

## Indian Child Welfare

“Active Efforts “

### Why are “Active Efforts” Required?

Congress found “that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarming high percentage of such children are placed in non-native foster and adoptive homes and institutions; and.....that the States, exercising the recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognized the essential tribal relations of Indian People and the cultural and social standards prevailing in Indian communities and Families”

25 U.S.C § 1901 (4)-(5)



Active Efforts are required to prevent the break up of an Indian Family by preventing an out-of-home placement or by fostering reunification when the child is removed from the physical and legal custody of his or her parents

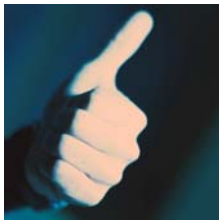


Whether a state or private party, the Indian Child Welfare Act (ICWA) § 1912 (d) requires the party seeking foster care placement under § 1912 (e) or termination of parental rights under § 1912 (f) to prove that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian Family and that such efforts have proved unsuccessful.

## What are “Active Efforts”?

“Active Efforts” standard requires more effort than “Reasonable efforts” standard does.

- ❖ A Montana court stated “the term active efforts by definition, implies heightened responsibility compared to passive efforts.
- ❖ An Alaska court cited an ICWA commentator who distinguished between active and passive efforts: “Passive efforts entail merely drawing up a reunification plan and requiring the client to use his or her own resources to....bring.....it to fruition”.  
“ Active Efforts on the other hand include taking the client through the steps of the plan rather than requiring the plan to be performed on it own.”

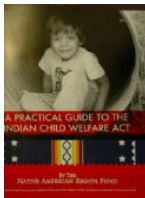


The rule of thumb is that “active efforts” is to engage the family while “reasonable efforts” simply offers referrals to the family , and leaves it to them to seek out assistance

## ASFA & ICWA

The ASFA recognizes certain circumstance under which no reasonable efforts are necessary such as where a court find that a parent has subjected their child to aggravated circumstances of abuse or neglect. This it purportedly relieves the showing of active efforts under the State Law, but it does not alter ICWA's active efforts requirements.

## Reference Materials Available



A practical guide to the Indian Child Welfare Act is available through Native American Rights Fund (NARF) <http://narf.org>

This guide is available on line or can be order