

Common Core 3.0

# **ICWA: Working with Native American Families and Tribes**

Trainee Guide



April 30, 2019

Table of Contents

Introduction to Common Core ..... 3

Curriculum Introduction ..... 4

Agenda ..... 5

Learning Objectives ..... 6

The Changing Perceptions of American Indian People..... 7

ICWA at a Glance ..... 8

ICWA Best Practice ..... 9

The Indian Child Welfare Act ..... 10

The Boarding School Experience..... 11

Two Apologies ..... 12

ICWA BASICS ..... 14

California Indians ..... 15

ICWA History ..... 17

Following the Spirit of ICWA ..... 18

Historical Trauma..... 21

Inquiry and Notice ..... 25

Active Efforts..... 46

Placement..... 50

Tribal Sovereignty ..... 54

Concurrent Planning ..... 59

Expert Witness..... 61

Why ICWA? ..... 63

References..... 65

Additional Resources ..... 66

Additional Resources—Tribal Star ..... 67

Appendices ..... 71

## Introduction to Common Core

Common Core curriculum and training for new child welfare workers in California is designed to be generalizable across the state, cover basic child welfare knowledge and skills and is important for all CWS positions within an agency.

California's Common Core Curricula for Child Welfare Workers is the result of the invaluable work and guidance of a great many people throughout the child welfare system in California and across the country. It would be impossible to list all of the individuals who contributed, but some groups of people will be acknowledged here.

The Content Development Oversight Group (CDOG) a subcommittee of the Statewide Training and Education Committee (STEC) provided overall guidance for the development of the curricula. Convened by the California Social Work Education Center (CalSWEC) and the California Department of Social Services (CDSS), CDOG membership includes representatives from the Regional Training Academies (RTAs), the University Consortium for Children and Families in Los Angeles (UCCF), and Los Angeles County Department of Children and Family Services.

In addition to CDOG, a Common Core 3.0 subcommittee comprised of representatives from the RTAs, the Resource Center for Family Focused Practice, and counties provided oversight and approval for the curriculum development process.

Along the way, many other people provided their insight and hard work, attending pilots of the trainings, reviewing sections of curricula, or providing other assistance.

California's child welfare system greatly benefits from this collaborative endeavor, which helps our workforce meet the needs of the state's children and families.

The Children's Research Center provided technical support as well as The Structured Decision Making System that includes the SDM 3.0 Policy and Procedure Manual and Decision Making Tools. These resources are used in compliance with CRC copyright agreements with California. Additionally, content in this curriculum has been adapted from CRC's SDM 3.0 classroom curriculum to meet the training needs in California.

In compliance with the Indian Child Welfare Act (1978) and the California Practice Model, social workers must identify American Indian/Alaska Native children in the system. For an overview of *Implementing the Indian Child Welfare Act* view: <https://www.youtube.com/watch?v=BIQG65KFKGs>

The curriculum is developed with public funds and is intended for public use. For information on use and citation of the curriculum, please refer to:

[https://calswec.berkeley.edu/sites/default/files/citation\\_guideline\\_6-2018.pdf](https://calswec.berkeley.edu/sites/default/files/citation_guideline_6-2018.pdf)



FOR MORE INFORMATION on California's Core Curricula, as well as the latest version of this curriculum, please visit the California Social Work Education Center (CalSWEC) website:

<https://calswec.berkeley.edu>

## Curriculum Introduction

This curriculum is adapted from the Tribal STAR eight-hour full-day training. This curriculum is intended to provide participants with an understanding of ICWA that incorporates the spirit of the law and the historic context for its necessity. This training attempts to change common perceptions about American Indians/Alaska Natives and assist participants in achieving the cultural humility required to engage with Tribal children, families, caregivers and Tribes.

The language is reflective of current best practices, including Safety Organized Practice and family finding, included in the curriculum in an effort to ensure this curriculum is consistent with the current practice model. The curriculum incorporates the Bureau of Indian Affairs' 2016 Guidelines of Implementing the Indian Child Welfare Act and the 2016 ICWA Regulations.

# Agenda

Segment 1:	Getting Started	9:00- 10:05 am
	<ul style="list-style-type: none"> <li>Welcome, Introductions, Housekeeping (optional Talking Circle)</li> <li>Training Overview; eLearning review, Historical Context of ICWA:</li> <li>Two Apologies</li> <li>Basic Provisions of ICWA</li> <li>Activity: What do we hope to gain from today?</li> </ul>	
<b>BREAK</b>		<b>10:05-10:20 am</b>
Segment 2:	California Indians	<b>10:20-10:50 am</b>
Segment 3:	History, Purpose and Spirit of ICWA	<b>10:50-11:00 am</b>
Segment 4:	Historical Trauma	<b>11:00-11:40 am</b>
Segment 5:	Remedying Bias through Contributions	<b>11:40-11:45 am</b>
<b>LUNCH BREAK</b>	<b>60 MINUTES</b>	<b>11:45 am-12:45 pm</b>
Segment 6:	ICWA Requirements and Social Work Practice	<b>12:45-2:30 pm</b>
	<ul style="list-style-type: none"> <li>Inquiry and Notice</li> <li>Active Efforts</li> <li>Placement</li> </ul>	
<b>BREAK</b>		<b>2:30-2:45 pm</b>
	<ul style="list-style-type: none"> <li>Tribal Sovereignty</li> <li>Concurrent Planning</li> <li>Qualified Expert Witness</li> </ul>	<b>2:45-3:05 pm</b>
Segment 7:	What Stands Out from Today	<b>3:05-3:25 pm</b>
Segment 8:	Post-Test and Evaluation	<b>3:25-4:00 pm</b>



## Learning Objectives

### Knowledge

- K1.** Participants will understand the relationship between U.S. history and the Indian Child Welfare Act (ICWA), and will be able to identify three events that led to the passage of ICWA.
- K2.** Participants will understand regional differences of California Indian history and will identify two regional historic events that resulted in historical trauma.
- K3.** Participants will identify two examples of the effects of historical trauma that affect engaging and working with Indian children, families and Tribes.
- K4.** Participants will recognize that Tribes are sovereign nations and that being American Indian/Alaska Native is both a political and cultural distinction.
- K5.** Participants will be able to identify five basic provisions of the Indian Child Welfare Act.
- K6.** Participants will be able to identify engagement and teaming with Tribes as a part of the new practice model.
- K7.** Participants will understand the differences between reasonable and active efforts, that active efforts begin immediately when there is reason to know a child is American Indian or Alaska Native, and will be able to change a reasonable effort into an active effort.
- K8.** Participants will understand ICWA placement preferences and that they are important to one of ICWA's purposes.
- K9.** Participants will recognize guardianship and Tribal Customary Adoption as concurrent planning options for American Indian and Alaska Native children.
- K10.** Participants will be able to describe two positive child welfare outcomes from a Tribal perspective and will be able to identify legal consequences to non-compliance with ICWA.
- K11.** Participants will recognize the legal ramifications related to non-compliance with ICWA.

### Skills

- S1.** Participants will demonstrate awareness of culturally appropriate engagement for the purpose of identifying American Indian/Alaska Native children.
- S2.** Participants will demonstrate the ability to change reasonable efforts into active efforts.

### Values

- V1.** Participants will value engaging and teaming with Tribes, Tribal service providers and designated ICWA agents and advocates as resources for decision making, ICWA compliance, and implementation of the Practice Model.
- V2.** Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and Tribe to ensure positive child welfare outcomes and ICWA compliance.

## The Changing Perceptions of American Indian People

"Made by the same Great Spirit, and living in the same land with our brothers, the red men, we consider ourselves as the same family; we wish to live with them as one people, and to cherish their interests as our own."

—*From: Thomas Jefferson: To the Miamis, Powtewataminies, and Weeauki*  
— Warren, Robert P. 1982 Chief Joseph of the Nez Perce, A Poem, Excerpt Frontpiece



"The more we can kill this year, the less will have to be killed the next war, for the more I see of these Indians, the more convinced I am that they will all have to be killed or be maintained as a species of paupers."

—*William Tecumseh Sherman*



"When the last Red Man shall have perished, and the memory of my Tribe shall have become a myth among the white men, these shores will swarm with the invisible dead of my Tribe, and when your children's children think themselves alone in the field, the store, the shop, upon the highway, or in the night when the streets of your cities are silent and you think them deserted, they will throng with the returning hosts that once filled them and still love this beautiful land. The White Man will never be alone."

—*Chief Sealth of the Duwamish*



"That a war of extermination will continue to be waged between the races, until the Indian race becomes extinct, must be expected. While we cannot anticipate this result but with painful regret, the inevitable destiny of the [Indian] race is beyond the power of wisdom of man to avert."

—*California Governor Peter H. Burnett*

## ICWA at a Glance

### ALWAYS

- **CONSULT** with Tribe early and throughout the case.
- **FOLLOW THE SPIRIT OF ICWA** if the child is a Native American child but the case is not an ICWA case OR if you are not sure it is an ICWA case,
- **DOCUMENT** everything clearly and objectively. ICWA forms must be completed, even if the answer is “information not available.” Document all of your efforts on the case, especially with regard to inquiry, notice, active efforts and placement.
- **WHEN IN DOUBT, C.Y.A.:** Call your attorney.

### INQUIRY AND NOTICE

- Disproportionality cannot be reduced if we do not identify each Indian child in our care.
- It is better to state “If you are American Indian/Alaska Native there may be additional services available to you,” than ask if they are Native American.
- Continue to make inquiry throughout the life of the case.
- Notice all Tribes of which the child is a member or eligible to be a member.
- Check your county’s ICWA protocol.

### ACTIVE EFFORTS

- Active efforts begin immediately if you have reason to believe the child is an Indian child.
- Active efforts are meant to help families believe in the process rather than become dependent.
- Active efforts are required to build trust and overcome generations of mistrust in government agencies.

### PLACEMENT

- Place with family/extended family; extended family is defined by Tribal law or custom.
- Work with Tribal ICWA worker to identify placement options.
- If a preferred placement is not available, place with caregiver who is 1) willing to promote family, cultural and Tribal connections and 2) to which the Tribe does not object.

### CONCURRENT PLANNING

- Early and meaningful consultation is the key to successful partnerships with Tribes.
- Remember to inform family and Tribe of Tribal Customary Adoption as an option early in the case.
- TCA may only be chosen by the Tribe; the TCA order is issued only by the Tribe.

### QUALIFIED EXPERT WITNESS

- Insist that the qualified expert witness make efforts to speak with the parents and Tribal social worker or advocate.
- Document all of your efforts related to inquiry, notice, active efforts and placement.
- Work with the child’s Tribe to identify a qualified expert witness.



## ICWA Best Practice

- Adopt the BIA Guidelines for Implementing the Indian Child Welfare Act as the foundation for best practices in serving Native American children and families.
- Assume that the child is an Indian child unless and until there is information indicating otherwise.
- Document clearly and objectively all of your efforts, but especially those related to inquiry, notice, active efforts and placement.
- If a child must be enrolled in order to be considered a member of a Tribe, the social worker should assist the family and child in completing required paperwork and engaging in the enrollment process.
- Follow the Spirit of ICWA: Ensure access to culturally appropriate services and facilitate ties between the child, extended family and the Tribe, when the Tribe is not federally recognize and when the Native American child is descended from a federally-recognized Tribe but is not eligible for membership.
- Complete every section of ICWA 010 and 030 forms. If, after asking, you are unable to obtain information, write “information unavailable” on the form.
- Make sure to consult with the Tribe when preparing each court report to confirm their choice of permanent plan has not changed.
- As soon as possible, engage with Tribal social workers, ICWA agents and advocates, and develop relationships that support appropriate decision-making to ensure ICWA compliance.

# THE INDIAN CHILD WELFARE ACT

## PURPOSE AND BASIC PROVISIONS



## FIVE PROVISIONS

### INQUIRY AND NOTICE

### ACTIVE EFFORTS

### PLACEMENT

### CONCURRENT PLANNING

### QUALIFIED EXPERT WITNESS



## The Boarding School Experience

The political approach by the federal government was to remove children from the reservation and place them in boarding schools with hopes of “civilizing” them. Boarding schools were rigid and military-like and were designed to separate a child from his family, Tribal community, Tribal values, culture, and language, and to change him in such a way that he would not be able to return to his people.

The first attempt to educate the American Indian was by religious groups in the 1870s and 1880s. The focus was on converting and civilizing the Indian and the curriculum was the Bible. The Carlisle Indian School, founded in 1879, was the first established boarding school for Indian children. Carlisle’s model of instruction emphasized religion, academic training, and institutional labor, and was adopted by other boarding and mission schools in years to come.

Boarding schools were the primary mechanism for educating Indian children until the 1920s. The Meriam Report, an economic and social study of conditions in Indian Country published in 1928, documented failures and inadequacies of boarding schools.<sup>1</sup> The report stated “frankly and unequivocally that the provisions for the care of the Indian children in boarding schools are grossly inadequate.”<sup>2</sup> Dietary deficiencies contributed to the poor health of the children, the facilities were overcrowded, healthcare was substandard, and the schools were supported by the labor of the children themselves.<sup>3</sup> Children faced harsh physical discipline, many were physically and sexually abused.

The boarding schools left a negative impact on the caregiver capacities of adults who were raised in the institutions. Tribal cultures had mechanisms that taught youth the responsibilities of becoming adults, parents, and active members of one’s community. During puberty rites, young men and women were taught values that governed childrearing and community responsibility. During the Boarding School era, many of the teachings were lost and the ability of Tribal people to raise and maintain successful families diminished. These challenges are often observed through the need for parenting classes, and through the need for youth to find culturally appropriate mentors and role models who successfully navigate contemporary culture while maintaining a Tribal identity.

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<sup>1</sup> Meriam, Lewis, Comp.; And Others. The Problem of Indian Administration. Report of a Survey Made at the Request of Honorable Hubert Work, Secretary of the Interior, and Submitted to Him, February 21, 1928. Brookings Institution, Washington, D.C. Department of the Interior, Washington, D.C.

<sup>2</sup> Ibid at page 11.

<sup>3</sup> Ibid 11-12.

## Two Apologies

**Kevin Gover's Remarks  
at the Ceremony Acknowledging the 175<sup>th</sup> Anniversary  
of the Bureau of Indian Affairs, September 8, 2000**  
*(Edited for length)*

"In March of 1824, President James Monroe established the Office of Indian Affairs in the Department of War. Its mission was to conduct the nation's business with regard to Indian affairs. We have come together today to mark the first 175 years of the institution now known as the Bureau of Indian Affairs. [...]

From the very beginning, the Office of Indian Affairs was an instrument by which the United States enforced its ambition against the Indian nations and Indian people who stood in its path. And so, the first mission of this institution was to execute the removal of the southeastern tribal nations. [...] As the nation looked to the West for more land, this agency participated in the ethnic cleansing that befell the western Tribes. [...]

This agency forbade the speaking of Indian languages, prohibited the conduct of traditional religious activities, outlawed traditional government, and made Indian people ashamed of who they were. Worst of all, the Bureau of Indian Affairs committed these acts against the children entrusted to its boarding schools, brutalizing them emotionally, psychologically, physically, and spiritually. [...] The trauma of shame, fear and anger has passed from one generation to the next, and manifests itself in the rampant alcoholism, drug abuse, and domestic violence that plague Indian country. [...] So many of the maladies suffered today in Indian country result from the failures of this agency. [...]

Let us begin by expressing our profound sorrow for what this agency has done in the past. Just like you, when we think of these misdeeds and their tragic consequences, our hearts break and our grief is as pure and complete as yours. We desperately wish that we could change this history, but of course we cannot. On behalf of the Bureau of Indian Affairs, I extend this formal apology to Indian people for the historical conduct of this agency.

And while the BIA employees of today did not commit these wrongs, we acknowledge that the institution we serve did. We accept this inheritance, this legacy of racism and inhumanity. And by accepting this legacy, we accept also the moral responsibility of putting things right. [...]"

**Apology of Shay Bilchik, Executive Director  
Child Welfare League of America**  
**Keynote Speech delivered at National Indian Child Welfare Association (NICWA) Conference**  
**Tuesday, April 24, 2001**  
**Anchorage, Alaska**  
*(Edited for length)*

“Now the Child Welfare League of America, the organization I represent, has never been a part of the U.S. government. But most of its members, public and private child welfare organizations, represent a profession that has always been dedicated to improvement, in its positive and sometimes negative sense. For that reason, I think that you and all the people you represent deserve an accounting of one phase of our history. [...]

These are the facts. Between 1958 and 1967, CWLA cooperated with the Bureau of Indian Affairs, under a federal contract, to facilitate an experiment in which 395 Indian children were removed from their Tribes and cultures for adoption by non-Indian families. This experiment began primarily in the New England states. CWLA channeled federal funds to its oldest and most established private agencies first, to arrange the adoptions, though public child welfare agencies were also involved toward the end of this period. Exactly 395 adoptions of Indian children were done and studied during this 10-year period, with the numbers peaking in 1967.

ARENA, the Adoption Resource Exchange of North America, began in early 1968 as the successor to the BIA/CWLA Indian Adoption Project. Counting the period before 1958 and some years after it, CWLA was partly responsible for approximately 650 children being taken from their Tribes and placed in non-Indian homes. For some of you, this story is a part of your personal history.

Through this project, BIA and CWLA actively encouraged states to continue and to expand the practice of “rescuing” Native children from their own culture, from their very families. Because of this legitimizing effect, the indirect results of this initiative cannot be measured by the numbers I have cited. Paternalism under the guise of child welfare is still alive in many locations today, as you well know. [...]

While adoption was not as wholesale as the infamous Indian schools, in terms of lost heritage, it was even more absolute. I deeply regret the fact that CWLA’s active participation gave credibility to such a hurtful, biased, and disgraceful course of action. I also acknowledge that a CWLA representative testified against ICWA at least once, although fortunately, that testimony did not achieve its end.

As we look at these events with today’s perspective, we see them as both catastrophic and unforgivable. Speaking for CWLA and its staff, I offer our sincere and deep regret for what preceded us.”

## ICWA BASICS

**Who is an Indian child?** An Indian child is any unmarried person who is less than 18 years of age and is also:

- A member of an Indian Tribe, or
- Is eligible for membership in an Indian Tribe and
- Is the biological child of a member of an Indian Tribe.

It is important to note that the child is not *required* to be a member of a Tribe to be considered an Indian child. The child only needs to be eligible for membership in accordance with the Tribe's law, custom or tradition relating to membership. Additionally, a social worker need only have "reason to know" the child is or may be an Indian child in order for certain ICWA requirements to be triggered. Proof of a parent or child's membership or eligibility is not required.

**Who determines who is an Indian child?** Only an Indian Tribe determines whether a child is a member or eligible for membership in the Tribe. A child does not have to be enrolled in the Tribe in order to be considered an Indian child unless the Tribe requires enrollment a prerequisite to membership in accordance with the Tribe's laws, customs and traditions.

**When does ICWA apply?** The case should be treated as an ICWA case **immediately** if there is reason to know that a child is or may be Indian. At the same time efforts need to be made to notify the Tribe and confirm whether the child is an Indian child under ICWA. "Reason to know" that a child is an Indian child includes, but is not limited to, information from parents, family, caregivers, etc., who say the family is Native American; the family receives services from Tribal services providers (such as Indian Health); the family resides on an Indian reservation or in a known Indian community or Rancheria. Best practice is to assume the child is an Indian child until information indicates otherwise.

**Tribal Participation.** Tribal participation in child dependency proceedings may occur in several ways. A Tribe may decide to intervene in the proceeding. If a Tribe has a Tribal court, it may petition to take jurisdiction. If the Tribe has exclusive jurisdiction the case *must* be transferred to the Tribe. A Tribe may also choose not to participate. Whether the Tribe petitions to intervene or not, and whether the Tribe requests transfer of jurisdiction or not, the case must still be treated as an Indian case and all the provisions of the Act followed.

## California Indians

*"The history of California Indians is the story of an attempt to survive a series of invasions and the hardships that ensued."*

—Dwight Dutschke, "A History of American Indians in California"

- Mission San Diego de Alcalá was founded in 1769, the first of 21 missions. The Spanish forcibly remove Indians from their homelands to the missions where they were kept as slaves. The Spanish viewed the Indians, including those who converted to Christianity, as expendable. Conditions at the missions were dismal, with the Indians being often being tortured and starved. The mission system would ultimately devastate California Indians.
- Mexico became independent from Spain in the early 1820s. During his tenure as governor, Jose Figueroa ended the mission system and large land grants were given to Mexican citizens, such as Johann Sutter, to settle on behalf of Mexico. California Indians resisted the outsiders, but the violence inflicted on the resisting Indians was devastating:

*"...invited the wild Indians and their Christian companions to come and have a feast...the troops, the civilians, and the auxiliaries surrounded them and tied them up... At every half mile or mile we put six of them on their knees to say their prayers. Each one was shot with four arrows....We baptized all the Indians and afterwards they were shot in the back."*

—Jose Maria Amador 1837

- In 1850, the Act for the Government and Protection of Indians was passed by the first session of California's legislature. The Act permitted any white settler to enslave Indian children, prohibited Indians from testifying in court against any non-Indian, from having alcohol and for Indians to be sold as punishment for certain crimes.
- More than 100,000 Indians died in the first two years of the California Gold Rush as a result of both random and organized violence against them.
- The federal government negotiated 18 treaties with 139 California Tribes. But the treaties were never ratified by the United States Senate, and instead were placed in a secret file under an injunction of secrecy where they remained until 1905.
- In 1901, Sherman Institute in Riverside became the first hospital for Indians, but later became a boarding school.
- The efforts of California Indians to sue the federal government under the Jurisdictional Act of 1928 resulted in the creation of the federal Indian Claims Commission in 1946 was the result of efforts by California Indians to sue the federal government over the theft of their lands in the 19th century. After 20 years of tortuous maneuvering all separate claims were consolidated into a single case. A compromise settlement of 47 cents per acre was offered for lands that were purchased for a minimum of \$1.50 per acre. By a questionable vote, claimants accepted the settlement and in 1972, 60,000 California Indians were paid \$633 to settle land claims resulting from the 18 unratified treaties. What is of significance is that the entire claims process was conducted outside of normal court proceedings protected by the Constitution. Thus Indians are the only class of citizens in the United States who are denied constitutional protection of their lands by extra-constitutional means.

- In the 1950s the BIA termination policy came to California. The Rancheria Termination Act, which targeted to smallest, least organized and most isolated Tribes, transferred Rancheria lands to individual Indians, which terminated the trust relationship with a number of Tribes. Approximately forty Rancherias and reservations were removed from federal trust status and federal services, including housing and health care abruptly ended. Many of those Tribes have not regained their federal recognition.

*“The amazing adaptive capabilities of California Indians have demonstrated the resiliency and genius of these much misunderstood and hard-working Tribes ... under the most unfavorable of circumstances. We enter the next century filled with optimism:”*

—Edward Castillo, “A Short Overview of California Indian History”<sup>4</sup>

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<sup>4</sup> Castillo, Edward. “A Short Overview of California Indian History.” accessed on November 26, 2015 at <http://www.nativeamericancaucus.org/content/california-indian-history>.

Other references for this fact sheet:

Santa Barbara Indian Center and Dutschke, Dwight. “A History of American Indians in California,” in CA Department of Parks and Recreation, Office of Historic Preservation, ed. Five Views (Sacramento OHP, 1988) accessed on December 30, 2015 at [http://www.nps.gov/parkhistory/online\\_books/5views/5views1.htm](http://www.nps.gov/parkhistory/online_books/5views/5views1.htm)

California Rural Indian Health Board, California Tribal Epidemiology Center. Riverside-San Bernardino County Indian Health Community Health Profile. Sacramento, CA May 2010.



## ICWA History

In the mid-1970s, as a result of activism by Indian Tribes tired of their children being removed, the United States Congress authorized the creation of the American Indian Policy Review Commission. The Commission created 11 task forces to address key aspects of the federal Indian relationship. Task Force Four dealt with the issues of federal, state, and Tribal jurisdiction, including child welfare.

The Task Force Four Final Report cites a frequently asked question: since both Indian and non-Indian systems act in the best interests of the child, what difference does it make as to who makes the decision about Indian children? According to the report, the difference is that the decisions were inherently biased by the cultural setting of the decision maker when decisions are made by non-Indian authorities. **The report further notes a curious paradox: that many early non-Indian commentators praised familial and Tribal devotion to their children. Yet now, after generations of contact and conflict with western “civilization,” so many Indian families are perceived as incapable of child-rearing.**

In the Congressional hearings preceding ICWA’s passage, Congress found: (1) that Indian children are vital to the continued existence of Indian Tribes and therefore must be protected; (2) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of children by public and private agencies and that an alarmingly high percentage of such children are then placed in non-Indian homes and institutions; and (3) that the States have failed to recognize the Tribal, social, and cultural standards prevailing in Indian communities and families.

In adopting ICWA, Congress declared that the policy of the United States is to protect the best interests of Indian children and promote the stability and security of Indian Tribes and families. This purpose is accomplished through the establishment of minimum federal standards for the removal of Indian children from their families and their placement in foster or adoptive homes that reflect the unique values of Indian culture. The purpose is also accomplished by providing assistance to Indian Tribes in the operation of child and family service programs.

**The Indian Child Welfare Act was passed to remedy bias and the problems of unresolved grief and loss from the historic traumas of the past. It does so by providing a process that every Agency must follow, including ensuring connections between the child and his or her Tribal community, when working with Native American families.**

# Following the Spirit of ICWA



## JUDICIAL COUNCIL OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION  
CENTER FOR FAMILIES, CHILDREN & THE COURTS



### Following the Spirit of the Indian Child Welfare Act (ICWA)

*A guide to understanding the benefits of providing culturally appropriate services to Native American families from non-federally recognized Tribes within the juvenile dependency and delinquency systems<sup>5</sup>*

In an effort to ensure proper inquiry and noticing and to reduce the number of ICWA-related appeals in child welfare cases, this handout is intended to help social workers and others respond when they encounter children and families that report American Indian or Alaska Native ancestry yet find they are not from a federally recognized Tribe. What is good social work practice in these cases, and how can courts support culturally centered practice that results in positive outcomes?

#### How to Provide “Spirit of the Law” ICWA Services

- Find out which Tribes and Native American resources are in your area.
- Visit and establish connections with local Tribes and Native American resources regardless of federal recognition status.
- Request ICWA training from tribal resources, California Department of Social Services training academies, or with staff from the Judicial Council of California.
- Conduct a proper inquiry of possible Native American ancestry in every case at the front end and throughout the duration of the case if family members provide additional lineage information.
- Connect a child and family with their Tribe and local Native American resources regardless of tribal affiliation.
- Assist the child or family with the tribal enrollment process but understand it is up to the Tribe to determine who is or is not eligible for enrollment.

Conduct placements consistent with ICWA placement preferences even though not technically required. In the case of non-federally recognized Tribes, tribal members would likely meet requirements as nonrelated extended family members because tribal communities tend to be related or close-knit communities.

- Consider the child’s tribal members as viable options for holiday visits, tutors, mentors, Court Appointed Special Advocates, etc.

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<sup>5</sup> This document was developed with the Fresno County Department of Social Services, Child Welfare Services, and Placer County System of Care as part of the American Indian Enhancement of the Casey Family Programs/Child and Family Policy Institute of the California Breakthrough Series on addressing disproportionality 2009–2010 in collaboration with the American Indian Caucus of the California ICWA Workgroup, Child and Family Policy Institute of California, Stuart Foundation, and Tribal STAR. Revised 11/2015.



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### The Benefits of Providing “Spirit of the Law” ICWA Services

- If the child’s Tribe is seeking federal recognition and is granted such recognition, formal ICWA case services, such as active efforts to prevent the breakup of the Indian family, will be required. If ICWA active efforts are attempted before the federal recognition, it is less disruptive for the child than having to change services and placement to make them in accordance with ICWA.
- Welfare and Institutions Code section 306.6 leaves the determination of services to individuals of non-recognized Tribes to the discretion of the court that has jurisdiction.
- Even if individuals are not associated with a federally recognized Tribe, they can still be part of an Indian community, which can serve as a strength and provide resources that enhance resilience factors for youth.
- Native American agencies that serve youth regardless of their Tribe’s status can have youth groups that provide mental health and substance abuse services as well as fun trips, at no cost to the county.
- Many resources available to Native Americans do not require status in a federally recognized Tribe (such as tribal Temporary Assistance for Needy Families (TANF), Native American health centers, and title VII Indian education programs).
- Some Native American health centers can access funding for residential treatment in and out of the state for children who are from non–federally recognized Tribes.
- When culturally centered practice is provided as early as possible, it can result in positive outcomes for tribal youth.
- Linking a child to cultural resources that support his or her development into a healthy self-reliant adult can reduce the number of times the person may enter public systems.
- Culturally centered practice provided at the front end and throughout the lifespan of the case, regardless of the recognition status of the Tribe, can reduce the public burden of cost over time.

### Historical Background

- In 1848, gold was discovered in Coloma, California.
- In 1851 and 1852, representatives of the United States entered into 18 treaties with Tribes throughout California that would have provided for more than 7.5 million acres of reserve land for the Tribes’ use. These treaties were rejected by the U.S. Senate in secret session. The affected Tribes were given no notice of the rejection for more than 50 years, and the promised reserve lands were never provided.
- In 1928, a census was conducted to determine the number of American Indians in California, resulting in the establishment of the 1933 California Indian Rolls (also referred to as the California Judgment Rolls). The purpose of the census and the rolls was to determine the number of Indians in California who had families alive in 1851–1852, when treaties were signed by the original Californians.

- From 1953 to 1964, called the “Termination Era,” the U.S. Congress terminated the federal recognition status of more than 40 California Tribes. These Tribes were deemed as not federally or state recognized, though previously descendants of these Tribes were federally recognized.
- Many Tribes that were terminated are currently seeking federal recognition by the U.S. government.
- Tribal communities throughout California are active and thriving, whether or not they have federal recognition.
- Descendants of family members listed on the California Judgment Rolls can use this documentation of Native American ancestry to provide information as to tribal affiliation. *Note:* Finding an ancestor on the roll does not mean an individual is an enrolled member in that particular Tribe. Only one Tribe can be listed on this document, and it is possible to descend from more than one Tribe.
- Senate Bill 678, passed in 2006 by the California Legislature, allows participation of non–federally recognized Tribes, on request and at the discretion of the judge in the dependency matter. This expands the option and availability of culturally appropriate services to children from non-recognized Tribes.

### **Additional Tips for Practice**

- Some Tribes include descendants as members, not only those who are enrolled.
- Best practices will vary depending on the location, available resources, and Tribe.
- If you are having challenges in working with the family, local Native American agencies or Tribes can assist.
- If the family requests additional resource information to trace its lineage, you can provide the following resource information:
  - The Tribe;
  - Mission church records;
  - Mormon genealogical records;
  - Historical societies and museums;
  - Genealogical Web sites; and

Historical statistical information and documents in the county of the family’s origin.

## Historical Trauma

In order to understand the threats to Native American family unity, it is helpful to understand the underlying reasons why many Native American individuals are not faring well in terms of emotional, physical and spiritual health. Dr. Maria Yellow Horse Brave Heart, Hunkpapa/Lakota, developed a theory of historical trauma and unresolved grief and loss for Native Americans and other indigenous peoples.<sup>6</sup> *Historical trauma*, as defined by Dr. Yellow Horse Braveheart, is the collective emotional and psychological injury both over the life span and across generations, resulting from a cataclysmic history of genocide. Related to historical trauma are cultural trauma and intergenerational trauma. *Cultural Trauma* is an attack on the fabric of society, affecting the very essence of the community and its members. *Intergenerational trauma* occurs when trauma is unresolved, internalized and subsequently passed from one generation to the next.

The cultural trauma experienced by American Indian/Alaska Native peoples has been extensive: rape, murder and kidnapping; forcible removal from homelands; large scale loss of land by those who were not removed; loss of access to traditional foods and medicines; forcible separation from languages and culture; and prohibitions against spiritual practices. As a result of the cultural trauma, traditional parenting skills were lost or impaired; kinship bonds were broken, a sense of identity and belonging was lost and traditional gender roles and knowledge were compromised. The pain of these losses was compounded by the continued devaluation of American Indian peoples and failure to acknowledge the grief and loss by dominant culture. The prohibition of spiritual practices prevented or limited grieving in culturally appropriate manner. This led to unresolved grief and loss across a number of generations.

Survivors of cultural trauma also experience contemporary traumas such as: being a victim of violent crime; death of a young person or a group of young people by suicide; loss of family members and friends from health issues relating to substance abuse or diabetes; loss of family members resulting from DUI car accidents; domestic violence, sexual assault, commercial sexual exploitation (personal or a loved one); or other circumstances that result in personal loss.<sup>7</sup> These compounded traumas and inability to mourn also result in unresolved grief and loss, which manifests in a number of ways:

- Being quick to anger
- Low self-esteem/ shame of identity
- Depression
- Suicidal ideation
- Self-harm behaviors
- Substance abuse/addictive behaviors
- Violence
- Victim identity

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<sup>6</sup> <https://www.nctsn.org/resources/conversations-about-historical-trauma-part-one>, or <https://psychiatry.unm.edu/news/2013/05/NCTSN.pdf>, retrieved 10/17/18.

<sup>7</sup> According to a 2014 Indian Health Service Report, young people aged 15-34 years comprised 64% of the total suicides in Indian Country (see <http://www.medpagetoday.com/psychiatry/depression/53941>, accessed June 24, 2016), while American Indians in general have a suicide rate 62% higher than the general population. (See Dr. Dolores Subia Bigfoot, "History of Victimization in Native Communities" (2000). According to the National Congress of American Indians, Native Americans die at higher rates than other Americans from alcoholism (510%); diabetes (189%); and car crashes (229%). (see <http://www.ncai.org/about-Tribes/demographics>, accessed June 22, 2016). Native Americans experience violent crime at a rate 2.5% higher than the general population and Native American women are victims of domestic violence at a rate of 50% more than those of non-Native women. (See [https://www.justice.gov/sites/default/files/otj/docs/american\\_indians\\_and\\_crime.pdf](https://www.justice.gov/sites/default/files/otj/docs/american_indians_and_crime.pdf), accessed June 22, 2016).

- Preoccupation with thoughts of the ancestors lost
- Focus on ancestors' suffering
- Yearning (traditional lands, cultural practices, languages)<sup>8</sup>

It may also manifest in emotional remoteness (going through the motions), apathy and resistance toward following through with case plans, contacting services providers, or engaging with government agencies. It is through these manifestations that unresolved grief and loss is internalized and then passed to the next generation.

For most Native American communities, children are viewed as sacred beings and are the responsibility of the entire family and community to care for. Children are vital to the future of the Tribe—so much so that some Tribal governments include a youth council that allows youth a voice in matters of Tribal governance or have youth groups intended to develop leadership and a sense of community belonging. Approximately 35% of children in many Native American communities have been removed either temporarily or permanently from their families and Tribes. This figure has been roughly the same for over 100 years and today, although comprising only 1% of the population, Native American children represent over 2% of the population in out-of-home care.<sup>9</sup>

Some have said that events that occurred several generations ago have little or no bearing on current situations, and wonder “why can’t Indians just get over it?” Understanding the impact of historical events is part of understanding cultural aspects of Native life and the cultural identity of Native people. Native American identity is inextricably rooted in a sense of connection to place, to relatives and ancestors, to cultural history and tradition, and to a higher power. Native people hold a continued desire to live according to their traditions and cultural teachings and to remain connected to their cultural identity. This does not mean the present is not important. It means the present links the future with the past because Native people do not isolate themselves from their ancestors or the future generations.

Traumatic events of the past that have negatively impacted Native people have made it difficult for individuals to care for themselves, their children and their families. The impact of having a significant portion of the Tribe—children-- removed reverberates, even today, on Tribal relationships. One in three Tribal people have experienced or have been affected by boarding schools. Many adults in Tribal communities with whom social workers are attempting to collaborate may have their own child welfare history that may not have been addressed. It is understandable that adults who have been in foster care as children may be hesitant to talk to social workers about their children, because of their own experience. Tribal elders also may have a history of being in foster care, or have children with whom they were very close that were removed and returned without a good reunification plan that addressed Tribal connections. Active efforts are important in addressing these issues as they build trust and will help empower Native families.

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<sup>8</sup> Yellow Horse Brave Heart, Maria., Ph.D., & Chase, Josephine A., Ph.D., MSW. *Historic Trauma Informed Clinical Intervention Research and Practice* [PowerPoint slides 30-46]. Retrieved from <http://www.aihec.org/our-stories/docs/BehavioralHealth/2014/HistoricalTraumaInformedClinicalInterventionResearchPractice.pdf>

<sup>9</sup> Hickie, Katie., & June, Liz. Native American Disproportionality in the Child Welfare System [PowerPoint slide 5]. Retrieved from [http://newscenter.sdsu.edu/education/csp/files/04541-FY\\_Disproportionality\\_Native\\_Amer.pdf](http://newscenter.sdsu.edu/education/csp/files/04541-FY_Disproportionality_Native_Amer.pdf)

## HEALING HISTORIC TRAUMA: What Parents Can Do

(By Dr. Delores Subia BigFoot)

- Greet my child each morning by name
- Have one family sit-down meal each day
- Read to my child each day
- Let my child hear me pray each day
- Smile each morning when I see my child
- Say “I am blessed because of you” each day
- Listen to my child for 2 minutes each day and not ask one question
- Hug my child once a day
- Let my child talk for 2 minutes without interrupting at least once a day
- Hold my child’s hand once a day
- Tell my child one fact I heard or learned each day from the newspaper, radio, television or other media outlet

# THE INDIAN CHILD WELFARE ACT

PURPOSE AND BASIC PROVISIONS



## FIVE PROVISIONS

INQUIRY AND NOTICE

ACTIVE EFFORTS

PLACEMENT

CONCURRENT PLANNING

QUALIFIED EXPERT WITNESS





## Inquiry and Notice

### INQUIRY

Many children who are eligible for the protection of the Indian Child Welfare Act do not appear to be Indian. Many are of mixed racial heritage, and in the southwest area of the country, including California, many children have Spanish or Hispanic surnames. Do not assume that a child is not American Indian because the child does not look American Indian, or because the surname would indicate a different ethnic group.

The court, social services, probation and any party seeking foster care placement, guardianship or adoption (including Tribal customary adoption (the petitioner) all have an ongoing duty to inquire about whether a child is an Indian child. If there is reason to know child is an Indian child, further inquiry must be made. Reason to know exists when:

- A person having an interest in the child provides information suggesting the child is a member or eligible for membership in a Tribe and/or one or more of the child's biological parents, grandparents or great grandparents was or is a member of a Tribe;
- The residence or domicile of the child, parents, or Indian custodian is in a predominantly Indian community
- The child or family has received Tribal services or benefits or federal services available to Indians.

Inquiry is ongoing, but should always be made at the initial intake, again if the child will be placed in foster care, and again if the child's permanent plan is adoption. Inquiry should be made of parents, Indian custodian, extended family members; the child (if old enough); and Tribes or any person who reasonable would have information about the child's Tribal membership or eligibility for membership.

When inquiry is made, the following questions should be asked:

- Is the child a member of an Indian Tribe or may be eligible for membership. If the answer is yes:
  - Ask for the name of the Tribe and any other name by which the Tribe may be known
  - Ask for the child's enrollment number (if available)
  - Ask for contact information for the Tribe (if available)
- 

If it is not clear whether the child is a member or eligible to be a member, ask for:

- Names (aliases, former names, maiden names) parents, grandparents, great-grandparents and Indian custodians
- Current and former addresses
- Birthdates, places of birth and death
- Name(s) of Indian Tribes
- Tribal enrollment numbers, contact numbers if known
- Any other identifying information, if known
- If there are challenges in obtaining this information, it is also appropriate to ask who may be the person who keeps the family history and whether it is okay to contact them.

Refer to the ICWA 030 form and to any genogram templates for additional questions you may ask in order to determine whether the child is an Indian child.

## NOTICE

Notice is critical to ensuring ICWA compliance. Notice allows a Tribe to determine whether a child is an Indian child, advises the Tribe of pending proceedings and ensures the Tribe has an opportunity to intervene or assume jurisdiction of the case. Without notice to the Tribe, ICWA's underlying policy is undermined.

Notice must be provided when the Court, social worker, probation officer or petitioner knows or has reason to know an Indian child is involved in the proceedings. The Court, social worker, probation officer or petitioner are responsible for providing notice to (1) the parents or Indian custodian; (2) all Tribes of which the child may be a member or eligible for membership; (3) any agents for the Tribe who may be designated by the Tribe to receive notice; (4) the Bureau of Indian Affairs and (5) the Secretary of the Interior. Information for contacting the Tribe(s) can be found in the Federal Register listing of ICWA agents, the Federal Register listing of federally recognized Tribes or by contacting the BIA or CDSS.

Notice *must* be sent on the Judicial Council form "ICWA-030" and all of the information required by the form *must be* included if it is reasonably available to the social worker. Where information is not available, "information not available" should be written on the form. It is important to remember that the responsibility for gathering the information and completing the ICWA 030 lies with the Agency, and it is strongly encouraged that the social worker follow up to ensure the form has been completed even if noticing is done by someone else.

Notice is provided by registered mail with return receipt requested. Notice must include the following information:

- Copy of the petition (which includes, as a matter of practice, the ICWA 010 form)
- Completed ICWA 030 form

Notice must be received ten days prior to the hearing except if the hearing is a detention hearing, and then notice must be given as soon as possible after filing the petition. If the court, social worker, probation officer or petitioner subsequently receives information that is required in the notice that was not previously provided, notice must be sent again. Those giving notice must file proof of notice with the court in advance of the hearing.

Anyone who knowingly and willfully falsifies or conceals a material fact concerning whether the child is an Indian child or who counsels a party to conceal this information is subject to court sanction.

### ***Skill-Building Activity: Inquiry and Notice***

Inquiry and notice are critical to ICWA compliance. Inquiry is the process of determining whether a child is a member of a Tribe or eligible for membership (identifying an Indian child). Notice is the process of (1) asking a Tribe whether a child is a member or eligible for membership and (2) informing the Tribe of upcoming dependency proceedings. This activity will familiarize you with the inquiry and notice process.

Scenario: You, the social worker, are visiting a family and notice American Indian art / artifacts in the living room. This includes a Native American poster and a figurine of an American Indian and a buffalo, among other items. During the initial investigation you learn that the child, Jack Jones, his mother, his mother's sister (Jack's aunt), and sometimes his maternal grandmother share the two bedroom apartment Jack's mother and aunt are sitting with you in the living room. You state that if they are American Indian/Alaska Native there may be additional services available to the child and family, and then ask whether they or the child are members of an American Indian or Alaskan Tribe. They both answer "no." Then you ask whether they know if Jack's father is a member of a Tribe. The mother answers "no", but her sister states, "I asked him where his family came from and he said originally they are from Montana, and he mentioned a Tribe but I can't remember which one."

Additionally:

1. Father's whereabouts are unknown.
2. Except for everyone in the home, Jack's relatives are not available.
3. The child is too young to know whether or not he is Native American.

#### **Part 1:**

A. If you have reason to know the child is an Indian child, further inquiry must be made. Do you have reason to know Jack is an Indian child? If yes, what is your reason to know?

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B. Role Play. Refer to the ICWA 010 form, ICWA 030 form and the "Additional Information" page. With a partner at your table, engage in the inquiry process to gather the information needed in order to determine whether Jack is a member of an Indian Tribe or eligible for membership, and if so, to identify the Tribe. How would you engage the family in this process? What questions would you ask to get the information you need and who would you ask? Be creative and remember that the inquiry process is not just about asking questions on a list—you are also building a relationship with the family.

**Part 2:** Refer to the ICWA 030 Form, “Additional Information” page and the Federal Register of Designated Tribal Agents for Service of Notice at: <https://www.federalregister.gov/documents/2016/03/02/2016-04619/indian-child-welfare-act-designated-tribal-agents-for-service-of-notice>. Work with your group to complete as much of Section 3, Sections 5 (c), 5 (d), 5(e) and Section 7 as possible in the time allotted. **FOR THIS EXERCISE ONLY**, you may write N/A where the information is not available.

**Part 3:** Be prepared to report to the larger group the following:

1. What was your reason to know Jack is or may be an Indian child?
2. Who would you talk to in order to complete further inquiry?
3. What Tribes should be noticed?
4. What questions would you ask in order to engage the family and obtain information?
5. If you did not have the information requested on the ICWA 030, what do you do?

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### *INQUIRY AND NOTICE BEST PRACTICES*

- Inquiry should begin by informing the family that if they are Native American, additional services may be available to them.
  - Presume the child is an Indian child unless and until information is discovered that indicates otherwise.
  - As soon as a Tribe is identified as possibly being the child’s Tribe, contact the designated ICWA agent or advocate by phone to share information.
  - Make sure all fields in the CMS/CWS, ICWA 101 and ICWA 030 are completed. Where information is not available to you, write “information not available.”
  - Document clearly and objectively all your inquiry and noticing efforts and responses you received.
-

ICWA-010(A)

CHILD'S NAME: _____	CASE NUMBER: _____
------------------------	-----------------------

1. Name of child:

Indian child inquiry ☐ made ☐ not made and (check all that apply):

a. ☐ The child is or may be a member of or eligible for membership in a tribe.

Name of tribe(s): \_\_\_\_\_

Name of band (if applicable): \_\_\_\_\_

b. ☐ The child's parents, grandparents, or great-grandparents are or were members of a tribe.

Name of tribe(s): \_\_\_\_\_

Name of band (if applicable): \_\_\_\_\_

c. ☐ The residence or domicile of the child, child's parents, or Indian custodian is in a predominantly Indian community.

d. ☐ The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service or Tribal Temporary Assistance to Needy Families (TANF).

e. ☐ The child may have Indian ancestry.

f. ☐ The child has no known Indian ancestry.

g. ☐ Other reason to know the child may be an Indian child: \_\_\_\_\_

Person(s) questioned:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, state, zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Date questioned: \_\_\_\_\_

Means of communication: \_\_\_\_\_

Relationship to child: \_\_\_\_\_

Summary of information: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Person(s) questioned:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, state, zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Date questioned: \_\_\_\_\_

Means of communication: \_\_\_\_\_

Relationship to child: \_\_\_\_\_

Summary of information: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

h. ☐ Information about other persons questioned is attached.

2. If this is a delinquency proceeding under Welfare and Institutions Code, § 601 or 602:

☐ The child is in foster care.

☐ It is probable the child will be entering foster care.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE)

## **ADDITIONAL INFORMATION**

### **Mother and Mother's Family**

Biological Mother: Sarah Jones

DOB: 6/1/1968 Birthplace: Great Falls, MT

Currently residing in San Diego, CA with her sister Sheryl and sometimes her mother

Child's Maternal Aunt: Sheryl Jones

DOB: 6/1/1968 Birthplace: Great Falls, MT

Address: 768 Home Street, SD CA 92105

Works as a firefighter/paramedic and is an Army reservist

Child's Maternal Grandmother: Jane Jones

DOB: March 23, 1947 Birthplace: Browning, MT

Maiden name: Jane Sanchez

Current Residence: San Diego, CA with daughters

Married to Joseph Jones until 1970

Child's Maternal Grandfather: Joseph Jones

DOB: 1943 Birthplace: Billings, MT

Lived all over Montana, including on the Ft. Peck Indian Reservation.

Died: 2000 in Denver, CO

Child's Maternal Great-Grandmother: Lena Jones

DOB: 1925 Birthplace: Billings, MT

Maiden name: Lena Hayes

1<sup>st</sup> spouse: Jack Busby 2<sup>nd</sup> Spouse: Franklin Jones

Lived in Browning, MT

Died: 1962 in Billings, MT

### **Father and Father's Family**

Biological Father: Joe Smith

DOB: 1/1/1968 Birthplace: Billings, MT

Attended St. Labre Indian School in Pryor, MT: Hardin High School in Hardin, MT.

Grew up on the Crow Indian Reservation and lived periodically on the Blackfoot Indian Reservation. U.S. Army veteran

Also known as: Junior Smith; Bear Smith; Junior Little Owl

Child's Paternal Uncle: Richard Smith

DOB: 11/15/1970 Birthplace: Billings, MT

Address: 756 Ocean Avenue, SD CA 92107

Married to a member of the Navajo Nation, has 5-year old son. Member of the Crow Nation in Montana; travels regularly to the reservation for spiritual ceremonies and cultural events. Owns his own computer technical business and is involved in the local Native community.

Child's Paternal Grandmother: Genevieve Smith

DOB: April 1, 1946 Birthplace: Browning, MT at the Indian

Health Services

Maiden name: Genevieve Smith

Attended Chemawa Indian School in Oregon

Lived in Kalispell, MT and on the Blackfeet Indian Reservation

Address: POB 12, Babb, MT 59411

Member of the Blackfeet Nation, Browning, MT Enrollment

Number: 12345A-ER

Child's Paternal Grandfather: Virgil Little Owl

DOB: March 13, 1943 Birthplace: Pryor, MT

Lived in Billings, MT; Ronan, MT and Wolf Point, MT

U.S. Marines veteran, former member of Crow Nation Tribal Council

Died: October 27, 1996 in Hardin, MT

Child's Paternal Great- Grandmother: Geraldine Eagle Ribs

DOB: 1924 Birthplace: Blackfeet Indian Reservation

Maiden Name: Geraldine Old Medicine

Married: 1941 in Browning, MT

Daughter is Genevieve Smith

Attended: Cushman Indian School

Address: PO Box 56, Browning MT 59875

Member of the Blackfeet Nation, Browning, MT: Enrollment Number 12345B-ER

Child's Paternal Second Cousin: Loretta Brown

DOB: 1965 Birthplace: Great Falls, MT

Lived in Billings, MT

Address: 432 Mission Road; Escondido CA 92489

Is a stay-at-home mother and foster parent certified by a San Diego County Tribe. Is non-Native, works at the local Indian Health Clinic and regularly attends cultural events sponsored by San Diego County Tribes.

NREFM: Carolina Jackson

DOB: 1953

Resides in Temecula, Long-time friend of Mother's family, Non-Native, semi-retired special education teacher.

**CONFIDENTIAL**

**ICWA-030**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):      <div style="display: flex; justify-content: space-between;"> <div>TELEPHONE NO.:</div> <div>FAX NO. (Optional):</div> </div> E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: TELEPHONE NO.:	
CASE NAME:	
<b>NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD (check all that apply):</b> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"><input type="checkbox"/> JUVENILE</div> <div style="width: 50%;"><input type="checkbox"/> Dependency</div> <div style="width: 50%;"><input type="checkbox"/> Delinquency</div> <div style="width: 50%;"><input type="checkbox"/> ADOPTION</div> <div style="width: 50%;"><input type="checkbox"/> CONSERVATORSHIP*</div> <div style="width: 50%;"><input type="checkbox"/> CUSTODY (Fam. Code, § 3041)</div> <div style="width: 50%;"><input type="checkbox"/> DECLARATION OF FREEDOM FROM CONTROL OF PARENT</div> <div style="width: 50%;"><input type="checkbox"/> GUARDIANSHIP</div> <div style="width: 50%;"><input type="checkbox"/> TERMINATION OF PARENTAL RIGHTS</div> <div style="width: 50%;"><input type="checkbox"/> VOLUNTARY RELINQUISHMENT OF CHILD BY PARENT</div> </div>	
<div style="display: flex; justify-content: space-between;"> <div>           CASE NUMBER:             HEARING DATE:         </div> <div>           DEPT.:         </div> </div>	

**NOTICE TO (check all that apply):**

- ☐ Parents or Legal Guardians  
 ☐ Tribes  
 ☐ Indian Custodians  
 ☐ Sacramento Area Director, BIA  
☐ Secretary of the Interior

1. NOTICE is given that based on the petition, a copy of which is attached to this notice, a child custody proceeding under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) has been initiated for the following child (a separate notice must be filed for each child):

<u>Name</u>	<u>Date of Birth</u>	<u>Place of Birth</u>
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**2. HEARING INFORMATION**

a. Date:	Time:	<input type="checkbox"/> Dept.:	<input type="checkbox"/> Room:
<input type="checkbox"/> Type of hearing:			

b. Address and telephone number of court ☐ same as noted above ☐ is (specify):

3. The child is or may be eligible for membership in the following Indian tribes (list each):

\*Use this form in a conservatorship only if the proposed conservatee is a formerly married minor.

Page 1 of 10

Form Adopted for Mandatory Use  
Judicial Council of California  
ICWA-030 [New January 1, 2008]

**NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD  
(Indian Child Welfare Act)**

25 U.S.C. § 1901 et seq.;  
Welfare & Institutions Code, §§ 224.2, 224.3;  
Probate Code, §§ 1449, 1459.5, 1460.2;  
Cal. Rules of Court, rules 5.480–5.487 and 7.1015  
www.courtinfo.ca.gov

**CEB**  
[www.ceb.com](http://www.ceb.com)



CASE NAME:	CASE NUMBER:
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**4. Under the Indian Child Welfare Act (ICWA) and California law:**

- The child's parents, Indian custodian, and the child's tribe have the right to be present at all hearings.
- The child's Indian custodian and the child's tribe have the right to intervene in the proceedings when ICWA applies.
- The child's parent, Indian custodian, or tribe may petition the court to transfer the case to the tribal court of the Indian child's tribe. The child's parent or tribe also have the right to refuse to have the case transferred to the tribal court.
- With the limited exceptions of the detention hearing in juvenile cases and the jurisdiction and disposition hearings in delinquency cases as identified in rule 5.482, the court will give up to 20 days from the time of the scheduled hearing if the child's parent, Indian custodian, or tribe request such time to prepare for the hearing.
- The proceedings could lead to the removal of the child from the custody of the parent or Indian custodian and possible adoption of the child.
- If the child's parents or Indian custodian have a right to be represented by a lawyer and if they cannot afford to hire one, a lawyer will be appointed for them.
- The information contained in this notice and all attachments is confidential. Any tribal representative or agent or any other person or entity receiving this information must maintain the confidentiality of this information and not reveal it to anyone who does not need the information in order to exercise the tribe's rights under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.).
- An Indian custodian is any person who has legal custody of the child under tribal law or custom or state law, or to whom temporary physical custody, care, and control of the child has been transferred by a parent.

**5. INFORMATION ON THE CHILD NAMED IN 1**

- The child's birth certificate is ☐ attached ☐ unavailable
- A copy of the tribal registration card of ☐ the child ☐ the parent is attached.
- Biological relative information is listed below. (Indicate if any of the information requested below is unknown or does not apply. Do not use the abbreviation "N/A".) (Required by Fam. Code, § 180; Prob. Code, § 1460.2; and Welf. & Inst. Code, § 224.2.)

Biological Mother	Biological Father
Name (include maiden, married, and former names or aliases):	Name (include former names or aliases):
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:
Additional information:	Additional information:

CASE NAME:	CASE NUMBER:
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5. c. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

<b>Mother's Biological Mother (Child's Maternal Grandmother)</b>	<b>Father's Biological Mother (Child's Paternal Grandmother)</b>
Name (include maiden, married, and former names or aliases):	Name (include maiden, married, and former names or aliases):
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

<b>Mother's Biological Father (Child's Maternal Grandfather)</b>	<b>Father's Biological Father (Child's Paternal Grandfather)</b>
Name (include former names or aliases):	Name (include former names or aliases):
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

CASE NAME:	CASE NUMBER:
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5. d. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

<b>Mother's Biological Grandmother (Child's Maternal Great-grandmother)</b>	<b>Mother's Biological Grandmother (Child's Maternal Great-grandmother)</b>
Name (include maiden, married, and former names or aliases):	Name (include maiden, married, and former names or aliases):
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

<b>Mother's Biological Grandfather (Child's Maternal Great-grandfather)</b>	<b>Mother's Biological Grandfather (Child's Maternal Great-grandfather)</b>
Name (include former names or aliases):	Name (include former names or aliases):
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

CASE NAME:	CASE NUMBER:
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5. e. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

<b>Father's Biological Grandmother (Child's Paternal Great-grandmother)</b>	<b>Father's Biological Grandmother (Child's Paternal Great-grandmother)</b>
Name (include maiden, married, and former names or aliases):	Name (include maiden, married, and former names or aliases):
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

<b>Father's Biological Grandfather (Child's Paternal Great-grandfather)</b>	<b>Father's Biological Grandfather (Child's Paternal Great-grandfather)</b>
Name (include former names or aliases):	Name (include former names or aliases):
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

CASE NAME:	CASE NUMBER:
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5. f. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Indian Custodian Information	Indian Custodian Information
Name (include maiden, married, and former names or aliases):	Name (include maiden, married, and former names or aliases):
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:

6. **ADDITIONAL INFORMATION ON CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown.)

- a. ☐ Biological birth father is named on birth certificate. ☐ Unknown  
b. ☐ Biological birth father has acknowledged parentage. ☐ Unknown  
c. ☐ There has been a judicial declaration of parentage. ☐ Unknown  
d. ☐ Other alleged father (name each):

☐ Unknown

The following optional questions may be helpful in tracing the ancestry of the child in 1.
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## 7. Has the child in 1 or any members of his or her family ever (if "yes," provide the information requested below):

- a. Attended an Indian school? ☐ Yes ☐ No ☐ Unknown

Name/relationship to child	Type of school	Dates attended	Name and location of school

CASE NAME:	CASE NUMBER:
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b. Received medical treatment at an Indian health clinic or U.S. Public Health Service hospital?

☐ Yes ☐ No ☐ Unknown

Name/relationship to child	Type of treatment	Dates of treatment	Location where treatment given

c. Lived on federal trust land, a reservation or rancheria, or an allotment? ☐ Yes ☐ No ☐ Unknown

Name/relationship to child	Name/description of property and address	Dates of residence

d. Other relative information (e.g., aunts, uncles, siblings, first and second cousins, stepparents, etc.)

Name/relationship to child	Current and former address	Birth date and place	Tribe, band, and location

8. ☐ Tribal affiliation and location of child in 1 (check all that apply):

- a. ☐ 1906 Final Roll    Name of relative listed on roll:  
Relationship to child in 1:
- b. ☐ Roll of 1924    Name of relative listed on roll:  
Relationship to child in 1:
- c. ☐ California Judgment Roll.    Roll number, if known:

CASE NAME:	CASE NUMBER:
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9. Additional party information (list the name, mailing address, and telephone number of all parties notified) :

Name

Mailing Address

Telephone Number

### DECLARATION

(To be completed, dated, and signed in all cases by each petitioner named in companion petition.)

I am the petitioner or we are all of the petitioners in this proceeding. In response to items 5–9 of this form, I/we have given all information I/we have about the relatives and, if applicable, the Indian custodian, of the child named in item 1 of this form.

I/We declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME )



\_\_\_\_\_  
(SIGNATURE)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME )



\_\_\_\_\_  
(SIGNATURE)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME )



\_\_\_\_\_  
(SIGNATURE)



CASE NAME:	CASE NUMBER:
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**CERTIFICATE OF MAILING—JUVENILE COURT PROCEEDINGS****(To be completed by social worker or probation officer.)**

I certify that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition identified on page 1 of this form, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with the United States Postal Service at (place):

on (date):

Date:

Title:

Department:

(TYPE OR PRINT NAME)

(SIGNATURE)

**DECLARATION OF MAILING—ADOPTION, FAMILY LAW, AND PROBATE PROCEEDINGS****(To be completed by the attorney for Petitioner if Petitioner is represented.)**

I am an attorney at law, admitted to practice in the courts of the State of California, and attorney for Petitioner in this matter. I declare that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition identified on page 1 of this form, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with the United States Postal Service at (place):

on (date):

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY)

**CERTIFICATE OF MAILING—PROBATE PROCEEDINGS****(To be completed by the clerk of the court if Petitioner is unrepresented.)**

I certify that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with the United States Postal Service at (place):

on (date):

Date:

Title:

Department:

(TYPE OR PRINT NAME)

(SIGNATURE)

**This form and all return receipts must be filed with the court.**



CASE NAME:	CASE NUMBER:
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**NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF ALL PERSONS,  
TRIBES, OR AGENCIES TO WHOM NOTICE WAS MAILED**

1. <input type="checkbox"/> Parent (Name): Street address: Mailing address: City, state and zip code: Telephone number:	2. <input type="checkbox"/> Parent (Name): Street address: Mailing address: City, state and zip code: Telephone number:
3. <input type="checkbox"/> Guardian (Name): Street address: Mailing address: City, state and zip code: Telephone number:	4. <input type="checkbox"/> Guardian (Name): Street address: Mailing address: City, state and zip code: Telephone number:
5. <input type="checkbox"/> Indian Custodian (Name): Street address: Mailing address: City, state and zip code: Telephone number:	6. <input type="checkbox"/> Indian Custodian (Name): Street address: Mailing address: City, state and zip code: Telephone number:
7. <input type="checkbox"/> Sacramento Area Director Bureau of Indian Affairs Street address: <b>2800 Cottage Way</b> City and zip code: <b>Sacramento, CA 95825</b> Telephone number:	8. <input type="checkbox"/> Secretary of the Interior U.S. Department of the Interior Street address: <b>1849 C Street, N.W.</b> City, state and zip code: <b>Washington D.C. 20240</b> Telephone number:
9. <input type="checkbox"/> Tribe (Name): Addressee (Name): Title: Street address: Mailing address: City, state and zip code: Telephone number:	10. <input type="checkbox"/> Tribe (Name): Addressee (Name): Title: Street address: Mailing address: City, state and zip code: Telephone number:
11. <input type="checkbox"/> Tribe (Name): Addressee (Name): Title: Street address: Mailing address: City, state and zip code: Telephone number:	12. <input type="checkbox"/> Tribe (Name): Addressee (Name): Title: Street address: Mailing address: City, state and zip code: Telephone number:

**Note: Notice to the tribe must be sent to the tribe chairman or designated authorized agent for service.**

☐ Additional tribes served listed on attached form ICWA-030(A)



## JUDICIAL COUNCIL OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION  
CENTER FOR FAMILIES, CHILDREN & THE COURTS



### **Social Work Practice Tips for Inquiry and Noticing *Reasons Why People Do Not Claim to Be American Indian*<sup>10</sup>**

There are many reasons why individuals do not claim their American Indian heritage. This has implications for ICWA compliance especially in the area of inquiry and noticing. If an Indian child is not known to be American Indian/Alaskan Native (AI/AN) how can social workers and service providers ensure culturally effective services and case plans?

Below is a brief list of responses that can be given by individuals that do not claim their American Indian heritage.

- *"I know we're part Indian but not enough."*
- *"I, my mom, or my dad was adopted."*
- *"No one knows the real history anymore, that person passed a long time ago."*
- *"No one talks about it." And/or "We don't talk about it with anyone."*
- *"I heard our family was disembroiled."*
- *"It was painful so we don't talk about it."*
- *"We heard different stories and are not sure if it's true or not."*
- *"Grandpa only talked about it late at night."*
- *"It's in the past now, you can't go back."*
- *"Someone lost the papers."*
- *"I can't prove it."*
- *"I didn't know until recently, so I don't think we qualify."*
- *"When dad came here to work we lost our history."*
- *"I don't know our history, but I heard something. We were told we didn't need to know."*
- *"No one speaks the language anymore, so we don't talk about it"*

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<sup>10</sup> This document was developed as part of the American Indian Enhancement of the Annie E. Casey, Casey Family Programs, & Child and Family Policy Institute of the California Breakthrough Series (BSC) on addressing disproportionality 2009-2010 with support from the Bay Area Collaborative of American Indian Resources (BACAIR), Human Services Agency of San Francisco Family and Children Services, Alameda County Social Services, and in collaboration with the American Indian Caucus of the California ICWA Workgroup, Child and Family Policy Institute of California, Stuart Foundation, and Tribal STAR. Revised January 2016.



### **Practice Tips to ensure effective inquiry:**

1. It is important to ask every family and every child if they have American Indian/Alaska Native ancestry even though they may not “look” as though they have American Indian/Alaska Native ancestry. Remember that many American Indian families will have Spanish last-names as a result of the influence of Spanish Missions from 1769 – 1823.
2. Encourage social workers/intake workers to *state* (rather than ask), “if you are AI/AN or believe you may be affiliated with a Tribe, there are additional services (ICWA) that are available to you.”
3. Talking to that family historian may yield a lot of information. Ask them “who are the keepers of the family history?” Usually there is one family member, or a few, who are gifted in this area.
4. Consider asking families about specific areas relatives may have lived or originated from. “Has anyone in your family ever lived on a reservation?”
5. Consider asking if they also have ever utilized Native American services, or if anyone has in the family?
6. Remember to continue to cultivate and build trust-based communication with children and families and continue to ask if they have AI/AN ancestry throughout the life of the case.
7. Document all your efforts of inquiry and document all you do to achieve proper inquiry and notice.

### **Background**

It is a significant challenge for American Indians who have been removed from their Tribe to claim tribal ties to a Native American community. This can be due to the complex process of identifying ancestors and being able to establish family blood lines. How an individual comes to know their heritage, and how much they know varies from region, to Tribe, to family. With over 500 recognized Tribes, over 100 terminated Tribes, and countless unrecognized Tribes across the United States each family has a unique history with their Tribe. As a result of federal and state policies that promoted assimilation and relocation (1830s Removal Era through 1950s Termination Era), many individuals and their families lost connection to their relations, customs, and traditions. The effects of boarding schools, and religious proselytizing, left many with the perception that it was better to pass as non-Indian than to claim their tribal status. In 1952 the federal government initiated the Urban Indian Relocation Act designed to increase the American Indian workforce in eight cities (Los Angeles, San Francisco, San Jose, St. Louis, Cincinnati, Dallas, Chicago, and Denver.).



## JUDICIAL COUNCIL OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION  
CENTER FOR FAMILIES, CHILDREN & THE COURTS



Historical and federal efforts to quantify and track the American Indian/Alaska Native populations through the census, and the establishment of “Indian Rolls” resulted in documentation of enrollment in a Tribe, often verified by blood quantum (amount/percentage of documented American Indian/Alaska Native blood). Tribal nations are not uniform in determining who is a tribal member through this manner. Some Tribes acknowledge descent and ancestry verified by proof of family lineage rather than ‘how much Indian blood’. Conversely, in some cases, tribal enrollment policies exclude many individuals from enrollment for political, historical, and reasons known only to their tribal membership. Enrollment in a Tribe may only be open at certain times, which can also affect an individual’s eligibility for enrollment.

Many descendants have only bits and pieces of information, sometimes passed along with quiet dignity, often with a longing to know more. What information was passed along may have been shrouded in shame or secrecy for unknown reasons resulting in reluctance to share the information. The number of families that are disconnected from their ancestral homeland grows exponentially each generation and many individuals find connection to Native American communities through intertribal, regional, and local cultural events. These community events enable a sense of belonging and kinship, and provide support for resilience through access to programs such as Title VII Indian Education, and Tribal TANF, that do not require proof of enrollment.

## Scale of Assimilation from Traditional to Acculturated to Assimilated

The attributes or characteristics below this scale from Traditional to Acculturated to Assimilated in terms of cultural identity in the American Indian and are not all inclusive. It is important to remember that this is a scale and there is some fluidity and flexibility between each of the definitions. This shows the importance of the need for thoughtful engagement based on where an American Indian/Alaska Native person is on the scale. It is important for social workers not to accept stereotypes of American Indians that we see in the movies and television, or that we read about in books.

Traditional	←————→	Acculturated	←————→	Assimilated
<ul style="list-style-type: none"> <li>• Speaks Native language, choosing not to speak language of dominant culture</li> <li>• Understands &amp; practices Tribal customs &amp; traditions</li> <li>• Participates in Tribal governance, religious, ceremonial &amp; social activities</li> <li>• Acts in appropriate ways at religious, ceremonial &amp; social activities</li> <li>• Practices traditional spirituality</li> <li>• Feels emotionally connected to Tribe(s)</li> <li>• Socializes exclusively with other Native American people</li> <li>• Chooses to live on reservation and may grow crops or have a farm</li> <li>• Everyday life centers around immediate and extended family and Tribal community on the reservation</li> <li>• Walks and lives in the traditional Indian world</li> </ul>		<ul style="list-style-type: none"> <li>• May be bi-or tri-lingual (speaks &amp; understands Native language)</li> <li>• Understands Tribal customs &amp; traditions as well as customs of dominant society</li> <li>• Participates in Tribal governance, religious, ceremonial &amp; social activities and is familiar with and comfortable participating in like activities of the dominant culture</li> <li>• Acts in appropriate ways at religious, ceremonial &amp; social activities both Tribal and non-Tribal</li> <li>• May practice both traditional spirituality and that of the dominant culture</li> <li>• Feels emotionally connected to Tribe(s)</li> <li>• Socializes with other Native American people as well as with non-Tribal people</li> <li>• May have homes both on reservation and in urban area and lives in both</li> <li>• May grow crops or have a farm on reservation</li> <li>• Immediate and extended family very important to individual</li> <li>• Walks and lives in both worlds</li> </ul>		<ul style="list-style-type: none"> <li>• Speaks only language of dominant culture</li> <li>• Has no connection to or understanding of Tribal customs or traditions</li> <li>• Participates in religious, ceremonial and social activities of dominant culture</li> <li>• Practices spirituality of dominant culture Feels emotionally connected to dominant culture</li> <li>• Socializes solely with people from the dominant culture</li> <li>• Lives in housing of dominant culture</li> <li>• Has no connection to reservation</li> <li>• Primary relationships are with nuclear family</li> <li>• Makes no claims to Native ancestry and may even deny Native ancestry if questioned</li> <li>• Walks and lives in the world of dominant culture</li> </ul>

### Practice Tips:

*Consider protocol when approaching families and individuals who practice their traditional ways. Traditional families and individuals may not communicate in ways a social worker is used to.*

*Families and individuals who are acculturated will have some awareness of resources and systems, but will need support and follow through. Some protocol may be useful in supporting trusting relationships.*

*Assimilated families and individuals may or may not value their culture and heritage the same way as acculturated and traditional individuals. They may need encouragement and guidance on how to maintain ties to their cultural resources.*

## Active Efforts

Before ordering involuntary foster care placement of an Indian child or before terminating parental rights, the court must conclude that active efforts were made to prevent the breakup of the Indian family and that those efforts were unsuccessful.

**What are active efforts?** According to federal regulations, active efforts are affirmative, thorough and timely efforts intended to maintain or reunite an Indian child with his or her family. They are more than reasonable efforts and are determined by the circumstances of each case. Active efforts are intended to address the issues that place the family at risk, and that are potentially the basis for child dependency proceedings. Reasonable efforts entail a family engaging in recommended services utilizing their own resources. In contrast, active efforts is a process through which a social worker collaborates with the family to ensure access to services and resources that support meeting case plan objectives. The process helps build trust between the social worker and the family, and builds confidence in the Indian parents that they are capable of addressing the protective issues and are empowered to take responsibility for them.

Culturally appropriate services should be identified and available wherever possible and should be inclusive of those resources available through the Tribe, extended family or community. Social workers are encouraged to give Indian parents choices where possible and appropriate about their services rather than make decisions for them. For example, if a reunification plan includes parenting education, the social worker may ask the parents if they would be interested in taking a Native American parenting class available through a Tribal social services program, rather than assume that to be the case. Another example may be to ask the parent whether they are interested in working with a Native American therapist for individual therapy, rather than assuming that is the case. In giving parents these kinds of choices, the social worker is encouraging their participation and “buy in.”

Often transportation is an issue for Native American parents, sometimes because they don’t have money for gas, sometimes because of the distance to access appropriate services, and sometimes because the parent(s) are not able to drive as a result of DUIs. Some people within the Native American community have literacy challenges, which makes the copious paperwork associated with their case and services daunting and often overwhelming. Driving a parent to an appointment or arranging for transportation with the Tribal social worker is an active effort under ICWA. Assisting the parents with completing paperwork, rather than leaving them to complete it on their own is an active effort. Active efforts can sometimes take place outside the case plan as well. Many counties lack Native American foster homes that can take Native children where relatives are unavailable. Active efforts include recruitment of safe, competent Native

American foster homes or working with non-Native placements to ensure they will maintain a child's connections to their extended families, Tribe and culture.

Compliance with active effort provisions of the Indian Child Welfare act requires:

1. That active efforts be made not only *prior* to the commencement of the proceeding, but also *until* the proceeding.
2. Detailed documentation of what active efforts were made.
3. A showing that active efforts have been unsuccessful.

To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe and should be conducted in partnership with the Indian child, the child's parents, extended family, Indian custodians and Tribe. Active efforts include, but are *not* limited to:

1. Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
2. Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining services;
3. Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning and in resolution of placement issues;
4. Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;
5. Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;
6. Taking steps to keep siblings together whenever possible;
7. Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety and welfare of the child;
8. Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate the child's family, in utilizing and accessing those resources;
9. Monitoring progress and participation in services;
10. Considering alterNative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;
11. Providing post-reunification services and monitoring.

The requirement to engage in active efforts begins the moment the possibility arises that an agency case or investigation may result in the need for the Indian child to be placed outside the custody of either parent or Indian custodian in order

to prevent removal. Active efforts must be conducted while investigating whether the child is a member of a Tribe, is eligible for membership in a Tribe or whether a biological parent of the child is a member of a Tribe.





***Skill-Building Activity: Active Efforts vs. Reasonable Efforts***

Each of the activities below are reasonable efforts. Discuss with your table group how to make each of these an active effort in compliance with ICWA. Chart your answers for a larger group report out.

1. Identify three service providers for substance abuse treatment.
2. Discuss placement options with the child's Native American grandmother.
3. Mother for counseling.
4. Provide Father the address to his drug testing appointment.
5. Give Father a list of parenting education classes to attend.
6. Remind Mother to make a doctor's appointment.
7. Contact Mother every month while she is in rehab.
8. Provide Mother and Father a copy of "Apartment-Finder Local Listings."
9. Give Mother a bus tokens to get to her to her AA/NA meetings.
10. Give Father a list of Native American social service programs in the county.
11. Refer parents to the local TANF program for assistance with housing and employment.
12. Ask non-Native foster home to be a placement for an Indian child.

## Placement

**Who is extended family?** Extended family is defined by the laws or customs of the child's Tribe. If there is not a law or custom defining extended family, then an extended family member is anyone who is at least 18 years old and the child's grandparent, aunt or uncle, sibling, brother-in-law or sister-in-law, niece or nephew, first or second cousin or stepparent.

**What is the order of preference for foster care placement?**

- The least restrictive setting which most approximates a family and in which the child's special needs, if any, may be met.
- Within reasonable proximity to his or her home, also taking into account any special needs of the child.

In the absence of good cause to the contrary, the placement preferences are as follows:

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

The determination that there is good cause to the contrary to deviate from the placement preferences is made by a judge, rather than the social worker.

**What is the order of preference for placement for a permanent or adoptive placement?** For an Indian child who will be in adoptive placement, the preferences are as follows:

1. a member of the child's extended family;
2. other members of the Indian child's Tribe; or
3. other Indian families.

There is no fourth item in the order of preference that allows for adoption of Indian children by non-Indians.

**Can different order of placement be used?** A different order of placement may be used if the Indian child's Tribe establishes a different order of preference by resolution, and the agency or court affecting placement but abide by this preference as long as it is the least restrictive setting appropriate to the needs of the child. Note that under California law, if a placement consistent with placement preferences is not available, active efforts must be made to find someone committed to maintaining the Tribal connection.

**What standards are used in applying preference requirements?** It is important to remember that *the prevailing social and cultural standards of the Indian community* in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties applies in meeting ICWA placement preference requirements. Why is this important? Recall that historically bias played a major role in the unwarranted removal of Indian children from their homes: social workers often based their decisions to remove on their own standards of

cleanliness, child-rearing, and care with no understanding or consideration given to the cultural standards of the community. Collaborating with and utilizing Tribal ICWA and social services is critical to ensuring best outcomes for the child and ICWA compliance.

***When else do placement preferences apply?*** Placement preferences also apply whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, except where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

***NOTE:*** ICWA does not prevent the emergency removal of an Indian child who is a resident of or domiciled on a reservation, but temporarily located off the reservation, or the placement of that child in foster care in order to prevent physical damage or harm to the child. However, the authority involved in the emergency removal or placement must ensure it terminates immediately when it no longer is necessary to prevent imminent physical damage or harm to the child. The intervening authority must expeditiously initiate a child custody proceeding, transfer the child to the Tribe's jurisdiction or return the child to the parent or Indian custodian as may be appropriate.

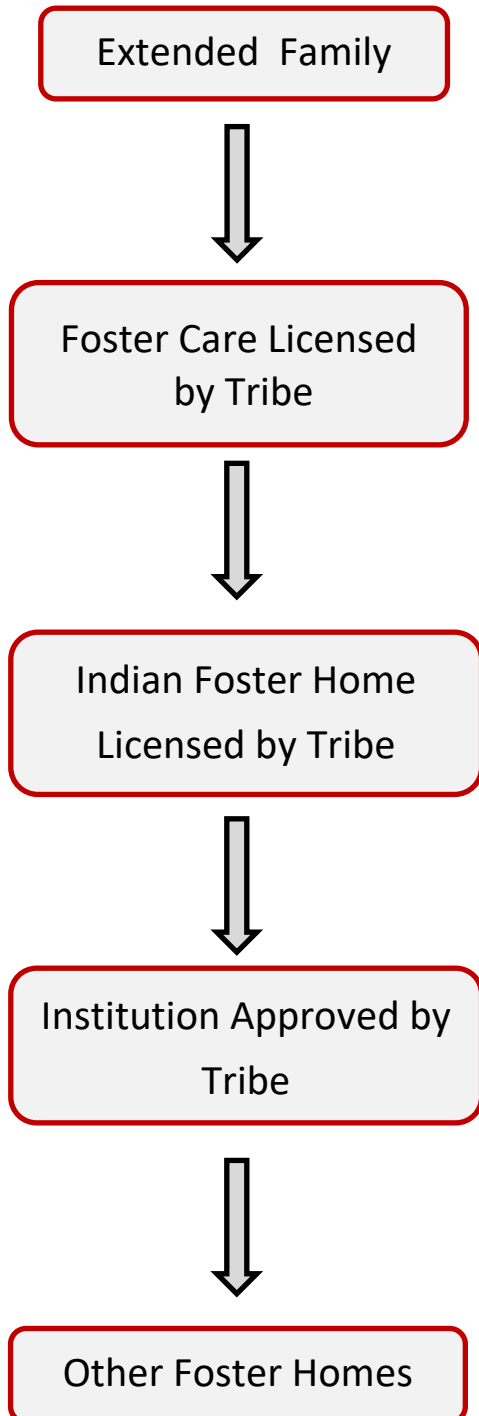


*“Indian families stick together like Gorilla Glue, the strongest adhesive in the world. My mother and father both lived within two miles of where they were born, and my grandmother lived one mile from where she was born. Ever since the Spokane Indian Reservation was founded back in 1881, nobody in my family had ever lived anywhere else. We Spirits stay in one place. We are absolutely tribal. For good or bad, we don’t leave one another.”*

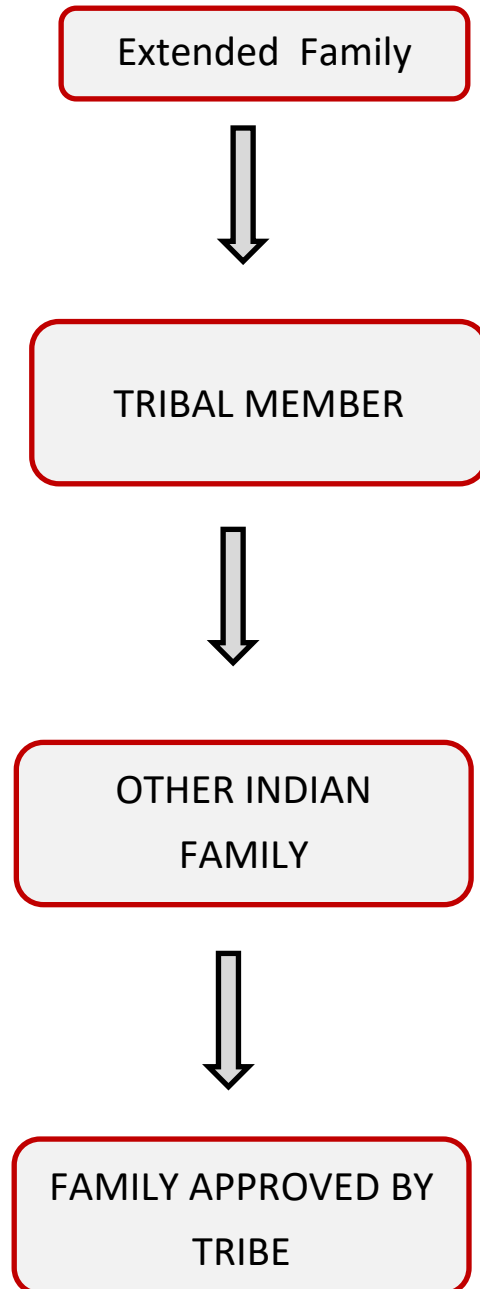
—Sherman Alexie, *The Absolutely True Diary of a Part-Time Indian*  
New York: Little, Brown and Co., 2007

## ICWA PLACEMENT PREFERENCES

### FOSTER CARE



### PERMANENCY



### ***Skill-Building Activity: Placement***

You, the social worker, must find a foster placement for the Jack Jones, the Indian child you identified in the inquiry and notice exercise. Jack's mother is participating in a residential substance abuse treatment program in semi-rural San Diego County that allows her to leave on weekends. Jack's father is incarcerated in San Diego County, but is participating in the limited services available to him. Jack talks with him weekly. Jack maintains a relationship with his aunt, his grandparents, his uncle, and his cousins. He is fond of his mother's long-time family friend. Jack, who is age 5, has an IEP for "other health impairment", is prescribed medication for ADHD, and receives behavioral health services to manage his behavioral issues. Jack's membership in the Crow Nation is pending; the Tribe has intervened in the proceedings and is represented by the designated ICWA agent, the director of the Tribe's social services department and the Tribe's social worker.

Refer to the family information provided for the inquiry and notice exercise. Working with your table group, in order of preference, identify three foster placement options for Jack, consistent with the requirements of ICWA. Your group will report back to the larger group your placement preferences. Why did you choose each of the preferences?

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# Tribal Sovereignty



The relationship between Tribes and the federal government is based on a political, not racial, status.

The trust relationship is the federal government's obligation to protect tribal self-governance, tribal land, assets, resources and treaty rights, and mandates in federal law.

The trust relationship, which extends only to federally recognized Tribes, is the basis for Congress' obligation to enact ICWA.

U.S. Department of Justice ICWA Compliance Initiative (2014) honors tribal sovereignty and the trust relationship.

- A Tribe's relationship with the federal and state governments is a government-to-government relationship, in the same way the United States relates to Mexico, or Arizona to California.
- Tribal governments are diverse structure, government processes, and revenue sources through which government services are provided.
- Retain powers of self-government including but not limited to excluding people from their lands, taxation, making and enforcing laws

Graphic from **Tribal Nations and the United States: An Introduction**  
National Congress of American Indians [www.ncai.org/tribalnations](http://www.ncai.org/tribalnations)

## TRIBAL SOVEREIGNTY AND CHILD WELFARE

Tribes have the ability to greatly influence child welfare outcomes. As it relates to child welfare, a Tribe has the authority, among other things, to:

- Determine the criteria for membership eligibility
- Designate ICWA social worker or advocate as primary contact for a child dependency case
- Designate ICWA representatives to receive notice of dependency proceedings involving Indian children
- Offer prevention and rehabilitation services to Indian families
- Assume legal jurisdiction of the case
- Participate as a party to child dependency proceedings
- Complete background checks and approve foster homes for children in dependency
- Define expert witness criteria
- Order Tribal Customary Adoption

## The Relationship between the Federal Government and Indian Tribes

ICWA defines an Indian Tribe as any organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary of Interior because of their status as Indians. It is a common misconception that the relationship between Indian Tribes and the United States is based on race. It is not—it is a political relationship. The special relationship between the U.S. and Indian Tribes is based on the Tribes' status as a sovereign government, which is why the federal government is able to treat Native American people differently than others and not violate constitutional rules relating to equal protection of the law.

Indian Tribes are politically and culturally distinct entities that maintain unique culture, language and history. Tribal governments predate the Constitution and have long been viewed as distinct political entities that are limited by the Constitution like the federal or state governments<sup>11</sup>. Independent of the United States government, they are subject to federal authority but retain their own inherent powers of self-government, including the authority to make and enforce laws, raise revenue and determine membership (citizenship).

The United States trust responsibility towards Tribes is a legally enforceable obligation of the United States. Its obligations include, among other things, providing healthcare, education and other services; and protecting Tribal government. The federal trust responsibility is afforded only to *federally-recognized* Indian Tribes. If a Tribe is an unrecognized Tribe, it means the federal government does not owe these obligations to that Tribe. During the Termination Era (approximately 1954–1964) the federal government terminated its formal recognition of 109 Indian Tribes. The “terminated” Tribes' lands were withdrawn from trust status, federal criminal jurisdiction was passed to states, and federal services provided to Tribes, including healthcare, education and public safety, ended. A number of Tribes have been able to regain their federally recognized status. Approximately 50 unrecognized Indian Tribes are in California.

In 1978, Congress declared that part of its trust responsibility to Indian Tribes included protecting the best interest of American Indian children, and promoting the stability and security of Indian Tribes and families. ICWA is a remedial statute, meaning that it is intended to undo the historic trauma of Native children and families by 1) preventing the unwarranted break-up of Indian families by child welfare agencies and, when a child must be removed from the family, 2) setting minimum standards that must be followed for identifying Indian children, providing services, and placing Indian children in culturally appropriate homes. Additionally, the ICWA provides assistance to Tribes to provide child and family service programs in furtherance of its trust responsibility. ICWA is intended to ensure the indiscriminate and biased interference with Indian families of the past does not recur.

Tribes exercise their sovereignty in a number of different ways with regard to child welfare. Many Tribes offer prevention and rehabilitative services and have designated a representative (ICWA program manager, Tribal attorney, etc.) to receive notice of dependency proceedings involving Indian children. Tribes may also define criteria for expert witnesses, participate in permanency planning (including Tribal Customary Adoption) and/or assert jurisdiction and handle child dependency matters in their own courts. Tribes can approve foster homes and complete background checks. Tribes have the discretion to choose their level of involvement in the case. If a Tribe intervenes, the Tribe is then a party to the case and is legally entitled to the same rights as other parties to the case. The Tribe may designate a representative to appear in court on the Tribe's behalf, or, if they are geographically too far away, may participate by phone. It is important to note that parents cannot waive a Tribe's right to participate in an ICWA case.

It is best practice to engage with ICWA representatives, social workers and advocates as early in the case as possible as they can be an important resource in serving the families and in the decision-making process. Research demonstrates

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<sup>11</sup> Santa Clara Pueblo v. Martinez 436 U.S. 49 (1978) at page 57.

that keeping children connected to their extended families and Tribes improves child welfare outcomes. Remember, even if the child's Tribe does not intervene or assume jurisdiction, it is still an ICWA case.

Link to list of expert witnesses statewide:

**<http://www.courtinfo.ca.gov/programs/cfcc/programs/description/jrta-ICWAEExpertWitness.htm>**





## Tribal Sovereignty and Child Welfare

### Practice Tips for social workers to understanding government to government relations in ICWA cases.<sup>12</sup>

Sovereignty is a word of many meanings. Merriam Webster defines Sovereignty as a: supreme power especially over a body politic; b: freedom from external control: see autonomy; c: controlling influence.<sup>13</sup> Generally, the term refers to the inherent right or power to govern. Under the U.S. constitutional system, this right is inherent in the people and is exercised through their representative local, state, and federal governments. This is somewhat comparable to the inherent sovereignty of Indian people in the Tribal context.<sup>14</sup>

As recognized by Congress, the Executive Branch, and the Supreme Court, Tribes' right to govern their members and remaining territories derive from a sovereignty that pre-dates European arrival. Treaties entered with Tribes by the U.S. and other countries are one example of the longstanding relationship between the United States and Tribes as sovereign nations.

The principal attributes of Tribal sovereignty today can be generally summarized as follows: (1) Indian Tribes possess inherent governmental power over all internal affairs, (2) the states are precluded from interfering with the Tribes' self-government, and (3) Congress has plenary (i.e., near absolute) power to limit Tribal sovereignty and thereby limit the first two attributes.<sup>15</sup> The federal policy of tribal self-determination, with its beginnings in the 1930s and a renewal in the 1970s, had created opportunities for Tribes to retain their sovereignty and to overcome some of the restraints arbitrarily or improperly placed on that sovereignty over the past 150 years.<sup>16</sup>

Social workers who have American Indian/Alaska Native children on their case load may be unaware that the Indian Child Welfare Act applies to their case or of the affect the law and tribal sovereignty may have on their case. Why is there a law that specifically targets American Indian children in child welfare? Why aren't there other laws that address the needs of other groups such as African Americans or Hispanic/Latinos? Simply put, being American Indian is not only a cultural distinction; it is also a political one. The United States has a government-to-government relationship with American Indian/Alaska Native Tribes and through that relationship has the obligation to protect the best interests of American Indian children and to promote the stability and security of Indian Tribes and families.<sup>17</sup>

Tribes exercise their sovereignty in *many ways*, including designating ICWA representatives to receive notice from state child welfare agencies and state courts; appointing an ICWA representative in order to ensure that the Tribe is informed

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<sup>12</sup> This document was developed by the American Indian Enhancement team in collaboration with the National Resource Center for Tribes, and Tribal STAR with technical support from the Hon. William Thorne. The American Indian Enhancement Team is an effort of the California Disproportionality Project, a Breakthrough Series Collaborative (BSC) resourced through the Annie E. Casey Foundation, California Department of Social Services, CalSWEC, Casey Family Program, Child and Family Policy Institute of California, and the Stuart Foundation. Revised 11/2015.

<sup>13</sup> Sovereignty. 2009. In *Merriam-Webster.com*. Retrieved July 15, 2009, from <http://www.merriam-webster.com/dictionary/sovereignty>

<sup>14</sup> Utter, Jack, American Indians: Answers to Today's Questions: H-8s: Legal Status and Tribal Self-Government 1993

<sup>15</sup> Ibid

<sup>16</sup> Ibid.

<sup>17</sup> 25 U.S.C. §1902

and can respond to the notice; defining expert witness criteria, and recommending Tribal Customary Adoption as a permanency option for its children.

### **Tips for Social Workers**

1. Learn about the Tribe(s) in your county and state. You can obtain a copy of ICWA designated agents at <http://www.tribal-institute.org>.
2. Be aware that when a Tribe intervenes in an ICWA case involving their child, the Tribe is then a party to the case and legally entitled to the same rights as all other parties to the case.
3. In cases where the child's Tribe is geographically too far to participate in the court process the Tribe may designate a representative to appear in court on the Tribe's behalf.
4. If the child's Tribe does not intervene in a case or assume jurisdiction, the case continues to maintain ICWA status and culturally appropriate active reunification services are still required.
5. Tribes exercise sovereign status in many ways, including during Tribal Customary Adoption, and to define criteria for expert witness.
6. Communicate with Tribes as though you were contacting the governor's office of a neighboring state. Show the same level of respect and adhere to appropriate protocols as you are dealing with representatives of a sovereign nation.
7. Respectfully consider what the Tribe has to say; otherwise the Tribe may decide to pursue legal avenues which could be timely and costly. If respect and courtesy is established early on in the relationship there is a greater potential for collaboration on case options. The more options, the better chances for positive outcomes for Indian children.
8. Attempt to resolve the case informally before having to resolve the case before a judge.



## Concurrent Planning

Developing and maintaining a partnership with Tribes (engagement and teaming with Tribes) is key to an effective child welfare practice and ICWA compliance. The cornerstone of this unique relationship is early engagement and meaningful consultation. Meaningful consultation is not making decisions and then “checking in” with the Tribe, but rather is respectful interaction with the Tribe as a partner, full consideration of the Tribe’s inputs and recommendation. Tribes hold legal rights under ICWA and can influence many aspects of a dependency case, from case plan development and services identification, to placement and permanency. Engagement and teaming with Tribes should begin as soon as there is reason to know a child is an Indian child and is required when concurrent planning begins. Under California law, permanency options include guardianship, adoption and, under California ICWA, Tribal Customary Adoption.<sup>18</sup>

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### *Best Practice Tip:*

*Check your records to make sure inquiry has been made. If it has not or it is not clear, make the inquiry before proceeding with the adoption. Document the information clearly in the files.*

*Make sure to consult with the Tribe when preparing each court report to confirm the Tribe’s permanent plan choice, especially if the Tribe previously indicated that TCA is not the preferred plan.*

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Tribal Customary Adoption (TCA) is an adoption that takes place under the laws, customs or traditions of the child’s Tribe. It is a culturally appropriate means of achieving permanency for an Indian child. Unlike conventional adoption, there is no requirement for parental rights to be terminated in a TCA, which is often in conflict with Tribal beliefs and values. TCA becomes a permanency option for every Indian child as soon as the Tribe identifies the child as an Indian child. As soon as concurrent planning begins, social workers must consult with the Tribe 1) to inform them that TCA is a permanency plan and 2) to determine whether TCA is an appropriate permanent plan. Only the Tribe can choose TCA as the permanent plan and it can do so at any time after disposition.

If the Tribe has chosen TCA as the preferred permanent plan, the process can proceed after the court has ordered TCA. The Tribe takes the lead in the next steps. The Tribe has 120 days to complete a home study, background checks, and issuing and filing the TCA order, though the home study and background checks can and should be done or underway before this point. The home study has to be completed before the TCA is written. The Tribe is able to request a continuance if these things are not completed within the 120 days. Once the TCA order is written and filed, the law requires the Tribal order to be recognized by the state court (afforded full faith and credit). Once the order is recognized, the TCA placement can occur. The prospective adoptive are responsible for filing the adoption petition, and once they do so, the finalization hearing will be set. The adoption will be finalized at the hearing and the dependency terminated.

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<sup>18</sup> See: CDSS All County Letter No. 10-47 <http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2010/10-47.pdf>, retrieved 10/19/18 and CDSS 2011 PowerPoint re Tribal Customary Adoption: <http://caltca.org/sites/default/files/pictures/pdfs/CDSS%20TCA%20Training%202011.pdf>, retrieved 10/19/18.

Additional information about TCA with regard to the Tribe:

- A Tribe does not have to formally intervene in a case in order for TCA to be considered as a permanency option.
- Tribes are not required to choose TCA as a permanency option.
- Tribes do not have to commit to TCA until the 366.26 hearing.
- If TCA is selected as a permanent plan, Tribes have 120 days to submit the TCA order; if they do not, the court has the discretion to choose another plan.
- Only the Tribe can choose TCA.
- The Tribe issues the TCA order, not the state court.
- Tribal Customary Adoption orders are entitled to receive full faith and credit (formal recognition and enforcement) by the state court

Social worker responsibilities with regard to concurrent planning:

- Must consult with the Tribe about an appropriate permanent plan as soon as concurrent planning begins.
- Must inform the court at disposition TCA was discussed and the Tribe's choice if one has been made.
- Must consult with the Tribe and report to the court at every hearing from disposition until 366.26 that consultation has occurred and the Tribe's permanent plan choice, if one has been made.
- Must report the Tribes' choice for a permanency plan to the court, even if the Tribe reports to the court.
- Must work in consultation with the Tribe to minimize unnecessary placement disruptions.
- Facilitate placement, and supporting the adoptive parents through the adoption assistance agreement.
- Submit a final report to the court regarding the TCA for the finalization hearing.

## Expert Witness

***When must a qualified expert witness be used?*** If a foster care placement is being sought for an Indian child or parental rights are being terminated. It is the responsibility of the party seeking foster care or termination of parental rights to obtain qualified expert witness testimony. However, in some cases, it is beneficial to the Tribe to provide a rebuttal witness, and often for the children's attorney and the parents' attorney. These options are seldom used and need to be encouraged. Qualified expert witness testimony can have an enormous impact on a case and counties should always try and work with Tribes to secure qualified expert witnesses.

***What does a qualified expert witness do?*** Diminishes the risk of bias in decision making by the Agency and testifies as to the detriment of the child in remaining with the parents or Indian guardian based on the prevailing social and cultural standards of the Tribe. Qualified expert witnesses may also testify on placement, especially when the Agency is recommending deviation from placement preferences because of the special needs of the child and active efforts and whether they were made in a manner consistent with the prevailing social and cultural values of the child's Tribe, and utilized the resources found in the extended family, Tribe, Tribal social services and Native American caregiver service providers.

***Who may be a qualified expert witness?*** A qualified expert witness can be almost anyone, such as a social worker, doctor, psychologist, traditional Tribal healer, spiritual leader, historian or elder. Those most likely to be a qualified expert witness is

A member of the child's Tribe who is recognized by the Tribal community as knowledgeable in Tribal customs as they pertain to family organization and child rearing practices;

Any person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices with the child's Tribe;

A professional person with substantial education and experiences in the area of his or her specialty.

Qualified expert witnesses cannot be an employee of the person/agency recommending foster care placement or termination of parental rights. County social workers are disqualified from being expert witnesses in the same county where the workers are employed.

***When should a qualified expert witness be identified?*** The expert witness or witnesses should be identified upon initial contact with the child. Ask the Tribe for its qualified expert witnesses.

***What if no Tribe is involved or the Tribe does not have a qualified expert witness?*** Begin the recruitment early and avoid waiting until the hearing is near. The Judicial Council of California, Administrative Office of the Courts' Center for Children, Families and Courts Indian Program has posted a list of individuals who are identified as qualified experts for ICWA purposes. This list is a resource and any agency or individual seeking to use an individual on the list is responsible for independently evaluating that person for suitability for participating in an ICWA proceeding.

Tribes are frequently asked for qualified expert witness testimony. Tribes can provide testimony about the relevance of cultural norms in a particular case and county/state compliance or lack of compliance with ICWA requiring compliance with those norms. Tribes outside of California often decline to provide their own qualified expert witness—they seldom have the resources to do so. Qualified expert witness testimony can have an enormous impact on a case and counties should always try and work with Tribes to secure qualified expert witness.

Link to list of expert witnesses statewide:

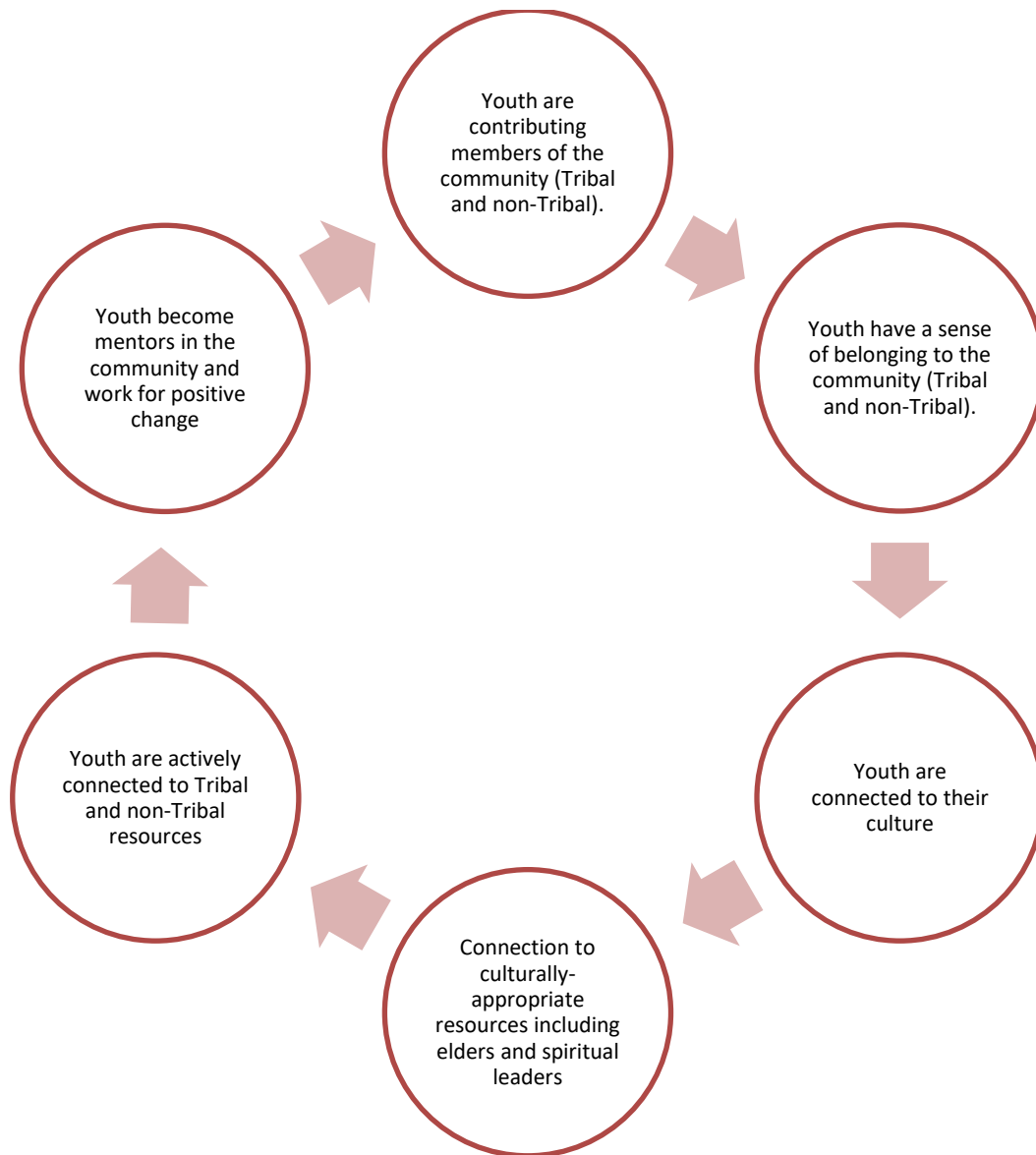
<http://www.courts.ca.gov/8105.htm>

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*Best Practice Tip:* Document all your efforts related to inquiry, notice, active efforts and placement. Contact the child’s Tribe as soon as possible and work with the Tribe to identify a qualified expert witness.

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### Positive Outcomes from a Tribal Youth Perspective

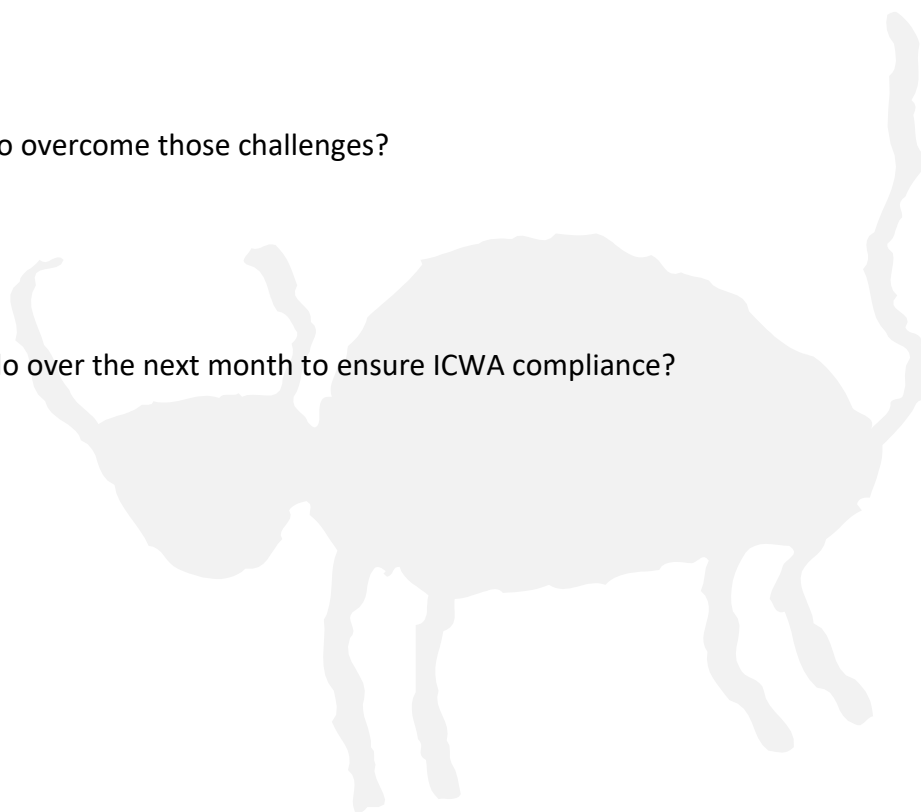


## WHAT STANDS OUT FROM TODAY?

What challenges do you expect to have with an ICWA case?

What can you do to overcome those challenges?

What can do you do over the next month to ensure ICWA compliance?





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- and a summary of the study written by Carol Locust is accessible at:
- <http://blog.americanindianadopteesh.com/p/split-feathers-study-by-carol-locust.html>, retrieved 10/17/18]
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## Additional Resources—Tribal Star

### THE SUMMIT

***The Summit Curriculum*** provides in-depth information that supports managers and supervisors of programs that serve Tribal youth. The curriculum provides an overview of the issues facing child welfare and Indian Child Welfare workers and includes recommendations, Tips for Protocol, and other resources designed to enhance cross-cultural relationships at the micro and macro levels.

***The Summit Workbook*** for participants is a booklet that is distributed to trainees, and provides an overview of the issues facing child welfare and Indian Child Welfare workers and includes recommendations, Tips for Protocol, and other resources designed to enhance cross-cultural relationships at the micro and macro levels.

***The Tribal STAR Journal*** is a small booklet designed to help participants remember core Native American values and provides blank pages for notes, reminders, and contact information.

***The Summit PowerPoint*** is the interactive multi-media PowerPoint that helps trainees follow the workbook and begin to understand key concepts provided in the Summit Curriculum. The PowerPoint provides prompting questions at the beginning of each section to stimulate thought and gauge understanding about each module.

### THE GATHERING

***The Gathering Curriculum*** provides in-depth information that supports front-line staff of programs that serve Tribal youth. The curriculum provides an overview of the issues facing child welfare and Indian Child Welfare workers and includes recommendations, Tips for Protocol, and other resources designed to enhance cross-cultural relationships at the micro and macro levels.

***The Gathering Workbook*** for participants is a booklet that is distributed to trainees, and provides an overview of the issues facing child welfare and Indian Child Welfare workers and includes recommendations, Tips for Protocol, and other resources designed to enhance cross-cultural relationships at the micro and macro levels.

***The Tribal STAR Journal*** is a small booklet designed to help participants remember core Native American values and provides blank pages for notes, reminders, and contact information.

***The Gathering PowerPoint*** is the interactive multimedia PowerPoint that helps trainees follow the workbook and begin to understand key concepts provided in the Summit Curriculum. The PowerPoint provides prompting questions at the beginning of each section to stimulate thought and gauge understanding about each module.

### THE INDIAN CHILD WELFARE ACT (ICWA)

***Let the Spirit Lead...In the Best Interest of the Indian Child Curriculum*** includes engagement strategies that encourage participation of local and regional Tribal representatives when implementing training at the local

level. The two most critical aspects of this curriculum are knowledge of the historical significance of the ICWA and skills for engagement with Tribal people and communities. The curriculum provides a brief history of ICWA to provide a cultural and historical context, and focuses on the following ICWA requirements: Inquiry and Noticing, Placement, Active vs. Reasonable Efforts, Concurrent Planning, and Expert Witness. Participants increase skills around inquiry and identification of an Indian child, and understanding of the Spirit of ICWA.

***Let the Spirit Lead...In the Best Interest of the Indian Child Workbook*** for participants is a booklet that is distributed to trainees, and provides an overview of ICWA requirements, social work practice tips, skill building worksheets, and questions for participants to consider as they experience the training.

***Let the Spirit Lead...In the Best Interest of the Indian Child PowerPoint*** is the interactive multi-media power point that helps trainees follow the workbook and begin to understand key concepts provided in the curriculum. The PowerPoint provides prompting questions at the beginning of each section to stimulate thought and gauge participant understanding about each segment.

## THE COLLABORATIVE

***The Collaborative*** is an adapted half-day training designed to introduce Tribal and non-Tribal child welfare workers to the challenges of serving Tribal foster youth. It covers a brief historical overview and concludes with recommendations that support increased communication and collaboration among providers that strive to achieve positive outcomes for Tribal youth

***The Collaborative Workbook*** is recommended for use with The Collaborative training and provides an overview of the issues facing child welfare and Indian Child Welfare workers and includes recommendations, Tips for Protocol, and other resources designed to enhance cross-cultural relationships at the micro, macro, and macro levels. This workbook is provided directly to trainees.

***The Tribal STAR Journal*** is a small booklet designed to help participants remember core Native American values and provides blank pages for notes, reminders, and contact information.

***The Collaborative PowerPoint*** is the interactive multi-media PowerPoint that helps trainees follow the workbook and begin to understand key concepts provided in the Summit Curriculum. The PowerPoint provides prompting questions at the beginning of each section to stimulate thought and gauge understanding about each module.

## TRAINING FOR TRAINERS (T4T)—CREATING CONNECTIONS

***T4T Creating Connections Curriculum*** provides in-depth information for those who may want to train the Tribal STAR Summit or Gathering. It provides a checklist to assist with trainer preparedness and trainer tips to enhance group discussions. The curriculum provides approaches to training sensitive topics and an overview of the issues facing child welfare and Indian Child Welfare workers and includes recommendations, Tips for Protocol and other resources designed to enhance cross-cultural relationships at the micro and macro levels.

## POWERPOINTS

***The Resiliency PowerPoint*** is approximately seven minutes of factors that contribute to the resilience of Tribal

youth. Intended to be shown without any music or audio narrative to induce the viewer into reflective thought, modeling one of the recommendations presented, that learning can occur in silence

***The Contributions PowerPoint*** provides a brief overview of some of the contributions of Native American/Alaska Native culture to western mainstream society. This self-guided (not timed) PowerPoint is intended to illuminate some of the many contributions that can support positive conversations between Tribal and non-Tribal participants. It also serves as a reminder of the Tribal achievements that many Tribal youth and families may have for gotten, and can reclaim to strengthen a sense of positive identity and dignity.

## RESOURCES (ONLINE)

The ***Tribal STAR Resources document online*** provides a compendium of articles that were reviewed and utilized in the development of the Summit, Gathering, Collaborative, and Training for Trainer (T4T) curricula. All Tribal STAR training materials are provided on the Resources document online, including: curricula, workbooks, the Journal, posters and related PowerPoint presentations. It also contains related resources, articles, maps, and information to support further understanding and collaboration among providers of services to Tribal foster youth.

## MSW MODULES

Tribal STAR has developed three (3) MSW modules designed to fill a standard 1.25 hour course session with a combination of lecture and interchangeable activities designed to increase awareness of American Indian history, values, and culture as they relate to policy, human behavior and generalist practice. Each module includes a format to accommodate guest speakers from the field and is also intended to increase MSW students' awareness of fairness and equality.

### Policy

***The Impact and Limitations of Indian Child Welfare Act*** module is intended to expand MSW Students awareness of the history, impact, and limitations of the Indian Child Welfare Act (ICWA). This 1.25 hour module is also intended to increase MSW Students' awareness of fairness and equity in relation to policy driven services to culturally specific populations.

### Behavioral

***Understanding the Effects of History upon Culture and Behavior of American Indians*** is a module intended to expand MSW awareness of cumulative collective trauma and how culture influences human behavior in this population by providing a menu of lectures, activities intended to fill a standard 1.25 hour session.

### Practice

***Considerations for Culturally Sensitive Social Work Practice with American Indians*** is a 1.25 hour session that addresses the fact that although American Indians represent a small percentage of the population, there exists a disproportionality of youth and families served by Child Welfare and ICWA programs. It provides guided instruction that supports the ability to develop stronger practice skills when serving American Indians and

strengthens the cross-application to other ethnic groups.

## **MSW RESOURCE CD**

The ***Tribal STAR Resource CD for MSW Modules*** provides a compendium of articles that were reviewed and utilized in the development of the MSW modules focusing on Policy, Behavior and Practice. All Tribal STAR MSW training materials are provided on the Resource CD, including modules, the Journal, posters and related PowerPoint presentations. It also contains related resources, articles, maps and information to support further understanding and collaboration for faculty and providers of services to Tribal foster youth.

## **DIGITAL STORIES**

The ***Tribal STAR Digital Stories*** is a DVD that contains three personal accounts of being touched by the Child Welfare System. *Paul's Story: Forever Hurt* is an account of a father and his daughter who were affected by both the state and Indian Child welfare systems. *Wakeem's Story: Finding Connection* is an account of a challenged Tribal youth who is reconnecting with heritage and Tribal relations. *Justine's Story: For Future Generations* is shared from the perspective of a Tribal youth, who has been touched by state and Indian Child welfare systems, and she gives advice to case managers and other youth on the journey.

## **TRIBAL STAR NEWSLETTER**

The ***Tribal STAR Newsletter "Drumbeats"*** is a bi-monthly publication of resources, stories, events, and articles that keep readers informed of current issues affecting services for Tribal youth in the child welfare system. It is also intended to support collaboration and networking among the diverse service providers that strive to increase positive outcomes for Tribal youth.

## **PUBLICATIONS**

The ***Checklist for Judges*** provides an overview of current issues facing Tribal youth and is designed to assist Judges in making culturally responsive determinations in cases involving Tribal youth.

### **Bringing Them Back**

***Bringing Them Back*** is a summary of points brought up at the 2003 NICWA Conference at which primarily Tribal participants were asked "How can we assist Tribal youth in returning to their Tribal communities?"

### **Tips for Protocol**

***Tips for Protocol*** was developed to assist service providers of Tribal foster youth in cultivating successful long-term relationships between Tribal and non-Tribal partners. It provides practical recommendations for Tribal youth.

### **Tips for Cross Cultural Training**

***Tips for Cross Cultural Training*** when working with Tribal communities provides an overview of the challenges one may face when training Tribal and non-Tribal participants. It provides practical solutions to support effective outcomes for the trainer.

## Appendices

### APPENDIX A: THE INDIAN CHILD WELFARE ACT

#### UNITED STATES CODE TITLE 25 - INDIANS CHAPTER 21 - INDIAN CHILD WELFARE Sections 1901-1922 (Edited for Length)

§ 1901. Congressional findings.

§ 1902. Congressional declaration of policy.

§ 1903. Definitions.

§ 1911. Indian Tribe jurisdiction over Indian child custody proceedings.

§ 1912. Pending court proceedings.

§ 1915. Placement of Indian children.

§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception.

§ 1922. Emergency removal or placement of child; termination; appropriate action.

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§ 1901. Congressional findings. Recognizing the special relationship between the United States and the Indian Tribes and their members and the Federal responsibility to Indian people, the Congress finds - (1) that clause 3, section 8, article I of the United States Constitution provides that the Congress shall have Power to regulate Commerce with Indian Tribes and, through this and other constitutional authority, Congress has plenary power over Indian affairs; (2) that Congress, through statutes, treaties, and the general course of dealing with Indian Tribes, has assumed the responsibility for the protection and preservation of Indian Tribes and their resources; (3) that there is no resource that is more vital to the continued existence and integrity of Indian Tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian Tribe; (4) 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 alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and (5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

§ 1902. Congressional declaration of policy. 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.

§ 1903. Definitions

For the - (purposes of this chapter, except as may be specifically provided otherwise, the term 1) "child custody proceeding" shall mean and include - (i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated; (ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship; (iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and (iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's Tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian Tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian Tribe or (b) is eligible for membership in an Indian Tribe and is the biological child of a member of an Indian Tribe;

(5) "Indian child's Tribe" means (a) the Indian Tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one Tribe, the Indian Tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian Tribe" means any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian Tribe or individual or held by any Indian Tribe or individual subject to a restriction by the United States against alienation;



(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian Tribe, or any other administrative body of a Tribe which is vested with authority over child custody proceedings.

#### § 1911. Indian Tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction. An Indian Tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such Tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian Tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court. In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's Tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the Tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's Tribe: Provided, That such transfer shall be subject to declination by the tribal court of such Tribe.

(c) State court proceedings; intervention. In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's Tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian Tribes. The United States, every State, every territory or possession of the United States, and every Indian Tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian Tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

#### § 1912. Pending court proceedings

(a) Notice; time for commencement of proceedings; additional time for preparation. In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's Tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the Tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the Tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the Tribe or the Secretary: Provided, That the parent or Indian custodian or the Tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(c) Examination of reports or other documents. Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures. Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child. No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

#### § 1915. Placement of Indian children

(a) Adoptive placements; preferences In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's Tribe; or (3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences. Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with - (i) a member of the Indian child's extended family; (ii) a foster home licensed, approved, or specified by the Indian child's Tribe; (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (iv) an institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preference. In the case of a placement under subsection (a) or (b) of this section, if the Indian child's Tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: Provided, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception. Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

§ 1922. Emergency removal or placement of child; termination; appropriate action. Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian Tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

## APPENDIX B: QUICK REFERENCE: INVOLUNTARY PROCEEDINGS AND ACTIVE EFFORTS

### Quick Reference Sheet for State Agency Personnel in Involuntary Proceedings\*



U.S. Department of the Interior, Bureau of Indian Affairs  
Final Rule: Indian Child Custody Proceedings  
25 CFR 23

**Inquiry.** The court will ask at the beginning of each child-custody proceeding:

*Do you know, or is there a reason to know, the child is an "Indian child" under the Indian Child Welfare Act (ICWA)?*

An "Indian child" is:

- A member of a federally recognized Tribe or
- Eligible for membership in a federally recognized Tribe and has a biological parent who is a member.

Indications of "reason to know" include—

- Anyone, including the child, tells the court the child is an Indian child or there is information indicating the child is an Indian child;
- The domicile or residence of the child or parent/Indian custodian is on a reservation or in an Alaska Native village;
- The child is, or has been, a ward of Tribal court; or
- Either parent or the child has an ID indicating Tribal membership.

Whether a child is an "Indian child" does not consider factors outside the statutory definition, such as:

- Participation of the parents or the Indian child in Tribal activities;
- Relationship between the Indian child and his or her parents;
- Whether the parent ever had custody of the child, or
- The Indian child's blood quantum.

**Pending verification.** The court will treat the child as an Indian child, unless and until it is determined on the record that the child is not an "Indian child" under the Indian Child Welfare Act (ICWA).

**Due diligence to identify "Indian child's Tribe" and verify membership/eligibility.** Use due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is a member or a biological parent is a member and the child is eligible for membership.

**Inquire as to domicile and residence.** The court will look at whether the Indian child's domicile or residence is on a reservation or the child is a ward of Tribal court to determine whether the Indian child's Tribe has exclusive jurisdiction.

**Use and document active efforts to prevent the breakup of the family.** You must use active efforts to prevent the breakup of the family. Before ordering an involuntary foster care placement or termination of parental rights (TPR), the court must conclude that active efforts have been made to prevent the breakup of the Indian family and those efforts have been unsuccessful. The court will require active efforts to be documented in detail in the record.

**Active efforts** are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. See 25 CFR § 23.2 for the more expansive definition and examples.

**If an emergency removal under State law is necessary.** An emergency removal or placement is any removal/placement of an Indian child under State law without the full suite of ICWA protections, regardless of the label used for the removal or placement, and is permitted to prevent "imminent physical damage or harm" to the child. Any emergency removal or placement of an Indian child:

- **Must terminate** immediately when the removal or placement is no longer necessary to prevent "imminent physical damage or harm" to the child and
- **Cannot last more than 30 days** unless the court makes certain determinations.

1

**IMPORTANT NOTE:** This quick reference guide is not comprehensive and highlights only some of the requirements of the statute at 25 U.S.C 1901 *et seq.* and regulations at 25 CFR 23. To the extent there are any discrepancies, the statute and regulations govern.

An emergency proceeding can be terminated by one or more of the following actions:

- (1) Initiation of a child-custody proceeding subject to the provisions of ICWA (e.g., providing notice);
- (2) Restoring the child to the parent or Indian custodian; or
- (3) The court transfers of the child to the jurisdiction of the appropriate Indian Tribe.

**Notice.** Provide clear and understandable notice to the parents (and/or Indian custodian, if any) and Tribe, by registered or certified mail, return receipt requested, of the involuntary proceeding, and maintain proof that the notice was given (i.e., the return receipts and copies of notice). The court will not hold a foster-care-placement or TPR proceeding until at least **10 days after receipt** of the notice of that particular proceeding (with extensions allowed at option of parent or Tribe).

**Standards of Evidence.** The court will order foster-care placement or TPR only if there is:

- **Clear and convincing evidence** (for foster-care placement) or **evidence beyond a reasonable doubt** (for TPR),
- Including the testimony of qualified expert witness(es),
- That the child's continued custody by the child's parent or Indian custodian is likely to result in "serious emotional or physical damage" to the child.

The evidence must show a **causal relationship** between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child-custody proceeding.

Without a causal relationship, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself meet the standard of evidence.

The **qualified expert witness** may not be the social worker regularly assigned to the Indian child. The Indian child's Tribe may designate an individual as a qualified expert witness and you may seek the Tribe's or BIA's assistance in identifying a qualified expert witness.

**Placement Preferences.** Seek to identify placements that meet ICWA's placement preferences (or the Indian child's Tribe's placement preferences established by resolution, if applicable). The court will apply the placement preferences in any preadoptive, adoptive, or foster-care placement of an Indian child.

ICWA's top preferred placement is a member of the Indian child's extended family.  
For the remaining preferences, see 25 U.S.C. 1915 or 25 CFR §§ 23.129-131.

The court will allow for deviations of the placement preferences only for *good cause* described on the record. Good cause should be shown by clear and convincing evidence and based on one or more of the considerations at § 23.132(c). Note that a prerequisite to finding good cause based on the *unavailability* of a suitable preferred placement is that a diligent search for suitable preferred placements must have been conducted. The standards for determining whether a placement is *unavailable* must conform to the prevailing social and cultural standards of the Indian community.

A placement may not depart from the preferences:

- Based on the socioeconomic status of any placement relative to another placement
- Based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

\*Any proceeding that is not "voluntary" under the regulations is **involuntary**. A proceeding is "voluntary" only if either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.

## 2

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## Active Efforts



U.S. Department of the Interior, Bureau of Indian Affairs  
Final Rule: Indian Child Custody Proceedings  
25 CFR § 23.2, § 23.120

### What are active efforts?

Active efforts are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family.

### What must active efforts involve?

Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent(s) or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.

### How should active efforts be provided?

To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and Tribe.

### Are active efforts tailored to each case?

Yes, active efforts are to be tailored to the facts and circumstances of the case.

### When are active efforts required?

The active efforts requirement applies in any foster-care or termination-of-parental-rights proceeding involving an "Indian child" (see 25 CFR 23). The court must conclude, prior to ordering an involuntary foster-care placement or termination of parental rights, that active efforts have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful.

### Must active efforts be documented?

Yes, the court will require active efforts to be documented in detail in the record.

### Active efforts may include, for example:

- (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
- (2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
- (3) Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;
- (4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;
- (5) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;
- (6) Taking steps to keep siblings together whenever possible;
- (7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;
- (8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;
- (9) Monitoring progress and participation in services;
- (10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;
- (11) Providing post-reunification services and monitoring.

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