



ICWA

The Indian Child Welfare Act (ICWA) was passed in 1978 to address the alarming number of Indian children removed from their families and placed in non-Indian homes. ICWA is considered an important link to the survival of Indian tribes and Indian culture. Congress recognized “no resource...more vital to the continued existence and integrity of Indian tribes than their children.” 25 U.S.C. 1901.

Briefly, ICWA

-established minimum federal requirements for the removal and placement of Indian children involved in state custody proceedings;

-provides assistance to tribes to offer child welfare programs;

Under ICWA, states must identify Indian children and notify the parents and the tribes of the right to intervene in state child welfare

proceedings. Tribes can request that a child welfare proceeding involving the custody of an Indian child be transferred to the tribal court.

States must follow particular procedures for Indian child welfare custody proceedings in state courts and standards of proof and placement preferences apply. You can view DCFS policies regarding ICWA at: www.hsdcsf.utah.gov/icwa.htm.

PDA OFFERS SEMINAR ON CHILD INTERVIEWING

On Friday, October 26, 2007, from 10:45 a.m. until 1:15 p.m. at the Utah Bar, the Parental Defense Alliance is pleased to offer a presentation by retired SL Det. Don Bell on Child Interviewing for Parents Counsel.

Det. Bell supervised investigators assigned to the Special Victims Unit in Salt Lake City.

The presentation includes:

-overview of the forensic child interview developed by the National Institute of Child Health and Development;

-7 reasons why children find it difficult to disclose abuse;

-Things to Remember When Interviewing Children;

-Children’s language development;

-Children tell us what they know if we ask the right questions in the right way;

-Best types of questions to use;

-Need for a structured interviewing guideline;

-Need for corroborative evidence.

Understanding the proper way to interview children is particularly useful for parents attorneys. DCFS employees have recently undergone training in the NICHD protocol. They must be held to the techniques taught them during their investigative interviews in child welfare cases.

The seminar will be held at the Utah Bar office, 645 So. 200 East, Salt Lake City. The event is free for parents counsel. General admission is \$10. Lunch will be served. Approved for 2 hours CLE.

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Special points of interest:

- Free Seminar on Child Interviewing For Parent’s Counsel
- Brief Look at The Indian Child Welfare Act
- When The System Fails The Family
- Family Centered Practice: The best approach to protect children

DID “THE SYSTEM” FAIL THIS FAMILY?

The following is a synopsis of one Utah case. The names have been changed. At the recent Prevent Child Abuse conference, attendees rallied themselves with tales of abuse when the system fails a severely abused child.

No one wants to see children abused. Under the guise of protection we cannot accept abuse of children by the State. It is important to remember that the system can fail families—thereby ultimately failing children—if the enforcement arm of child protection—CPS investigators, GAL, caseworkers, and prosecutors—misjudge the intervention necessary to protect our children.

RaeAnne was a typical boy-crazy 15 year old when she met the a young member of a local gang. She became infatuated with him, writing him long love letters, anxious to have his “brown baby”.

RaeAnne’s parents weren’t as enthralled with the idea of their minor daughter becoming a mother. They did all they could to keep RaeAnne from the young gang-banger.

RaeAnne’s desires could not be dampened by restriction or removing telephone privileges. One night father caught her writing the young man yet another sexually explicit “love letter.” RaeAnne and her father argued and he, in his frustration, held her face in an attempt to force her to look at him while he talked to her. He then pushed her backward onto her bed. Her younger sister, in the next bed, “saw” dad “pick her up by the neck and throw her on the bed.” RaeAnne had 3 “red marks” the size of fingertips on her

face.

The next morning, RaeAnne reported to school officials that her father had beaten her. CPS investigated. RaeAnne was “afraid” to go home. RaeAnne was “taken into protective custody.”

RaeAnne’s three younger siblings were removed as siblings at risk.

Before the State’s petition would be adjudicated, the parents visited with their children at the DCFS office. The younger children cried and wanted to go home. They wrote their parents letters...letters the GAL refused to allow to be delivered to their mother. On one visit, the DCFS aide observing the visit would remark to the father words to the effect that being “15 and pregnant” isn’t so bad...her sister had a child at 15 and “doing fine.”

Father was charged criminally with a misdemeanor charge. Determined to use their limited financial resources to defend themselves in juvenile court, the father pled no contest to the charge. At his sentencing, the judge looked at the photographs of RaeAnne’s “injuries”, listened to father’s story, and he imposed a nominal fine as a sanction.

In juvenile court, the sanction was far from nominal

After trial, the children were found to be under the jurisdiction of the court as abused children. The children were separated, placed with family members. The three younger children would eventually return home.

Over the next two years, RaeAnne would blow at least 7 placements, including high cost special placements. She was caught “skinny dipping” with a group of boys during school hours. She convinced her DCFS caseworker she needed birth control for “painful periods.”

DCFS initially provided “counseling” to RaeAnne in the form of bi-weekly visits with the school counselor. She would later be discharged from a residential facility after she repeatedly refused to participate in the program. She tormented another resident to the point the young girl attempted suicide.

RaeAnne’s sisters participated, at considerable cost to the parents, in counseling with a licensed mental health therapist to deal with their anger at their older sister.

The parents life savings were depleted with legal fees, counseling and child support payments.

Despite birth control, RaeAnne became pregnant while in the “protective custody of the Division.” The DCFS caseworker would repeatedly deny to the mother that RaeAnne was pregnant. The parents’ insurance covered the costs of prenatal care and the parents were billed for non-covered charges so they received payment explanations detailing the reason for the medical care: Pregnancy.

RaeAnne aged out of protective custody, unmarried and pregnant.

CURRENT STATUS: Mother and father have divorced, unable to cope with the

Continued...

Annual “Prevent Child Abuse Utah” Conference Light On “Prevention” Heavy On “Prosecution”

The Annual “Joining Forces” by Prevent Child Abuse Utah conference was held September 24, 25 and 26 2007 in Salt Lake City, Utah. The annual event for child welfare workers, social workers, therapists, and law enforcement included programs from Primary Children’s Hospital’s Child Abuse detection team to “debunk” challenges to “shaken baby

syndrome” by “the lawyers” and “legal system.” Law enforcement offered techniques for investigating child abuse. Mental health professionals considered the conflict between therapeutic and forensic roles which arises when by mental health therapists who work with children and must also provide information to “attorneys and court”.

Although the conference is sponsored by “Prevent” Child Abuse Utah, very little was evident by way of providing services to at risk families to seriously “prevent” child abuse. There were no obvious signs of “reasonable efforts” in any presentation.

Maybe next year...

Did “The System” Fail This Family?



financial difficulty and stressors placed on their shattered family .

Mom has a close relationship with the younger children, but her relationship with RaeAnne is cautious. She does what she needs to do to be able to be involved in her grandchildren’s lives. Mom states that RaeAnne plays “the victim” now whenever she wants to get her way.

One sibling was killed in an auto pedestrian accident while on her way to see her mother.

Another sibling has a “strained” relationship with RaeAnne. She has never forgiven RaeAnne for “using” the younger kids “to enhance her cause.”

The youngest sister has reconciled with RaeAnne and today lives with her to help her out

RaeAnne, still unmarried, has had a second child.



What Is “Family Centered” Practice?

Child Welfare legislation, from the 1980 Adoption and Safe Families Act (PL-96-272), Family Preservation and Support Act of 1993 (PL 103-66), Safe and Stable Family Program of 1997, Child Abuse and Prevention and Treatment Act and Keeping Children (CAPTA) and Families Safe Act of 2003 (reauthorizing CAPTA), and Promoting Safe and Stable Families Amendments, require States to have programs intended to reflect a comprehensive plan for family-centered services, including:

- aid families manage the tasks of daily living, adequately nurture children, and remedy risky family situations;
- provide “reasonable efforts” to keep children in their homes whenever possible rather than placing them in foster care;
- to protect the right of every child to grow up with a sense of well-being, belonging and permanence.

According to the National Resource Center for Family-Centered Practice and Permanency Planning, *Shifting the focus from the child to the family has often been viewed in child welfare as creating a dichotomy between the goals of protecting children and preserving and supporting families. But effective family-centered practice depends on a clear understanding of the relationship between these two goals. The belief that the best approach to protect children is to*

strengthen families acknowledges that there are times in the lives of families when they may be weak from exposure to stressors such as poverty, poor housing, substance abuse, domestic violence, or mental illness.

The shift to a family centered practice comes at a time when research confirms what parents have intuitively known all along—generally, children fare better with their parents—even in dysfunctional families—than in foster care.

According to a 2007 study by a MIT Sloan School of Management professor, “children on the margin of foster care placement have better employment, delinquency and teen motherhood outcomes when they remain at home.” Joseph J. Doyle, Jr., utilized the analytic tools of applied economics to show that children faced with two options—being allowed to stay home or to be placed in foster care—have generally **better life outcomes** when they remain with their families. MIT News, <http://web.mit.edu/newsoffice/2007/sloan-fostercare-study-0703.html>. “We were able to analyze what would have happened to a child if he or she had stayed at home, rather than in a foster home,” he said. “For decades, the issue of family preservation versus foster placement has been a thorny one. In the 1960s, the number of children in foster care increased from 200,000 to 600,000, and then fell back

to 200,000 by 1980. Currently, more than 500,000 children are in care and we’re again seeing an emphasis on family preservation.” Id.

“The belief that the best approach to protect children is to strengthen families acknowledges that there are times in the lives of families when they may be weak from exposure to stressors such as poverty, poor housing, substance abuse, domestic violence, or mental illness.”

Components of a family-centered practice include the following:

- focus on the family unit;
- emphasis on strengthening the capacity of families to function effectively
- engage families in designing all aspects of services;
- families are linked to appropriate community services.

DCFS has adopted the family-centered approach. View their Guidelines online at: www.hsdcfs.utah.gov.

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*If the government is a lawbreaker, it breeds
 contempt for the law.*

Justice Louis Brandeis



Notices

JUVENILE LAW SECTION. The Utah Bar Commission unanimously approved the request for a Juvenile Law Section. Julie Lund, Assistant Attorney General, Chief of the Child Welfare Division, will serve as the Section's first President. Herb Gillespie, Parental Defense attorney and Public Defender, is the Sections first Vice-President. Watch the Newsletter and eBulletins for more information about the Section.

MINI SEMINAR. The PDA will sponsor a mini-seminar in October on Interviewing Children. Retired Salt Lake Detective Don Bell will conduct the meeting, providing parental defense counsel with an overview of the training recently provided to CPS workers for The Division of Child and Family Services. The training will help counsel evaluate the adequacy of the interviews of children conducted by CPS investigators. You can register on line from the Parental Defense website, www.parentaldefense.org.

2008 ANNUAL CONFERENCE. Planning is underway for the 2008 Annual Parental Defense Conference. We would welcome your suggestions for presenters and topics. If you have any suggestions, please contact John Norman, john@parentaldefense.org.

WE WANT YOUR INPUT! PDA of Utah is considering bringing the NITA trial advocacy program to Utah for Parental Defense counsel. Please let us know if this program is something you would support by your participation. Contact John Norman at john@parentaldefense.org if you would participate in the program.

PRACTICE GUIDELINES. PDA will provide, free of cost, a copy of the DCFS Practice Guidelines. The Guidelines contain the policies and practices DCFS must follow in all aspects of its conduct.



If you need a copy, contact John Norman, john @parentaldefense.org.