



# When there is Reason to Know

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## Objectives

- General conversation that will help put these two important aspects into context of the “When and Why” of Reason to Know and Active Efforts
  
- How an Advocate/Staff or other parties may assist
  - *(Please join us at the 5<sup>th</sup> Annual ICWA Institute Week of November 1, 2021)*



## Journey to Reason to Know We will start Here:

**October 6, 1879:** The first students attend Carlisle Indian Industrial School in Pennsylvania, the country's first off-reservation boarding school. The school, created by Civil War veteran Richard Henry Pratt, is designed to assimilate Native American students.



Picture of American Indian children after arriving at Carlisle...  
“Kill the Indian in him and save the man”



## Capt. Richard H. Pratt on the Education of Native Americans

“By 1900 thousands of Native Americans were studying at almost 150 boarding schools around the United States. The U.S. Training and Industrial School founded in 1879 at Carlisle Barracks, Pennsylvania, was the model for most of these schools. Boarding schools like Carlisle provided vocational and manual training and sought to systematically strip away tribal culture. They insisted that students drop their Indian names, forbade the speaking of native languages, and cut off their long hair. Not surprisingly, such schools often met fierce resistance from American Indian Tribes, parents, and youth to no avail.



# ICWA Enacted November 8, 1978



# Implementation of ICWA

## Signed by Present Jimmy Carter

“ICWA” stands for the Indian Child Welfare Act, which is a federal law passed. ICWA was passed in response to the alarmingly high number of Indian children being removed from their homes by both public and private agencies. The intent of Congress under ICWA was to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families” (25 U.S.C. § 1902).

# ICWA implantation continued

ICWA sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of, or eligible for membership in, a federally recognized tribe. Child custody proceedings under ICWA include hearings focused on foster care placement, termination of parental rights, adoption, and placements related to status offenses.



# Washington State ICWA

## Enacted July 22, 2011

### 13.38.010 to 13.38.190 RCW

One of the fundamental tenets of Indian tribal sovereignty is the preservation of Indian tribal courts' exclusive jurisdiction over their land and people. Prior to the enactment of the Indian Child Welfare Act (ICWA), the policy of the federal and state governments was the assimilation and elimination of Indian tribes through the breakup of Indian families and the placement of Indian children in non-Indian homes. Since the 1970s, federal policy now supports Indian tribes in retention of their children through the ICWA. Washington State enacted its own version of the ICWA, entitled the Washington State Indian Child Welfare Act (WSICWA), which mirrors the current federal policy. The policy of Washington State is that it is in the per se best interest of Indian children to be placed in the homes of Indian families, and that at every stage of child custody cases involving Indian children Washington State courts must respect the jurisdictional rights of Indian tribes.



"The Seventh generation is coming. They're going to help save the world, the human heart and our spirituality."

- Chief Blue Star Eagle

# IS “REASON TO KNOW” NEW???

BIA Guidelines: A.3. WHEN DOES ICWA APPLY?

(d) If there is any reason to believe the child is an Indian child, the agency and State court must treat the child as an Indian child, unless and until it is determined that the child is not a member or is not eligible for membership in an Indian tribe.

25 USC SECTION 1912 (1978)

**(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.



THE SUPREME COURT OF WASHINGTON'S BROAD INTERPRETATION OF "REASON TO KNOW" A STANDARD SET FORTH IN THE RULING "IN RE DEPENDENCY OF Z.J.G." AND WHY A UNIFORM, BROAD INTERPRETATION OF THE STANDARD WILL LEAD TO BETTER OUTCOMES



# What Happened:

Children were removed from their parents. At shelter care, it was identified that a maternal Grandmother was enrolled and there was evidence that Mom and the children were enrollable. Also evidence that Mom had had heritage from another tribe. Father also identified heritage, but did not know if he or the children were enrollable. Court found “NO REASON TO KNOW” the children were Indian children. Court of Appeals upheld. Supreme Court Reversed.





# Reason to Know

## Key Holdings

- ❖ “A trial court has ‘Reason to know’ that a child is an Indian child when a participant in the proceeding indicates that a child has tribal heritage.”
- ❖ “An indication of tribal heritage is sufficient to satisfy ‘reason to know’ standard.
- ❖ “The ‘reason to know’ standard covers situations where tribal membership is in question but is a possibility due to tribal heritage, ancestry, or familial political affiliation.”
  - ❖ Final determination of whether the child is an Indian child must then be done by the tribe itself, after it has been formally notified of the proceedings
- ❖ “Where there is a possibility to political affiliation due to heritage, we interpret ‘reason to know’ in favor of notice to the tribes where tribal heritage is indicated.”



# My interpretation to this ruling



1. Reason to know “protects the tribes” sovereignty role in determining its own membership (please remember, the child may not be a member at this time)
2. The statute should be interpreted favorable to American Indian people/tribe(s).
3. At every stage of litigation, (dependencies) there needs to have legal notices sent to mentioned tribes.
4. Every child will not be worse off by applying ICWA early in a case and asking the question throughout a case.
5. Other states have interpreted ICWA in this way.

# Active Efforts

- Active efforts is a term that is included in the Indian Child Welfare Act (ICWA). It refers to **the amount of effort a social worker must devote to providing services to a parent in order to prevent state removal of an Indian child from parental care and to assist a parent rehabilitate so a child may safely be returned.**



# Active Efforts vs Reasonable Efforts

- Referral
  - Managing Case
  - Meeting minimum policy standards
  - Mainstream services provision
  - Updating tribe/tribal social worker
- Arranging Services, Aiding transportation, Helping family engage
  - Proactively engaging in diligent casework, follow-up, visits
  - Creatively meeting the needs of the family involved (e.g., more face-to-face contact than required by policy)
  - Culturally appropriate service provisions
  - Seeking service and case management suggestions and actively co-case managing where tribe has available personnel





# Active Efforts

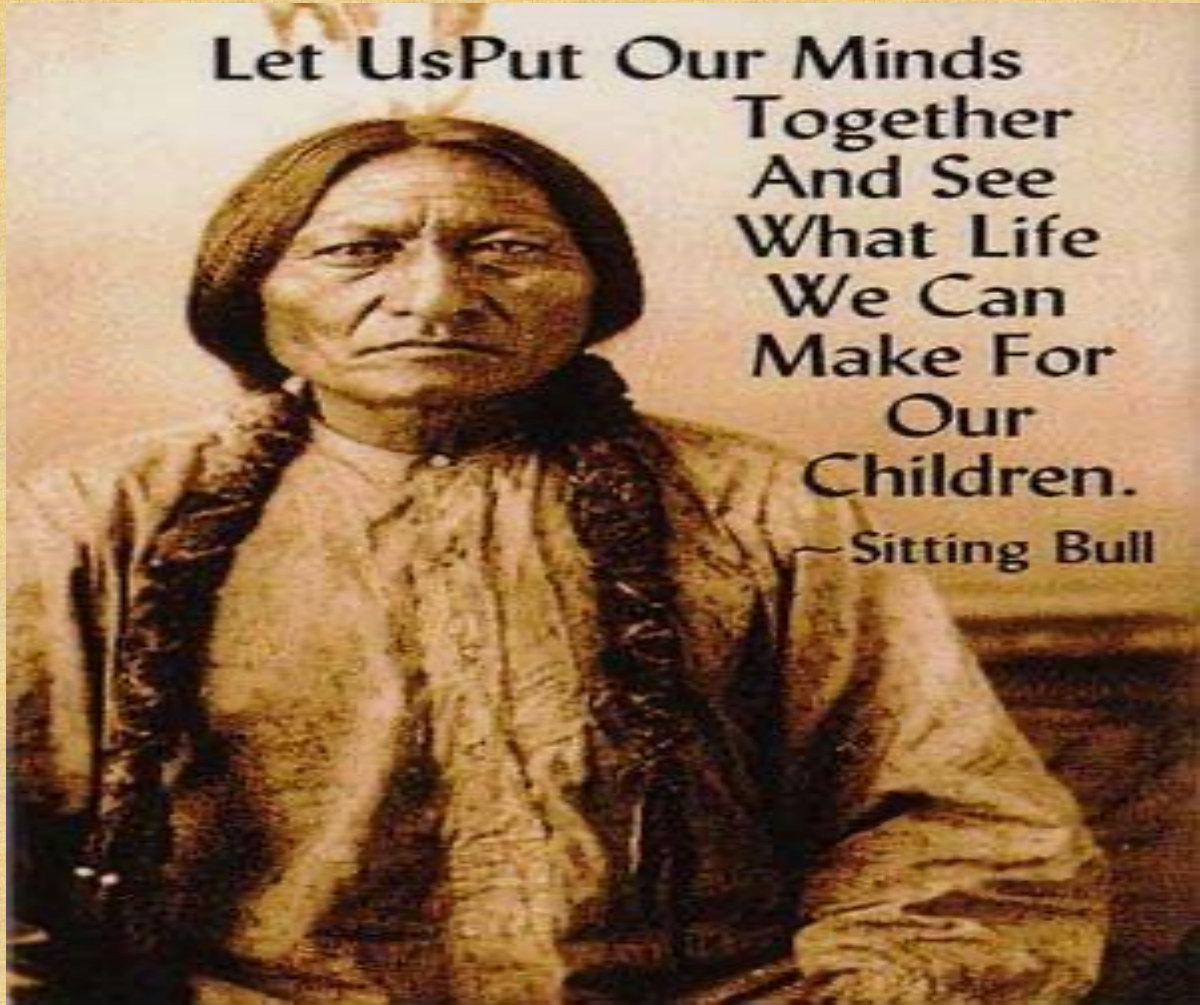
## Examples:

- Engaging the child, parents, extended family and tribe
- Taking the steps necessary to keep siblings together
- Identifying services and actively assisting parents in obtaining these services
- Diligent search for extended family for assistance and placement
- Identifying community resources
- Offering and employing all available and culturally appropriate preservation services
- Put other examples in chat

# Breaking into groups to practice

## Scenario

- You are at a FTDM, the mother and father were asked (when the child was born) if they had any American Indian/Native American ancestry. Both parents mentioned to the social worker of some relatives and had a name/number of a maternal grandmother. The parents did not attend the meeting but the relative was invited and attended.
- This grandmother made a statement that she and other family members are enrolled members of a local Tribe. She is not asked anymore questions.
- What would you do as an Advocate/CASA?
- Come up with questions and what other information would you gather?
- Why would asking these questions benefit the child?
- We will come back and talk about what the groups came up with.

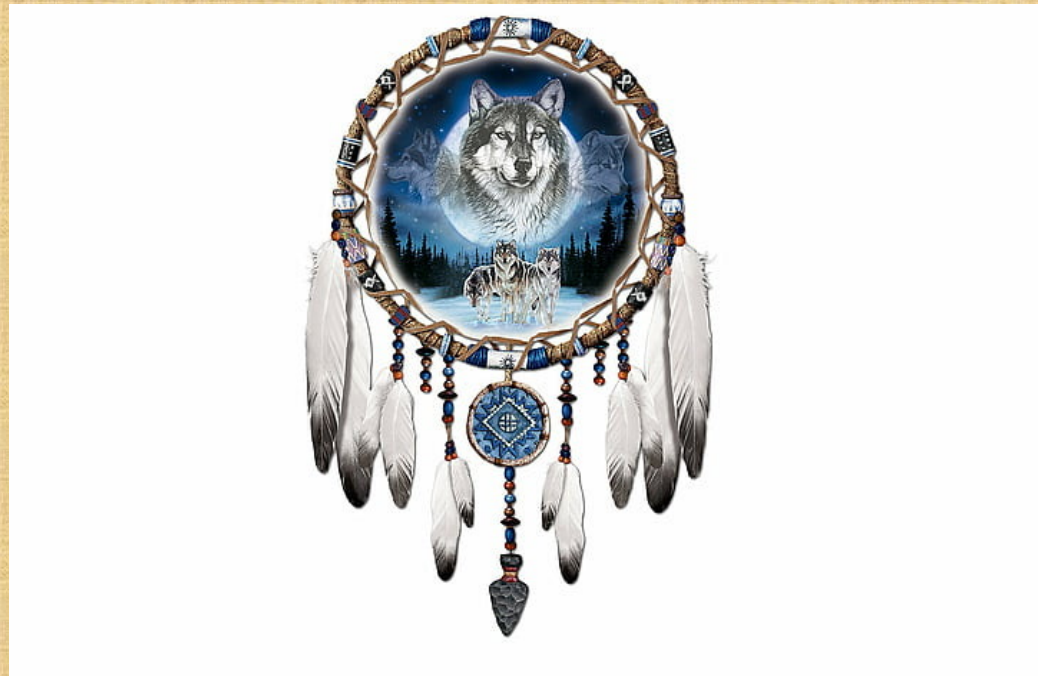


**Let Us Put Our Minds  
Together  
And See  
What Life  
We Can  
Make For  
Our  
Children.**

*— Sitting Bull*



# Q & A Talking Circle



Keeping the “Spirit of ICWA” at the forefront of everyone's Heart  
SO



ASKING