

# CHIPPEWA FEDERATION



**BAD RIVER**



**RED CLIFF**



**LAC DU  
FLAMBEAU**



**LAC COURTE  
OREILLES**



**SOKAOGON**



**ST. CROIX**



**KEWEENAW  
BAY**

## A Joint Memorandum

**From Seven Ojibwe Bands of the Anishinaabeg Territory of Lake Superior:**

**Bad River Band of Lake Superior Chippewa Indians, Keweenaw Bay Indian Community, Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Lac du Flambeau Band of Lake Superior Chippewa Indians, Red Cliff Band of Lake Superior Chippewa Indians, Sokaogon Chippewa Community of the Mole Lake Band, and St. Croix Chippewa Indians of Wisconsin**

To: Members of the Special Committee on State-Tribal Relations

From: Chippewa Federation

Re: Wisconsin Safe Haven Law and the Indian Child Welfare Act

Date: November 21, 2014

The federally recognized tribes of the Chippewa Federation offer these comments as the Special Committee on State-Tribal Relations (hereinafter “Committee”) considers legislation to achieve the objectives of the federal and Wisconsin Indian Child Welfare Acts (ICWA, 25 U.S.C. 1901 et seq. and WICWA, s. 48.028 Stats.) in the context of the Safe Haven Law (s. 48.028, Stats.).

As Sovereign Nations, the federally recognized tribes of the Chippewa Federation have a vested interest in protecting their children. The purpose of the Indian Child Welfare Act (ICWA) was “meant to stop the widespread removal of Native children from their communities”<sup>1</sup> From 1961 to 1976 in particular, approximately 12,500 American Indian children were removed from their families and tribal communities.<sup>2</sup> American Indian children were being removed without evidence of neglect and/or abuse. During the U.S. Senate and Congressional hearings, it was clearly demonstrated that “deceptive, coercive, and discriminatory practices” were utilized by “governmental officials, missionaries, and social workers” in the removal of generations of Indian children from their families.<sup>3</sup>

<sup>1</sup> Palmiste, C. (2011). From the Indian Adoption Project to the Indian Child Welfare Act: the resistance of Native American communities. *Indigenous Policy Journal* (No. 1, Vol. XXII., pp. 6. Retrieved from <http://indigenouspolicy.org/ipjcms/Articles/VolXXII/No1/FromtheIndianAdoptionProjectto/tabid/223/Default.aspx>

<sup>2</sup> *Id.*

<sup>3</sup> Strong, P. T. (2001). To forget their tongue, their name, and their whole relation: captivity, extra-tribal adoption, and the Indian child welfare act. In S. Franklin & S. McKinnon (Eds.), *Relative values: reconfiguring kinship studies* (pp. 469). Durham & London: Duke University Press.

Following other policies of assimilation such as the Boarding School policy, the Allotment policy, the Termination policy and the Indian Relocation policy, the removal of children continued towards a path of cultural decimation. National studies were conducted by the Association on American Indian Affairs in 1969 and again in 1974 to study the impact of state child welfare practices towards American Indian children. The studies concluded that 25 to 35 percent of American Indian children were removed and placed in foster and adoptive homes, as well as institutions.<sup>4</sup> These findings were presented in congressional hearings starting in 1974.<sup>5</sup> The result of these hearings was the passage of the Indian Child Welfare Act on November 8, 1978. The purpose of the ICWA was:

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs. (25 U.S.C. §1902).

Prior to the ICWA, the underlying policy of the United States at the time was assimilation of tribal individuals, cultures, and communities as acts of cultural genocide. These failures continue today in the form of the Safe Haven Law. State-sanctioned relinquishment of a child, when it could be readily ascertained if that child has Indian ancestry, deprives both the child of his or her identity, and threatens the continued existence of the federally recognized tribes of the Chippewa Federation. As illustrated in the 1977 Congressional Hearings, “culturally the chance of Indian survival are significantly reduced if our children, the only means for the transmission of the tribal heritage are to be raised in non-Indian homes and denied exposure to the ways of their people.”<sup>6</sup>

The Chippewa Federation recognizes that in the immediate moment of relinquishment, a safe haven protocol is in a child’s best interests. However, the importance of an Indian child maintaining its cultural connection to its Tribe is equally important. As Blanchard and Barsh emphasized: With enactment of the Indian Child Welfare Act, the federal government responded affirmatively to the petition of American Indians that their way of life be allowed to continue. At issue is not tribal right versus individual right, but rather the right of a people to maintain a culture that has provided them meaning in this world from the beginning of time.<sup>7</sup>

In order to act in the best interests of an Indian child, all actors in the course of a child relinquishment must put forth an effort to ensure that information related to a child’s Indian identity is obtained and maintained. Recognizing that the majority of Safe Haven relinquishments occur in a

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<sup>4</sup> Holt, M. I. (2001). *Indian orphanages*. University Press of Kansas.

<sup>5</sup> *Id.*

<sup>6</sup> National Archives of the United States. (1974). Hearings before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, April 8 and 9, 1974. Washington DC: Government Printing Office.

<sup>7</sup> Mannes, M. (1995). Factors and events leading to the passage of the Indian Child Welfare Act. *Child Welfare* (1 No., Vol. 74, pp. 264-282).

hospital setting, the Chippewa Federation wishes to propose the following to reconcile the intent of the Safe Haven Law with the purpose of both the ICWA and the WICWA:

**I. A duty for relinquishing parent(s) to disclose a child's Indian status, including but not limited to the parent(s) name, date of birth, enrollment/membership identification number, tribe (band and clan), and other identifying information.**

The Chippewa Federation believes that imposing a duty to provide information related to tribal affiliation upon relinquishing a child is in the best interests of that child. The Chippewa Federation further believes that through information and education, a relinquishing parent can be assured that her or his identifying information will be sealed by the tribe of affiliation once a determination has been made as to the child's eligibility for enrollment. To this end, the relinquishing parent's anonymity can be preserved through internal tribal confidentiality controls, while the child's best interests and the tribe's continued existence, are ensured.

**II. A duty for state child protection workers to: a) respond to a hospital where a parent has indicated a desire to relinquish under Safe Haven, following notification by hospital personnel; b) to make active efforts to collect, maintain, and disseminate to the tribe identified the information given by the relinquishing parent(s); and c) take the child into custody.**

The Chippewa Federation believes it should be the responsibility of state Child Protective Services ("CPS") to report to a hospital, where an admitted parent evidences an intent to relinquish, in a timely matter for all children. The codification of such a response would necessitate that hospital staff inform CPS as soon as the mother indicated a desire to relinquish, but take no further steps in ascertaining the Indian identity of the child. To this end, CPS would report in *all* Safe Haven cases, and it would be CPS's responsibility to determine if the child is potentially an Indian child.

Importantly, a procedure that requires CPS to respond to hospital-based Safe Haven deliveries permits the collection of information related to tribal affiliation outside the scope of any Health Insurance Portability and Accountability Act ("HIPAA") concerns. The information collected would become part of the child protection record, and in accordance with the provisions of Wis. Stat. Ann. Chapter 48, is disseminated to the tribe(s) identified. For those cases where the relinquishing parent indicates tribal affiliation, the child should be taken into custody under an involuntary child welfare proceeding. To this end, the relinquishment is permissible under the ICWA.

In conclusion, the Chippewa Federation reminds the members of the Special Committee on State-Tribal Relations that the ICWA preempts Wisconsin's Safe Haven Law. Therefore, the undersigned federally recognized tribes of the Chippewa Federation request that you consider these comments, and looks forward to working with the members of the Special Committee on State-Tribal Relations on this very important issue.