



Growing and Linking our Knowledge About Data, History, & Sovereignty to Strengthen ICWA Practice and CPM Leadership Behaviors

November 15, 2021

Learning Objectives

1. To learn about the states and counties' responsibility to engage in a government-to-government Relationship with Tribes in child Welfare Matters.
2. To learn about the concepts and features of on-going Tribal engagement and consultation.
3. To deepen the understanding of the Role of child welfare leadership in the application of the Indian child welfare act.

November - Celebrating Native American Heritage month & 43 years of the ICWA

Native American and Alaska Native Heritage Month has evolved from its beginnings as a week-long celebration in 1986, when President Reagan proclaimed the week of November 23-30, 1986, as "American Indian Week." Every President since 1995 has issued annual proclamations designating the month of November as the time to celebrate the cultures, accomplishments, and contributions of Native Americans and Alaska Natives.



Presenters



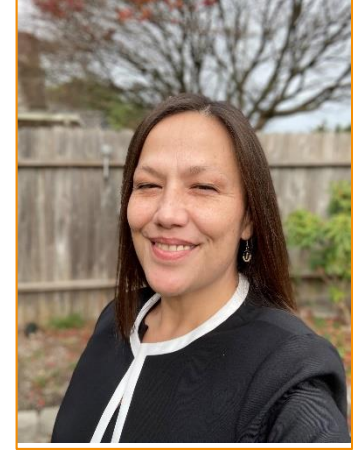
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Agenda

Welcome/Overview

Tribal Sovereignty

Contemporary Tribes

Panel

Tribal Engagement & Consultation

Poll & Break

Office of Tribal Affairs

ICWA Overview

Closing

Recap- Building from REI Session 1 on August 19, 2021 & Regional work sessions

- Assess what the current data tells us and does not tell us about the extent of disparities that exist among the Native American children and families we serve.
- Increase knowledge about the historical context of the Native American experience in the United States and California.
- Introduce how government laws and practices have shaped and impacted Native American experience, especially as it pertains to children and families.
- Engaged in the regional data discussion and met regional OTA Field Liaison.





Tribal Sovereignty

Sovereignty today, or why is Indian law so confusing?

- Despite tribes' inherent sovereignty, the U.S. Constitution declares them subject to plenary and exclusive power of Congress, meaning that Congress has ultimate decision-making authority to limit or expand the powers of tribal governments and determine which tribes have federal recognition.
- BUT: The general framework of Indian law, including a long history of precedential federal court decisions recognizing tribal sovereignty, the moral and legal federal obligations to tribes, and existing treaties, has a great deal of influence over Congressional action.

Sovereignty Today

Pursuant to federal case law, tribes are “domestic dependent nations” with quasi-sovereign status over their members and territory, meaning that they have internal rather than external sovereign powers (e.g., authority over their own domestic relations, membership, governance).

Treaties are to be liberally construed in favor of the Indian parties, and all ambiguities are to be resolved in their favor

Generally, states have no authority to regulate Indian affairs.
.. Unless Congress expressly delegates this power to them.

- → Public Law 280

Why isn't it considered unconstitutional when the government provides more rights, protections, and services to Indians?

The rights, protections, and services provided by the federal government to Indians flow:

from membership (citizenship) — that is, having a distinct political status—in a distinct government (that is, a tribe).

not from ancestry, race, or culture.

Sovereignty and “political status” why does it matter?

- Tribal sovereignty is recognized as being inherent, meaning that the traditional authority of tribal leaders to govern their people and lands existed long before their relationship with the U.S. government.
- Because it is inherent, tribal sovereignty is something Indian tribes have retained, not something granted to them by the federal government. Inherent sovereignty arises from within and does not require recognition or approval by any other government to exist.
- **“Political status”**- today generally refers to the sovereign authority of **federally recognized tribes** to officially engage in a government-to-government relationship with the United States & other governments.
 - Where authorized by state statute, tribes can also enter into agreements and compacts with states (for example, Title IV-E agreements and gaming compacts).
 - States-CDSS requirement to consult with federal recognized Tribes on policy changes
 - County requirement (AB 153/ AB 2083) develop MOU’s ILT’s
 - County develops ICWA protocols with a Tribe- Sonoma, SD, Humboldt/Hoopa,
 - Counties required to notice tribes (federal recognized) of children that reason to know

Does the United States engage in a government-to-government relationship with all tribes?



No. This duty to engage as sovereigns, and many federal protections and benefits, apply only to “federally recognized” tribes and their members.

- Some states have a formal process for state recognition of non-federally recognized tribes.
- California has no such process. However, it has repeatedly acknowledged them, including by legislation (for example, WIC §306.6 provides for the participation of such tribes in child welfare proceedings).

If Tribes are already sovereign governments, why does federal recognition matter?

Federal recognition establishes a legal relationship between the tribe and the government.

It requires that the federal government has the highest fiduciary responsibility for proper management of tribal trust land, has an obligation to protect tribes' treaty rights and other property interests, and must provide certain services. These obligations are legally enforceable.

Federal recognition does *not* stem from meaningful differences between tribes with recognition and those without. It is the product of changing policies, legislation, and court decisions through the years.

What is Jurisdiction?

- Jurisdiction has many shades of meaning. The primary emphasis is on powers. It can describe the powers of an office, a nation, a court, even a committee.
- When applied to a government, the word means that government's power to govern its people and territory.
- Jurisdiction is measured in terms of the power that one government or agency has in relationship to the power exercised by another.

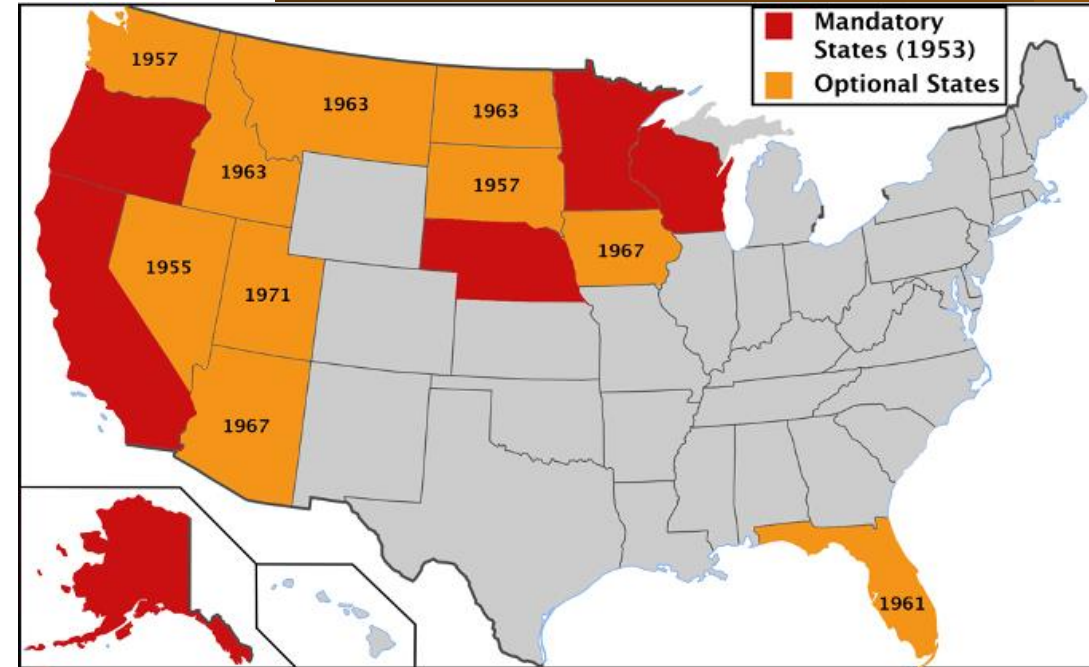


Tribes are not subordinate to states, but can have a government-to-government relationship with a state

- **Tribal Consultation Requirements.** Federal and state laws require consultation with tribes (generally federally-recognized tribes located within the state) on designated issues.
- **Intergovernmental Agreements.** Agreements that address issues such as how concurrent jurisdiction is exercised, or that allow for delegations of authority.
 - **Examples:** Cross-Deputization Agreements, Joint Jurisdiction Courts, Natural Resource Co-management Agreements/protocols.
 - **Sovereign Immunity to Unconsented Suit.** The judicial doctrine that prevents the government or its political subdivisions, departments, and agencies from being sued without its consent. (Common barrier to state/tribe agreements.)

Public Law 280

- Public Law 280, passed during the Indian reorganization-termination eras, requires five states (including California) to take over from the federal government extensive criminal and civil jurisdiction over tribal matters. Tribes were not given a say in this legislation.
- What is the practical effect of PL 280?
 - Example: The Indian Child Welfare Act generally reserves to tribes exclusive jurisdiction over child custody proceedings for Indian children who live on their reservation, but the Act contains an *exception for tribes in PL-280 states*.
 - **This deprives tribes of sole authority over a vitally important internal matter: the care of their own children.**
 - Case law has subsequently determined that these tribes retain jurisdiction over these proceedings concurrent with the state.



PL 280: the Upshot

Due to PL 280, county welfare departments have the same obligations to protect Indian children, regardless of whether ICWA applies, or the child resides on rancheria land, as with any other child.

- Thus, for example, county welfare departments have the obligation to respond to all emergency calls.
- “. . . County welfare departments shall respond to any report of imminent danger to a child immediately and all other reports within 10 calendar days.” WIC §16501(f)

One important exception is a non-emergency child welfare case where the child is already a ward of a tribal court: In that instance, that tribal court retains *exclusive* jurisdiction regardless of where the child lives. In other words, a state court is unable to unilaterally take such a case away from a tribal court.

- “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.” ICWA, 25 USC 1911(a)

Contemporary Tribes



Indian Tribes: Tribal Systems of Governing



- Traditional tribal governments existed before European contact and continue to shape some tribal governments
- About 60% of tribal governments are based on IRA constitutions patterned on a BIA model
 - These standard tribal constitutions contain provisions describing tribal territory, specifying eligibility for citizenship, and establishing the governing bodies and their powers.
 - Most tribes give legislative authority to an elected tribal council.
 - Most tribal constitutions also provide for an executive officer, called a “tribal chairman,” “president,” “governor,” or “chief.”
- Many tribes also have created their own court
 - Judges may be elected or appointed
 - May or may not be separation of powers and an elected governing body may convene in a judicial capacity to rule on issues.

Tribal Nations and the United States, NCAI

Contemporary Tribal Powers

- Power to select own form of government
- Power to make and enforce laws
- Power to define and regulate use of its territory.
- Power to determine membership
- Power to regulate trade within its borders
- Power to impose and collect taxes
- Power to regulate domestic relations
- Power to regulate property



Contemporary Indians and Tribes

(One size does not fit all)

- The People: Native American, American Indian/Alaska native (race), Indian (political status)
 - **“Native American”** came into broad usage in the 1970's as an alternative to “American Indian.” It has been gradually expanded to include all Native peoples of the United States and its trust territories, and from Canada, Central and South America. (BIA website Q & A)
 - **American Indian/Alaska native (AFCARS race definition)** “origins in any of the original peoples of North or South American (including Central America), and maintains Tribal affiliation or community attachment.”
 - **Indian** Political status, varied but specific legal definitions

CDSS ✕ OTA

CAPACITY

Legal Capacity

(a specific role or position)

- **Tribal authority varies with the capacity of the tribal engagement**
 - Sovereign government
 - Exercising a legal right or privilege, such as a consultation mandate or intervention right
 - Contractor/grantee
 - Stakeholder, individualized interest (Like corporations, tribes are people too.)
- **State/tribe structuring consideration**
 - Jurisdiction ▪ Funding ▪ Liability

Operational Capacity

(ability to do something – function &

amount)

• **One size does not fit all**

While the basic legal status of federally-recognized tribes is the same, there is great diversity among tribes – demographics, location, resources, infrastructure, cultural traditions . . .

• **Economy of scale favors collaborative strategies**

- base funding levels
- tribal consortiums allow tribes to partner in development of services, such as Indian health services and regional housing authorities

Indian Tribes: Tribal Operations





Ceremonies(Humboldt County)

**Historic/ancestorial tribal affiliations remain significant,
may or may not correspond to political status**



Federal Agencies- Tribal Services

- An awareness of the **legal basis** for the federal obligation to provide health care to American Indians and Alaska Natives is important when designing health care programs, developing federal budgets, coordinating with other agencies, and obtaining regulation waivers for selected Indian programs.
- The **trust relationship** establishes a responsibility for a variety of services and benefits to Indian people based on their status as Indians, including health care.
- Health care, Indian education services (HeadStart, JOM tribal social services (TANF, ICWA, etc.) , WIOA, VRP

Legal Basis for Federal Services to American Indians and Alaska Natives

- ✓ United States Constitution
- ✓ The Snyder Act of 1921
- ✓ The Transfer Act of 1954
- ✓ Indian Sanitation Facilities and Services Act of 1959
- ✓ The Indian Self-Determination and Education Assistance Act (enacted 1975)
- ✓ Indian Health Care Improvement Act of 1976
- ✓ The Indian Alcohol and Substance Abuse prevention and Treatment Act of 1986
- ✓ The Indian Child Protection and Family Violence Prevention Act of 1990

This is not an all-inclusive list.

Tribal Engagement & Tribal Consultation



U.S. Dept. of Commerce to Grant \$1 Billion to Tribe for broadband and internet infrastructure

Source: Indian Country Today

Secretary of Commerce Gina Raimondo announced it is investing \$1 billion in grants for in broadband and high-speed internet infrastructure on tribal lands.

The Covid-19 pandemic exacerbated and shined a bright light on a number of issues in Indian Country, perhaps few more than the need for broadband connectivity on tribal lands.

The \$1 billion was an amount determined by Congress and comes from the Commerce Department's National Telecommunications and Information Administration, and was



"Kids shouldn't have to sit outside libraries, fast food places, or other public spaces to use the wi-fi for homework. We have a responsibility to build infrastructure that will fuel economic development, keep



Engaging with Tribes and partnerships

1. Purpose - to hear and learn from tribes and counties about how they define engagement, the benefits of partnership, and ways to ensure that it lasts.

Listen for CPM Leadership Behaviors

2. Structure of the panel

3. Introduction panel

SOUTHERN: Karan Kolb, Indian Health Council, Inc. partnering with Kim Giardina, San Diego County, Director of Child Welfare Services.

CENTRAL: Stacy Stahl, Washoe Tribe partnering with Nicole Williamson, Alpine County Administrative Officer.

NORTHERN: Chris Piekarski, Indian Child Welfare Act Coordinator, Redwood Valley Little River Band of Pomo Indians, Mendocino County partnering with Jena Conner, Deputy Director.



Panel Questions

1. Tell us how your partnership began and how you nurture it now or you could nurture it further. Why is this partnership important?

2. Tell us about a challenge you have faced or continue to face in your partnership. How did you or do you continue to work through it?

3. What have you put into place to ensure that this partnership between the Tribe and the County continues to effectively serve native children and families beyond your tenure as leaders?



Poll Questions

What are some ways that would help your child welfare program to sustain its commitment to tribal engagement, partnership, and respect for tribal sovereignty? (Check all that apply...)

1. Co-create and engage in meaningful and consistent communication between tribal leadership and child welfare executive staff.
2. Establish formal contracts with tribes to engage them in consultation services in key design and implementation meetings.
3. Embed tribal principles and values into the design and implementation of key practice models and practice/system change efforts, using tribal consultation to guide that input.
4. Bring a “statement of intent” to honor your specific tribes’ (and name them) sovereignty to your Board of Supervisors and invite your local tribes to share in the presentation and affirmation of agreement.
5. Engage your Juvenile Court Judges in relationship building with tribes through regular brown bag lunches or other regular opportunities for judges to talk about issues facing native children and their families.
6. Partner with your local OTA field liaison as you engage your local tribes or any time there is need for support around a shared family.
7. Set up regular “case reviews” or case roundtables with tribes to review experiences and outcomes of tribal families, with special attention to the overrepresentation of tribal children in foster care, and especially those children who are not placed in tribally approved homes.
8. Invite your local tribes to engage with your workforce at regular meetings (e.g., division meetings, unit meetings, etc.) so that consistent data review might inform and launch strategies for improvement.
9. Create an ICWA unit of responsible and dedicated social workers and other support staff who would work with specific families of tribes they are partnering with.



Break time

Tribal Engagement

Relationship Marked by Mutual Respect and Trust

- Be transparent, accurate, and open communication and a high degree of accountability.
- Respecting tribal confidentiality when handling sensitive information
- Existence of an agency tribal liaison
- Adopting a culturally appropriate perspective, underscored by familiarity with a Tribe's culture and history.
- Tribes want to be involved in planning, not convinced to adopt the agency's plan
- Be familiar with and respect tribal sovereignty
- Involvement and Support of Tribal and State Leadership
- Tribal Leaders to be formally addressed (Chairman, Chairwoman, Chairperson, etc.).
- Make sure that the person you are consulting with is designated by the tribal government to speak on behalf of the Tribe.


Collaborate on Planning Consultation Meetings

- Agree on a venue that maximizes participation and minimizes travel expenses for all parties.
- Develop an agenda with the Tribe in advance, agenda is straightforward
- To the extent possible, research any issues raised by either side before the meeting
- Share materials before the meeting
- Recognize that a Tribal representative or spiritual leader will often open a meeting with a prayer, a song or an invocation. CDSS staff should display respect for the Tribes' customs and beliefs in this tradition.
- Land acknowledgement

Practices for Meeting with Tribes

Honest, Open, and Meaningful Conversation

- Includes providing Tribes/agencies with necessary information and the time to review it and active listening.
- Disagreements or limitations do not derail consultation efforts, so both good and bad news can be openly shared and discussed.
- Staff and management should promise only what can be delivered. Discuss and promise only what can realistically be delivered. Views, opinions, materials and ideas must be presented honestly and openly.
- Listen and think of positive new solutions, be sure to not only provide the reason for not doing something. Do share limitations and elicit solutions and buy in.
- Make sure not to cut leaders off
- Be sure to not assume and inquire
- Use plain language- try not to utilize Acronyms or AB/SB
- Take notes live and restate next steps.
- Send notes out timely and identify if recommendations are adopted. Assign task timelines.

A photograph of three women standing side-by-side in front of a wall. The wall features the 'CDSS' logo in large gold letters. To the left is an American flag, and to the right is a Canadian flag. The woman on the left wears a floral patterned top, the woman in the center wears a dark blazer over a white top and a beaded necklace, and the woman on the right wears a plaid shirt. The text 'Strong relationships are built on trust and honesty. As representatives of a professional, government agency you should....' is overlaid on the left side of the image in white, with a horizontal line underneath the final word.

Strong relationships are
built on trust and honesty.
As representatives of a
professional, government
agency you should....

CDSS Tribal Consultation Policy

- Finalized on June 6, 2017.
- Mailed to all Tribal Leaders on August 3, 2017.
- Sent via email directly to over 90 Tribal Chairpersons.
- Sent to all Tribal Chairs Associations.
- [Tribal Consultation Policy](#)
- California Health & Human Services Agency tribal consultation policy.
 - <http://www.chhs.ca.gov/pages/tribalpolicy.aspx>
- In line with [Executive Order B-10-11](#)



Collaborate on Planning Consultation Meetings

A government-to-government leadership meeting in which recognizes the leaders and Tribal sovereignty – meeting with a Nation with elected officials

Agree on a venue that maximizes participation and minimizes travel expenses for all parties.

Develop an agenda with the tribe in advance, agenda is straightforward

To the extent possible, research any issues raised by either side before the meeting

Share materials before the meeting

Recognize that a Tribal representative or spiritual leader will often open a meeting with a prayer, a song or an invocation. staff should display respect for the Tribes' customs and beliefs in this tradition.

Consultation: Input and discussion



Is the proposed structure and process feasible?



What are areas that you would like to adjust?



Are there additional ways to achieve this purpose beyond a Legislative Committee?

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES MISSION STATEMENT

The mission of the California Department of Social Services is to serve, aid, and protect needy and vulnerable children and adults in ways that strengthen and preserve families, encourage personal responsibility, and foster independence.



OTA VISION STATEMENT

OTA cultivates informed participation and trusting relationships with and among Tribes, CDSS, and counties to help create and facilitate policies, procedures and programs to enhance the well-being of American Indian children and families.

OTA MISSION STATEMENT

Grounded in meaningful consultation, engagement of core stakeholders, and advising leadership, the OTA guides CDSS efforts to help create and facilitate policies, procedures, and programs that serve American Indian children and families.

OTA VALUES

- Respect for tribal sovereignty
 - Integrity
 - Transparency
 - Solution-focused

<https://www.cdss.ca.gov/inforesources/tribal-affairs>

The CDSS Office of Tribal Affairs House



TAC

3 Tribal
Advisory
Committee
Meetings
Annually

Work groups

AFCARS
686
Placement
ICPM

Consultation

Annual Tribal
Consultation
Summit & as
needed or
requested

TA/Advising Program & Policy

CFSD
CDSS
Counties

ICWA State Plan

CDSS
Tribes
Counties
5-10 year
plan to
improve
ICWA

ICWA Field Liaisons



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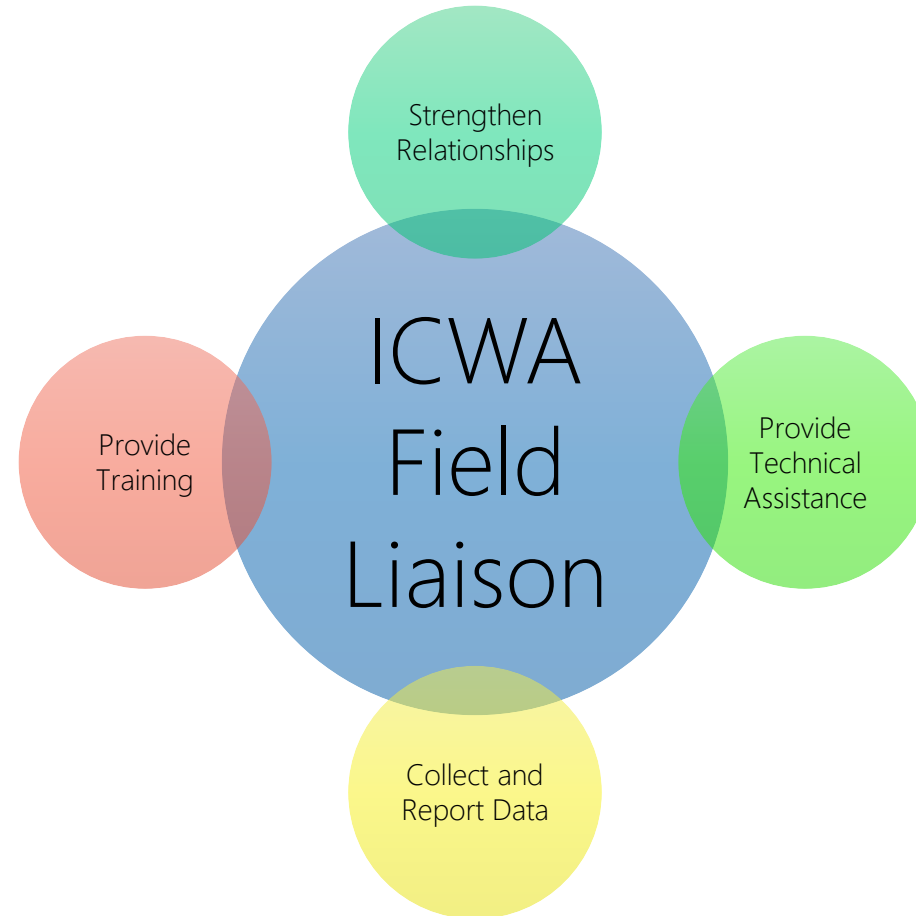
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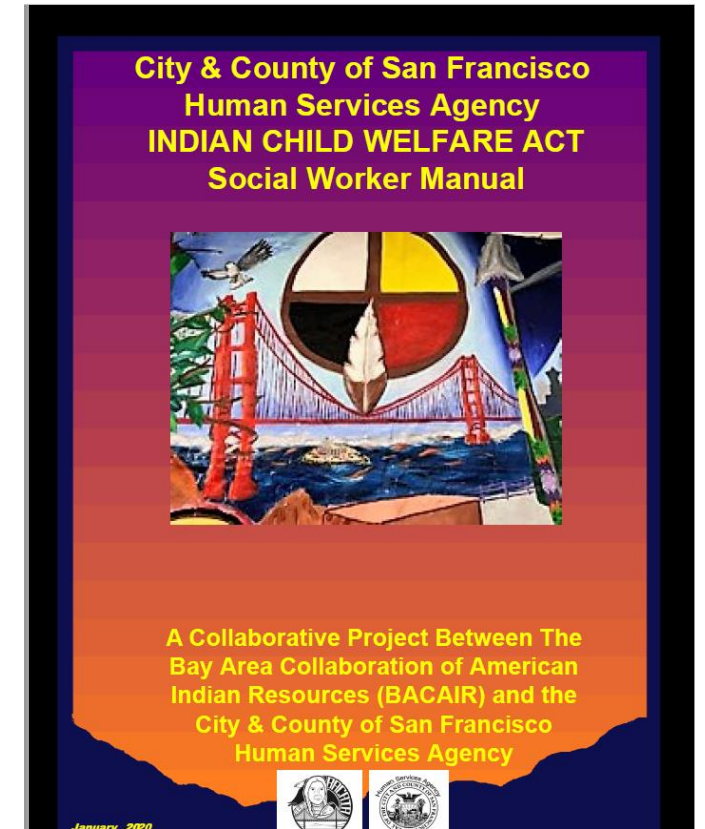
ICWA Field Liaison Priorities



Technical Assistance

Examples of Technical Assistance Provided

- Provide updated contacts for Tribes for Inquiry and Noticing (224.2e)
- Due diligence for reason to know vs. reason to believe (including flowchart)
- Providing sample ICWA protocols, manuals, policies
- Qualified Expert Witness (QEW) referrals
- Assistance with developing tribal engagement strategies
- Providing ACLs and ACINs and Job Aides
- Foster care ombudsperson contact information
- Issues surrounding non-ICWA compliance
- Connecting Tribal and county issues to CDSS policy shops
- Providing feedback and reviewing County ICWA Protocols, P&P's, training materials
- Available trainings (Active Efforts, ICWA 101 trainings, Court Advocacy Skills)



Where to Start?

Acknowledge whose land you're on at this very moment. Enter your zip code to find out whose traditional territories you're residing on. Take a minute to learn more about them and honor their enduring relationship to the land.

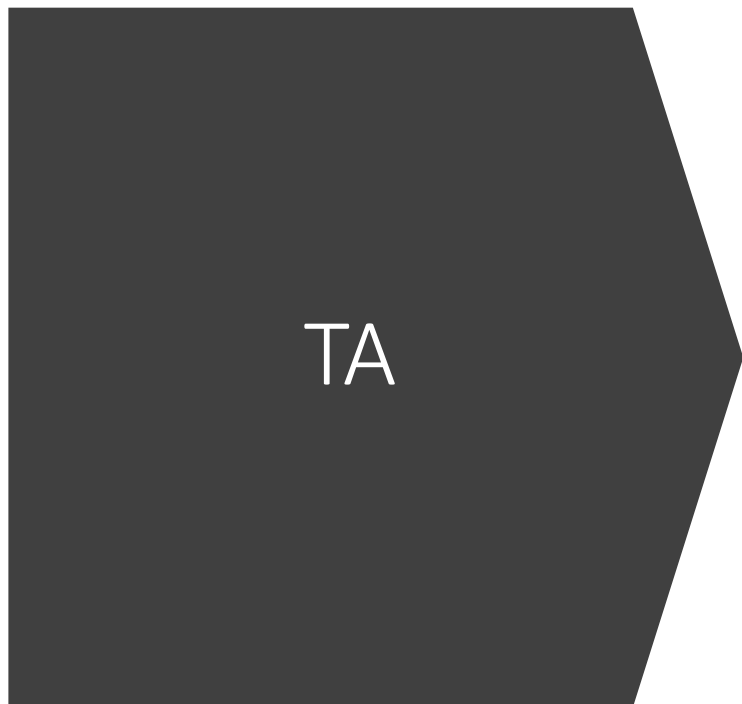


Federally-Recognized tribes in your county

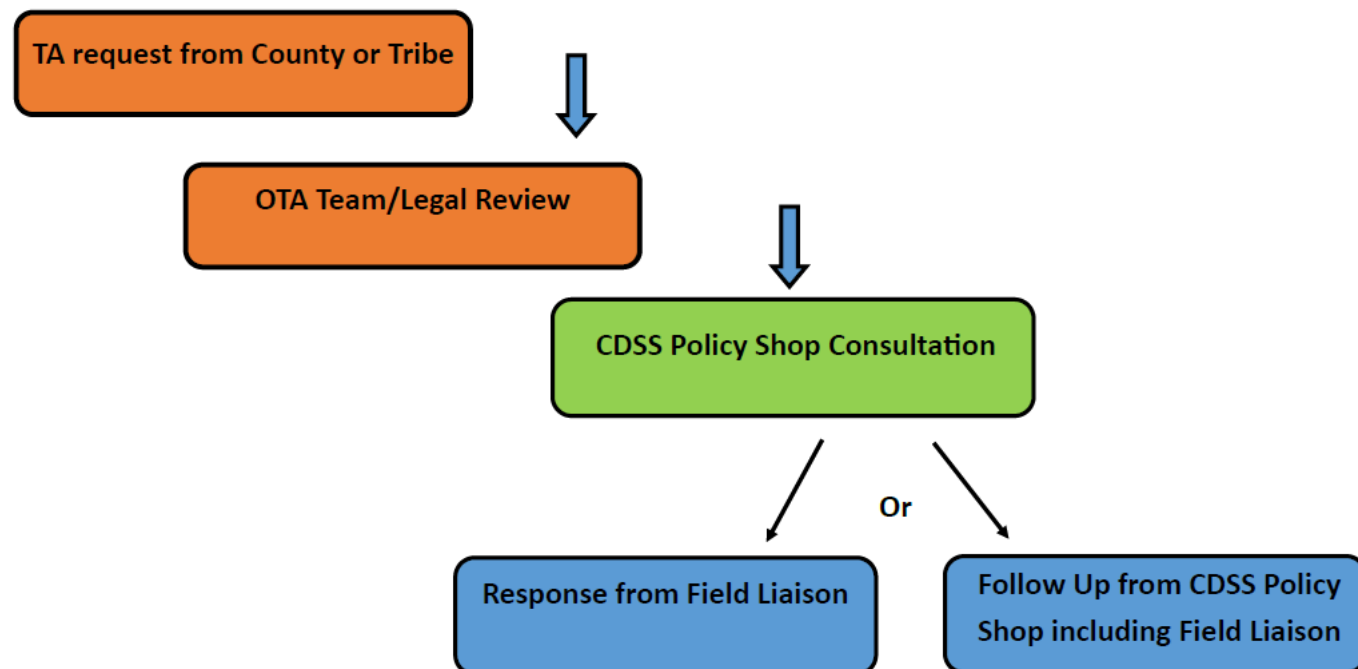
- Modeling collaboration from the top down
- Reviewing your ICWA data
- Extending personal invitation(s) to tribe(s). Build relationships
- Address invitation to ICWA representative(s) and inquire whether:
 - additional tribal leadership should be invited
 - whether the tribe would like to meet with other tribe(s) together or individually
- Provide more than one date, time, include proposed agenda
- Have “WHY” statement prepared to share with Tribe at the initial meeting
- Be prepared to brainstorming different methods of engagement.
- How can we do this work together?

No Federally-Recognized tribes in your county

- What local tribe(s) in surrounding area/counties
- Tribe(s) with consistent ICWA cases in your jurisdiction
- Reviewing your ICWA data
- Connecting with other local ICWA Roundtables/workgroups/tribal service providers

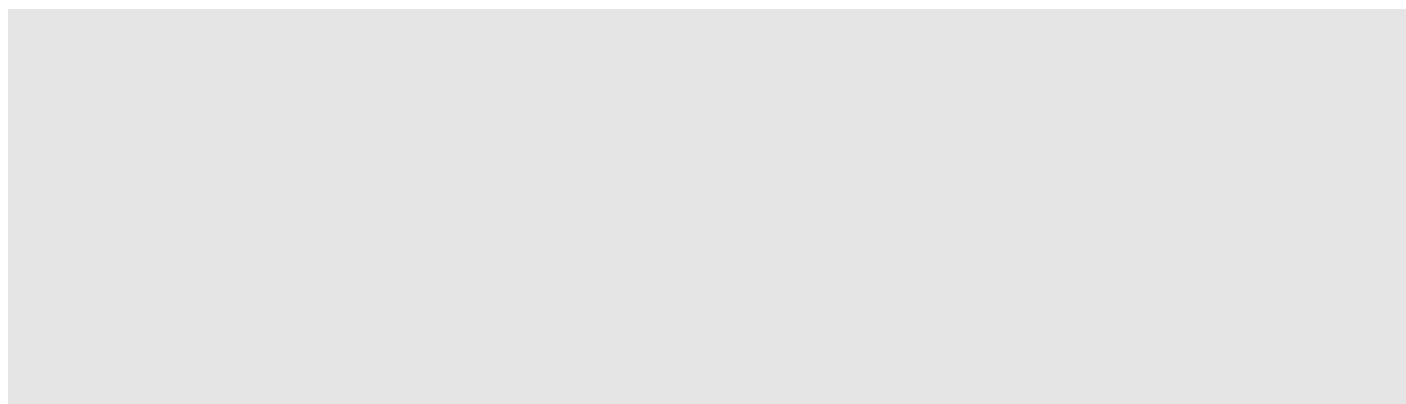


Field Liaison Technical Assistance (TA) Process- Counties and Tribes





ICWA Overview



THE INDIAN CHILD WELFARE ACT A POWERFUL AND MULTIFACETED STATUTE

ICWA provisions address all of the following:

- Tribal Rights and Opportunities
- Minimum Federal Standards for State Court Proceedings
- Indian Social and Cultural Considerations



ICWA LEGISLATIVE HISTORY AND PURPOSE

- Congressional Hearings revealed a pattern of wholesale public and private removal of Indian children.
- Congress passed the ICWA to remedy “abusive child welfare practices.” (Holyfield)
- As a result of the “special relationship between the U.S. and Indian tribes and their members and the federal responsibility to Indian people” Congress enacted the ICWA.

Two purposes of the Act – To promote

1. the “best interests of Indian children” and
2. the “stability and security of Indian tribes and families” – are intertwined.

CONGRESSIONAL FINDINGS & ICWA LANES

- Congress found that “the States, exercising their recognized jurisdiction over 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.” (25 USC 1901(5).)
- Finding sets forth two **important but *distinct*** considerations that underlie the Act and the federal best interest standard.

CULTURE DOES MATTER



- Culture and concern for tribal heritage is relevant to a proper application of the Act.
 - Assessment, treatment and placement standards require adherence to cultural dictates. (see, 25 U.S.C. 1912, 1915)
 - The special services eligibility definition reflects the common history suffered by Indian people throughout the nation. (see, 25 U.S.C. 1934)
- Culture and historic (ancestral) tribal affiliations are relevant to tribal membership and to compliance with ICWA

Tribal Rights and Opportunities (25 U.S.C. §§1903, 1911, 1918, 1919)

•Jurisdictional provisions

- Concurrent or exclusive tribal control over some cases
- Case transfers to tribal court in some cases
- Sovereign authority to determine membership
- Ability to regulate (license or approve) placements for member children
- Opportunity to reassume jurisdiction
- Full Faith and Credit
- Agreements between Tribes and States Authorized
- Intervention Rights
- Ability to Alter Standards that MUST be Applied in State Proceedings (whether or not Tribe intervenes)
 - Definitions
 - Placement Preferences



ICWA Minimum Federal Standards (MFS) for State Courts (§§1911 – 123)

- Do not apply to tribal proceedings unless adopted by the tribe
- Involve interplay of Federal, State and Tribal law.
- Impose procedural (how) and substantive (what) requirements.
- Apply to state court proceedings
 - Apply whether or not the child's Tribe intervenes or is otherwise involved with the case
 - Remove subjective assessments in favor of express requirements that, if met, advance the best interest of Indian children and stability and security of Indian tribes and families.

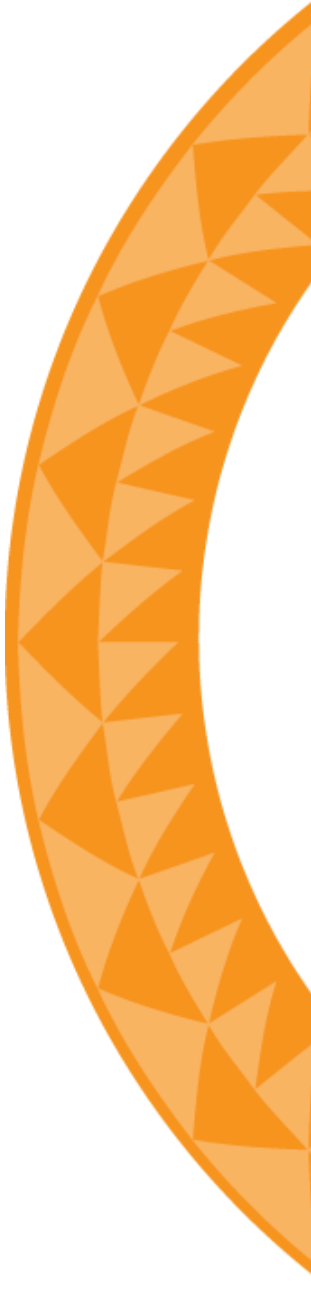
ICWA: MFS for State Courts (§§1911 – 123)

Procedural and Substantive Protections

- Inquiry (continuing duty in **ALL** cases, from initial contact)
 - Due Diligence investigation when **reason to believe**
- Notice and all MFS apply when there is **reason to know** the **child is an Indian child**.
- Intervention (child's tribe, parents, Indian custodian)
- Active Efforts (from initial contact)
- Evidentiary Burdens
- Qualified Expert Witness
- Foster and Adoptive Placement Preferences
- Adopted Indian Child's Right
- Invalidation of Proceedings
- Higher state or federal standard of protection to rights of parent or Indian custodian applies

California's commitment to establishing, developing, and maintaining tribal relations.

- California law recognizes that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe.
- The state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices in accordance with the Indian Child Welfare Act. This includes assisting the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community. (Welfare & Inst. §224 (a).)



Special CA Definition - CA is Complicated

25 U.S.C. §1679. Eligibility of Calif. Indians

(b) Eligible Indians. Until such time as any subsequent law may otherwise provide, the following CA Indians shall be eligible for health services provided by the Service

(1) Any member of a federally-recognized Indian tribe.

(2) Any descendant of an Indian who was residing in CA on June 1, 1852, but only if such descendant

(A) is living in CA

(B) is a member of the Indian community served by a local program of the Service,
and

(C) is regarded as an Indian by the community in which such descendant lives.

(3) Any Indian who holds trust interests in public domain, national forest, or Indian reservation allotments in CA.

(4) Any Indian in CA who is listed on the plans for distribution of the assets of CA Rancherias and reservations under the Act of August 18, 1958 (72 Stat. 619), and any descendant of such an Indian.

Change - California ICWA Laws

- **SB 678 (2006) CA ICWA**
 - ICWA applies to all Indian child custody cases
 - Inquiry in all cases
 - Spirit of ICWA
- **AB 3176 (2019)** Conforming CA law to amended 2016 federal ICWA regulations
 - Inquiry requirement clarifications
 - Reason to know presumption
 - Active efforts beginning at initial contact
 - Increased emphasis on tribal authority & opportunities
- **WIC §10553.1** CDSS authorized to enter into IV-E Agreements with Tribes
- **MMP, Div. 31 (2016)** ICWA integrated throughout the regulations
- **WIC §361.31(g)** re: use of tribal services for Indian child placement.
- **Health & Safety §1505; RFA Written Directive** Tribally Approved Homes exempt from state licensing and approval requirements.
- **WIC §361.31(k)** retention of Indian child placement records in perpetuity.
- **WIC §10553.12 (SB 1460)** Tribal Background check option for tribes.
- **WIC 16519.5 and Health & Safety 1517** Integrating Indian Community Standards into the RFA home approval process for Indian children (Applies to counties & FFAs)

Change - AB 3176 (2019 – everything is outdated)

- Made important definitional clarifications, including:
 - **Active efforts**: to reflect that *more is required than reasonable efforts* in order to maintain or reunite an Indian child with his or her family.
 - **Reason to know a child is an Indian child**
 - narrowed from California's expansive definition
 - added a statutory presumption that ICWA standards apply if there is reason to know
 - **Child custody proceedings**: clarifies that hearing versus "proceeding" where ICWA applies is *determined by the possible outcome* of a hearing, i.e. foster care, termination of parental rights, pre-adoptive or adoptive placement
 - **Voluntary proceeding** = free will, without threat of removal by a state agency
- **Emergency proceedings**: consists of a *detention hearing within 30 days* of the emergency removal with a finding the removal was necessary to protect the Indian child from *imminent physical damage or harm*.
- Clarifies county and State actions to determine **tribal exclusive jurisdiction**, and how to properly handle cases in which tribal exclusive jurisdiction exists.
- Clarifies **inquiry begins at initial contact** and what it requires; also, what is required when there is **"reason to believe" versus "reason to know"** a child is an Indian child (the first only requires further inquiry, the second requires the application of ICWA).
- Clarifies when **full ICWA versus standard notice** is required.

Initial Contact

During initial contact with the child/family, and at every phase thereafter, the social worker or probation officer have a duty to *inquire* if the child is or may be an Indian child (WIC § 224.2).

Inquiry

Inquiry may reveal information that gives a reason to believe the child may be an Indian child without rising to the level of reason to know. For example, among other indicators, belief could be based on the child:

- having Indian ancestry
- being domiciled on a reservation
- Having received Indian health/education services

Reason to Believe

Further Inquiry

If the social worker, probation officer, or court have reason to believe the child may be an Indian child, they must conduct further inquiry to determine if there is reason to know.

Further inquiry must include contacting the parent(s), guardian(s), Indian custodian, the BIA, the Tribe(s), and any other person who might reasonably have more information regarding the child's tribal membership status or eligibility (WIC § 224.2 (e))

When contacting a tribe as part of further inquiry, minimum contacts must include a phone call, fax, or e-mail to the Tribe's ICWA designee (WIC § 224.2(e)(2)(C)).

If any additional information arises at any point during further inquiry, a "reason to believe" can turn into a "reason to know" a child is an Indian child. Alternatively, the Tribe can confirm that the child is not an Indian child. Only tribes can make membership/eligibility determinations.

Reason to Know

Circumstances when there is a reason to know a child is in an Indian child are:

- (1) A person having an interest in the child (including the child) informs the court that the child is an Indian child.
- (2) The residence or domicile of the child or a parent/Indian custodian is on a reservation or in an Alaska Native village.
- (3) Any participant in the proceedings informs the court that they have discovered information indicating that the child is an Indian child.
- (4) The child gives the court reason to know.
- (5) The court is informed that the child is or has been a ward of a tribal court.
- (6) The court is informed that either the parent or the child has a membership or citizenship identification card from an Indian Tribe.

WIC § 224.2 (d)

Formal Notice

Formal notice **MUST** be sent to the child's Tribe and parents, guardian, or Indian custodian according to WIC § 224.3.

If there is reason to know, the court shall treat the child as an Indian child unless the court determines on the record that the child is not an Indian child (WIC § 224.2 (i)).

Inquiry – Reason
to know and
reason to believe
-Draft ACL
inquiry

Complexity + Diversity + Change + Unfamiliarity = Compliance issues, frustration

- **Appeals**

- CA Judicial Council analyzed July-Oct 2015
- 30% of all dependency appeals are ICWA Appeals; 85% involve Inquiry and Notice; 70% resulted in some form of remand for ICWA compliance.
- Indigenous Law and Policy Center, Michigan State analyzed 2017
- In 2017 there were 214 appealed ICWA cases, up 39 from the prior year. There were 34 reported ICWA cases. California led the states with 152 cases, 5 reported. Alaska was second with 6, 3 reported.

- **2017 Tribal Taskforce on ICWA Compliance**

- **California Attorney General, Bureau of Children's Justice**

- Investigations and lawsuit(s) against CA counties in northern CA



Why do you think ICWA
implementation is so
challenging?

Unfamiliarity – Staff ill-equipped to comply with ICWA

- Implementation and training approaches have set the bar too low - often focusing on “ICWA eligible”, culture and services. Counties are ill-equipped to engage with tribes as governments
 - Increasing opportunities and requirements for (early) tribal engagement
 - Tribes may or may not respond. Multiple approaches may be needed
- Uninformed by the federal framework, the *spirit of ICWA* generates confusion and encourages a racial/ethnic rather than a legal/political approach to policy and program development and implementation
- Unclear processes and terminology. Examples:
 - Tribal lists are not understood. In the state data system, they are not clearly defined or consistently administered
 - Policies and data fields may include loosely used terms that do not coincide with statutory definitions. E.g., undefined and indiscriminate use of “Native American”

Barriers to ICWA Implementation

Tribal Responses

Table 6. Barriers for Tribes in Supporting ICWA		
Theme		
Resources – funding and supports		
High Staff Turnover or Lack of Staffing		
High Caseloads		
Legal Representation for Tribes		
ICWA Training – Courts, CWS Staff		
Relying on County to Collaborate with Tribe		
Inconsistent Child Welfare Practices amongst Counties around ICWA cases		

County Responses

Table 6. Barriers for Counties in Supporting ICWA		
Theme		
High Case Loads		
Not enough time to get to know families		
High Referrals		
Training needs unmet		
High turnover of staff		
Lack of/Timely Response from Tribes		
Lack of Resources in the Community		
The barriers are systemic in nature due to child welfare's large complex bureaucracy coupled with ICWA's complex and large legislation. Social Workers learning curve is so high and long in the state of California due to ongoing and extensive state mandates (ie. CCR, CFT, SDM, CPM, etc...) that workers cannot keep up. Therefore, they triage and ultimately focus on core needs; child safety, court reports, documentation of contact. Then, management steps in a reactive manner to push the required mandates due to funding. Social workers then burn out in less than 18 months and leave. The cycle continues with the next trained and green social workers.		
Inquiry at the hotline is not being conducted		

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Barriers to ICWA Implementation

County Responses

The Path Forward – Raise the Bar

- ICWA Basics – equip policy makers and practitioners with a framework and basic orientation to:
 - The federal Indian law framework that distinguishes Indians and tribes from other groups
 - The distinction between and interplay of culture/ethnicity and political status
 - Tribes as governments
 - All the facets of ICWA
 - Exposure to the contemporary Indian/tribal landscape
- Build supportive informational resources and tools to support state/county/tribal collaborations and ICWA practice
- Acknowledge complexity and diversity and accommodate it in policy and programs – stay in the appropriate lane, integrate tribes into efforts to maximize resources and protect Indian children.



Closing & Next Steps

1. Final Questions and comments
2. Next Session-2.5 regional session by the end of December-focus on ICWA points of contact and revisit ICWA data and strategies for action.
3. Final Webinar 3- how the CPM leadership behaviors support working with Tribes and ICWA.

