, housing conditions, misuse of alcohol, sexual mores, placement with a relative or a friend shall not be considered prima facie evidence of abuse, neglect or abandonment nor shall truancy or the delinquent behavior of juveniles. Further, it should be recognized that any rate of placement for Indian children in excess of the rate for all races is evidence of a denial of equal opportunity.

DUE PROCESS

Social workers and other agents of government who seek to initiate a custody proceeding against Indian parents should be required to submit their petition to an Indian tribal or community review board prior to bringing it before the court.

Special effort must be made to afford Indian parents effective, written notice. Such notice must be understandable in the parents' own language when that language is other than English; and every effort should be made to assure that the notice is actually received and understood. Additionally, notice should be made to the Indian tribe, to the members of the extended family in whose care the child may have been left and, in the case of other Indian rural and urban communities, to an Indian child-welfare or other Indian community organization.

At the time of the notice, and again throughout the proceedings, the Indian parents should be informed of their rights and the potential consequences of the proceedings in a language and manner that enables them to understand what is being done or contemplated.

Indian parents and their child both have the right to counsel, and to have the supporting testimony of expert and character witnesses. The parents should have the right to choose their own counsel. The attorney appointed by the court to represent the child should not be the same attorney that represents the welfare department or other complaining party.

The right to a speedy trial should be available to the parents and their children. It is generally in the best interest of the child to remain in the parents' custody throughout the hearing and appeal, unless it can be shown that the child is in imminent danger and that the danger cannot be removed with application of appropriate social services.

A jury trial should be available as an option to the parents and to counsel for the child and affirmative efforts should be made to seat Indians on the jury.

Parents shall be presumed to be innocent and to represent the best interests of the child. It should further be assumed that allowing the child to remain in the home is the least detrimental alternative.

The burden of proof should be on the state as a practical as well as legal matter.

Throughout the proceedings, the court should be constantly alert lest the manner in which it is proceeding erects culturally conditioned barriers that affect the ability of the Indian parents to obtain a fair trial and the

children an appropriate disposition. If necessary, there should be the assistance of knowledgeable persons who can help the parents and the court overcome language and cultural impediments.

Because of the special cultural factors that may make it very difficult for Indian parents to receive a fair trial and for the court to make an appropriate disposition, the state should be required to prove its case beyond a reasonable doubt.

Indian parents should have the right to examine all documents that have a bearing on the case and should have the right after trial to expunge from those documents reports and allegations that have not been substantiated.

The state or local authority should be required to demonstrate that it has made available all its remedial services before temporary custody is granted.

Informal Indian custom placements should be respected and no legal separations should occur from such placements unless in accordance with the standards applicable to the removal of the child from the natural parents.

Permanent disposition should be prohibited until the parents have had a reasonable opportunity to rehabilitate themselves and the state can demonstrate that it has made available rehabilitation services appropriate to the parents' culture. Parental rights should not be terminated owing to deficiencies in state and federal services.

The standards of the Indian community shall be applied in determining whether rehabilitation has occurred.

In dispositions, recognition should be given to the special needs of Indian children; and preference should be given to placing them in homes licensed or approved by Indian tribes or Indian community child-care agencies.

Extreme care should be taken to keep siblings together and no numerical standards that contribute to the separation of siblings should be invoked unless it can be demonstrated that it is in the best interests of the children and then only as a last resort.

Voluntary relinquishments of custody by the parents should come before a court for disposition. This is intended to abolish voluntary waivers. In those states where voluntary waivers are permitted, a waiver to be valid or given any legal force and effect should be voluntary in writing, and signed in the presence of at least two witnesses and translated into the parents' natural language and fully understood. The consent should be subjected to review by a tribal, state, or local court. Parents granting their consent should have the right to withdraw it at any time prior to the termination of parental rights and adoption, and at least 90 days shall elapse before permanent custody proceedings are commenced. Unless these conditions are met, the consent should be deemed involuntary. The tribe and members of the extended family should be given an opportunity to make alternative resources available for the custody of the child.

In the absence of a valid state or tribal court order, state courts shall immediately order anyone in possession of an Indian child to surrender the child into the custody of his parents upon the demand of the parents. Should

the state fail to do order, the Indian family should have immediate recourse to the federal courts in a habeas corpus action without having to exhaust state remedies.

RIGHT TO SERVICES

Indian children and parents should have the right to services appropriate to their special cultural and individual needs, including the right to a dayschool education.

The over-all goal of services to Indian children and parents should be to support the integrity of the family disruption and community disintegration; and following placement, emphasis should be placed on providing support services to the child and on rehabilitation services to the parent.

Federal, state, and local agencies serving Indian children and parents should establish divisions or desks to aid in policy-making, planning, budgeting, administration, and evaluation of programs made available to Indian tribes and communities.

Such programs should be carried out under the direct control of Indian tribes or Indian community agencies. Administrative models should be developed that separate the police powers of the state to intervene in family affairs from those agencies that provide family services. These models should eliminate economic and other institutional incentives for placement.

Services and subsidies should be adequate to achieve at least minimum standards of maintenance.

Alternatives to placements should be increased and integrated in a continuum of services under the direction of the Indian tribe or community. These should include in-home help, home counseling, day care, and respite services; as well as housing improvement, employment counseling and the creation of job opportunities, and adequate health and mental health services.

Funds should be made available so that child-care facilities may be constructed within the Indian community and for the construction of essential roads and dayschools to eliminate unnecessary boarding school placement.

Facilities should be made available to Indian parents as an alternative to jail for minor offenses so that they may remain with their children and, wherever possible, they should be permitted to remain in their own homes. Special efforts should be made to train Indian social workers and other providers of care and to train foster and adoptive parents in the special needs of Indian children.

There should be a needs assessment for the children and the parents prior to and following placement.

All placements should be subject to periodic review by the courts to determine whether there is a continuing need for temporary placement, whether the placement should be made permanent, and whether the home in which the child is or will be placed meets the child's basic and special needs.

In temporary placements parents of children should be given regular reports and family visits should be encouraged.

Children placed with foster and adoptive parents in accordance with Indian custom should be entitled to aid to dependent children and the only

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it so!
Birth defects
are forever.
Unless
you help.
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