

Welcome to ICWA Training!

“The Heart of ICWA” Fawn Sharp - Quinault

https://youtu.be/VpxlN7vL_IA

“The Heart of ICWA”
was created by The
National Indian
Child Welfare
Association.



Introduction to Indian Child Welfare Law

February 23, 2021



With Thanks to: **Roxanne Finney, DCYF**
Indian Child Welfare Program Manager

Remember These five things.....


- ▶ ICWA applies only in State courts;
- ▶ ICWA applies based on political affiliation – Sovereign to Sovereign
- ▶ The Tribe decides:
 - ▶ Membership
 - ▶ Placement preference
 - ▶ Whether to take jurisdiction
- ▶ Advocates Need to Be Proactive
- ▶ Advocates need to inquire about Native Ancestry



Historical Perspective

- **Boarding School Era – 1860-1978**
- **Adoption Project: 1958-1969**

Collaboration by private child welfare agencies and the BIA to promote adoption of Indian children by non-Indian families



Indian Child Welfare Act

Congressional Findings: 1978

- Recognizing the special relationship between the United States and the Indian tribes
- Congress shall have Power To regulate Commerce with Indian tribes
- Congress, through statutes, treaties assumed the responsibility for the protection and preservation of Indian tribes
- **To protect the best interest of Indian children and promote the stability and security of Indian Tribes and families**



1978 Indian Child Welfare Act Congressional Findings:

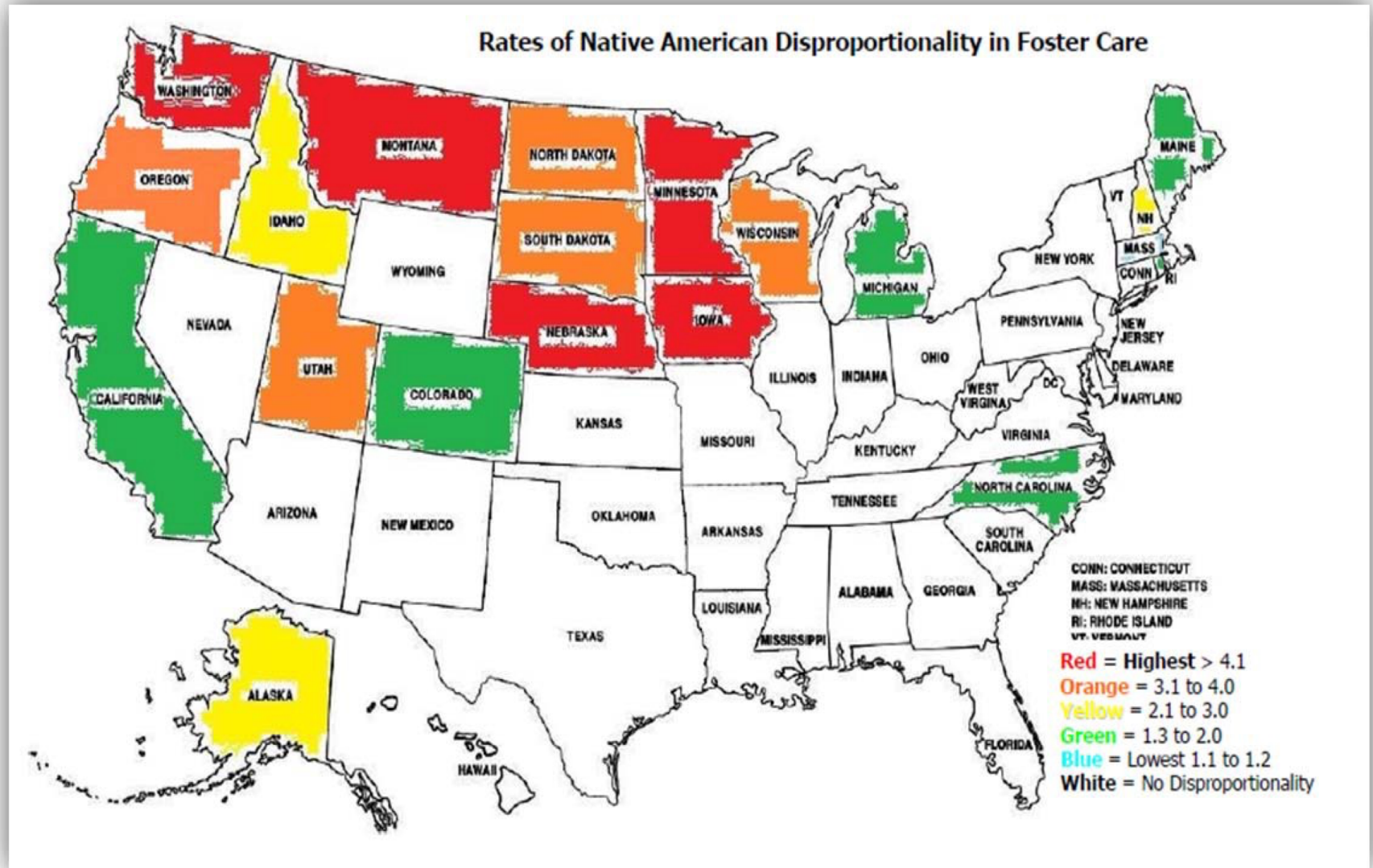
“There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children”


The Indian Child Welfare Act Public Law 95-608, 1978

- ▶ Prior to ICWA enactment, 25-35% Indian children were removed (in some communities it was 100%)
- ▶ Tribes were devastated, whole communities were destroyed
- ▶ ICWA is a citizenship based law



Disproportionality: Why ICWA is Still Needed





What Must States do under ICWA?

- ▶ Notify the Tribe/Tribes Immediately
- ▶ Tribes may intervene and be a party to the case
- ▶ Transfer jurisdiction to tribal court at request of the Tribe
- ▶ Make Active Efforts to provide “remedial and rehabilitative” services to the Indian family before and after placement occurs
- ▶ Follow specific placement preferences for Indian Children
- ▶ Meet a higher legal standard for dependency and termination
- ▶ Requires Qualified Expert Witness Testimony

29 Washington Tribes





Washington State ICWA: 2011

RCW 13.38

Applies to:

- Dependency and termination of parental rights proceedings**
- Dependency guardianships**
- Minor Guardianships, RCW 11.130. 250**
- Adoption proceedings**

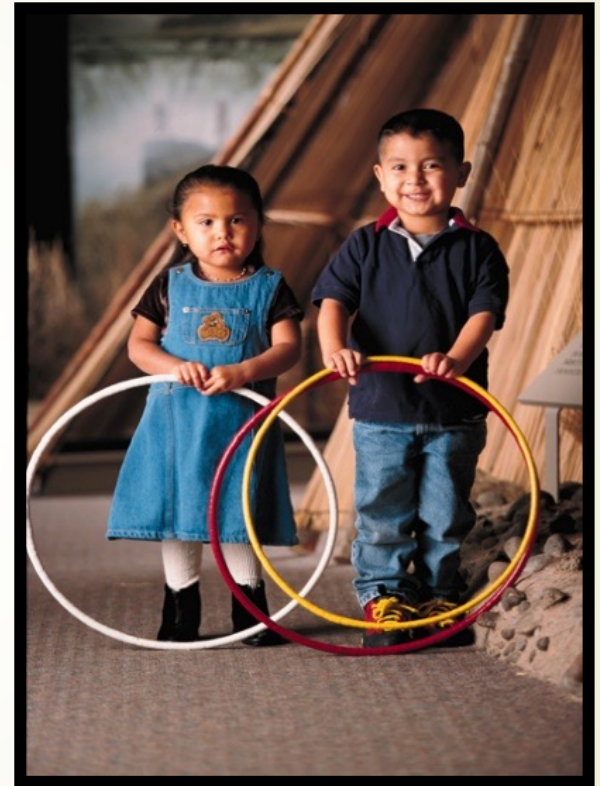
Legislative Intent:

- ▶ To protect the essential tribal relations and best interests of Indian children
- ▶ That when an out of home placement is necessary, the state is committed to a placement that reflects and honors the unique values of the child's tribal culture



Verifying Indian Status

- ▶ In re ZJG, 2020 Reason to Know
- ▶ Inquiry to Tribe/Band/Nation/BIA
- ▶ Family Ancestry Chart
- ▶ Child Advocates Inquiry into the child's Indian status is ongoing throughout the case. RCW 13.34.105(1)(d)



ICWA Placement Priority

- ▶ Parent, Family and extended family;
- ▶ Tribal Foster Home; A foster home licensed, approved, or specified by the Indian child's tribe;
- ▶ An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- ▶ Other Tribe approved “institution.”



ICWA Adoptive Placement Preferences

- ▶ A member of the child's extended family;
- ▶ Other members of the Indian child's tribe; or
- ▶ 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 other Indian families.



Qualified Expert Witness

- ▶ Under ICWA and WICWA a Qualified Expert Witness (QEW) is required when a Indian child is placed out of the home and when termination of parental rights is sought.
- ▶ A QEW is designated by the child's Tribe, or may be a person with recognized expertise in child raising standards in the child's Indian Tribe or community.
- ▶ The QEW may **not** be the DCYF Social Worker or that person's supervisor.

Tribal Involvement in Dependency Proceedings

- The Tribe takes jurisdiction
- The Tribe intervenes as a legal party to the case
- The Tribe participates in hearings and meetings but does not intervene
- Case consultation with the tribe





Tribal Jurisdiction

- ▶ If the child resides on Tribal lands or is domiciled there, the Tribe has jurisdiction.
- ▶ If the Tribe seeks jurisdiction, only the parents can object to a transfer of jurisdiction, absent good cause.
- ▶ Attachment to the care provider is not good cause to prevent transfer to the Tribe.

Tribal Engagement


What should GAL/Child Advocates do?

- Contact the Tribe, regularly
- Send the Tribe your reports
– always...
- Bring the Tribal Representative's phone number with you to all meetings and court hearings, and call them...
- Remind the parties and Court to include the Tribe.





Why is Contact with the Child's Tribe Important?

- ▶ Tribes are the first and foremost experts
 - ▶ Healthy cultural and ethnic identity can help establish strong foundations for how children view themselves
 - ▶ Keeping children connected with their family and community will have a positive impact on their development
- 



Using the LAW & GALRs

to advocate for the
best interests of



**Native American and
Alaskan Native children**



If the Reason to Know Applies: In re ZJG, 2020

- ▶ What should CASA be asking about?
- ▶ Inquiry should be made at each hearing.

- ▶ This will be addressed in more detail at a later session.

RCW 13.34.105 Guardian ad litem Duties..

(1)(d) To report to the court information on the legal status of a child's membership in any Indian tribe or band;

(1)(h) In the case of an Indian child as defined in RCW [13.38.040](#), know, understand, and advocate the best interests of the Indian child.



RCW 13.38.040 (2) "Best interests of the Indian child,"

Means the use of practices in accordance with the federal Indian child welfare act, this chapter, and other applicable law, that are designed to accomplish the following:



RCW 13.38.040(2)



- ▶ **(a) Protect** the safety, well-being, development, and stability of the Indian child;
- ▶ **(b) prevent the unnecessary out-of-home placement** of the Indian child;
- ▶ **(c) acknowledge the right of Indian tribes to maintain their existence** and integrity which will promote the stability and security of their children and families;
- ▶ **(d) recognize the value to the Indian child** of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community; and
- ▶ **(e)** in a proceeding under this chapter where out-of-home placement is necessary, to **prioritize placement of** the Indian child in accordance with the placement preferences of this chapter.

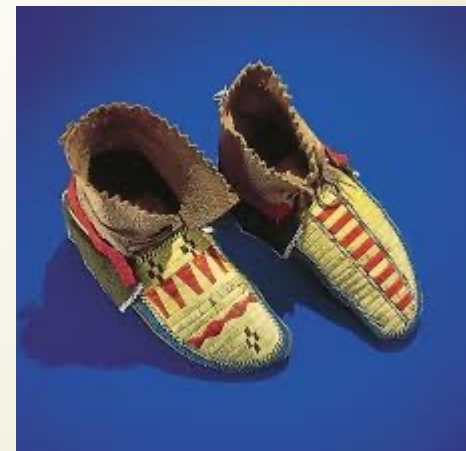
Under GALR 2(g) a GAL/Child Advocate must make reasonable efforts to contact all parties involved in the case.

Best practice for an ICWA case:

Reach out to the child's tribe even if they do not legally intervene (i.e. they are not yet a party to the case).

A child's tribe can provide important support even if they are not a legal party to the case initially.

- **Tribal perspective on the family and child,**
- **Contact with local relatives and elders.**
- **Educational materials the GAL/Child Advocate can provide to the child regarding tribal practices and traditions,**
- **Tribal events that the child could participate in,**



Under GALR 2(o) a GAL/Child Advocate has the ability to request an interim review (or early review) to monitor a specific issue.

- ▶ A GAL/Child Advocate can request an early review of the case to check in regarding:
 - ▶ Whether notice has been provided to tribes
 - ▶ Whether replies have been received from notified tribes
 - ▶ Whether the child's placement is in a preferred placement under the ICWA hierarchy
 - ▶ Other concerns or issues which fall under ICWA



What else can a GAL/Child Advocate do to ensure ICWA is being properly applied?



A GAL/Child Advocate may request a shared planning meeting to discuss an issue which has arisen in the case.

You do not need to wait for the social worker to set a shared planning meeting!

A GAL/Child Advocate may request a LICWAC staffing.

LICWAC will be discussed in more detail in the Relative Search & Native American Inquiry Referral (NAIR) Process session.

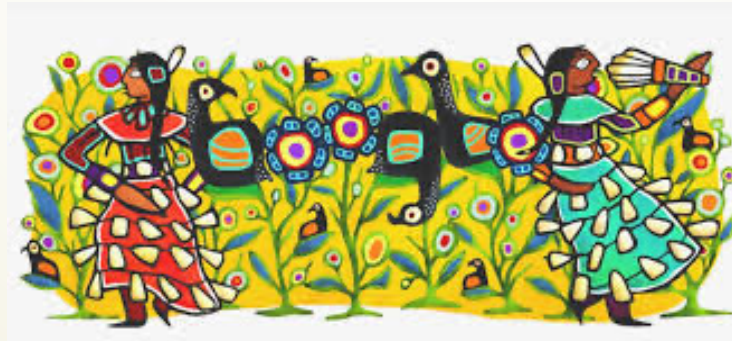
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- ▶ Advocates Need to Be Proactive and Inquire about Native Ancestry

BREAK OUT ROOMS

INSTRUCTIONS:

- ▶ Open and read the PDF that is posted in the CHAT
- ▶ Go to your breakout rooms and discuss the scenario
- ▶ Breakout rooms
 - ▶ Discuss Question 1
 - ▶ Discuss Question 2
 - ▶ Discuss Question 3
 - ▶ Discuss Question 4
 - ▶ Discuss Question 5




Scenario Discussion Questions





Photo of Healing Heart Totem Memorial in Craig, Alaska.

Credit to: <http://alaskanwayoflife.com/post/134429961874/healing-heart-memorial-craig-ak>




1) Does the state court have “reason to know” under *In re: ZJG* that ICWA applies to any of the children? Why or why not?

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- ▶ Yes. At the initial shelter care hearing David indicated he has a connection to a federally recognized Indian tribe.
 - ▶ He does not need to be enrolled in the tribe in order for the “reason to know” standard to apply to the case.
 - ▶ Once the “reason to know” standard applies – the children fall under the protections of ICWA.
 - ▶ Because this standard is still very new, we expect there to be debate in the state courts regarding how the state must prove a child is **not** eligible for ICWA protections.



2) Which, if any, of the children are Indian children?

Which, if any, of the children are Indian children under ICWA? Which one(s)? How do you know?



- 
- ▶ All of the children are Indian children.
 - ▶ With the current information, ICWA applies to Stuart, Laura, and Emma.
 - ▶ They are the children of an enrolled member of the Ketchikan Indian Community and are eligible to enroll.
 - ▶ Alex is not an Indian child under ICWA at this time because he is not the child of an enrolled member of a federally recognized Indian Tribe and is not enrolled himself.
 - ▶ But what about Alex's First Nation heritage?



Remember: in order for ICWA to apply, the tribe must be federally recognized. Canadian First Nation tribes are not federally recognized by the U.S. government.



3) Does the active efforts standard apply to the ongoing case?



If so, is this standard being met?


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- ▶ The active efforts standard does apply to the ongoing case.
 - ▶ ICWA currently applies to the three younger children.
 - ▶ And it is possible ICWA will apply to Alex in the future.
 - ▶ The Department must show their efforts go beyond simply referring Mona and David to services in order to meet the “active efforts” standard.
 - ▶ It is unclear if the CFWS Caseworker is meeting the standard, but active efforts mean supporting the family in finding culturally appropriate services and engaging in those services.



4) Did the state follow the hierarchy of preference under ICWA regarding placement of the children?



Why or why not?

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- No. The CPS Investigator, and subsequently the CFWS Caseworker, failed to contact the family friend/tribal placement requested by Mona and David to determine if this was a safe and appropriate placement.
 - A placement requested by parents, placement with a member of a child's tribe, or a member of another tribe is preferred over foster care whenever possible.



5) Is the Volunteer Advocate responsible under ICWA, a GALR, or other requirement, to keep the Ketchikan Indian Community informed as they have requested?

If so, how can the Volunteer Advocate meet that responsibility?

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- ▶ The child's tribal representative should receive a copy of the Volunteer Advocate's report for any review hearing.
 - ▶ This is a courtesy where the tribe has not legally intervened but asks to be kept informed regarding the case (as in our scenario). It is a requirement where the tribe has legally intervened. GALR 2(i).
 - ▶ A Volunteer Advocate should be in contact with the representative of the child's tribe throughout the case.
 - ▶ GALR 2(g) requires "reasonable efforts" to contact all parties and that includes the child's tribe where the tribe has legally intervened.
 - ▶ It is best practice to keep in contact with the tribe even where legal intervention has not occurred.

Important points to take away...

- ICWA applies only in State courts;
- ICWA applies based on political affiliation – Sovereign to Sovereign
- The Tribe decides:
 - Membership
 - Placement preference
 - Whether to take jurisdiction
- Advocates Need to Be Proactive and Inquire about Native Ancestry

**Thank you for attending our
presentation and for your passion to
advocate for ICWA children and youth!**





Resources



- ▶ We Shall Remain

<https://www.youtube.com/watch?v=G50iwY6YjSk>

- ▶ Bringing Our Children Home:

<https://www.dshs.wa.gov/ca/indian-child-welfare>

- ▶ Governor's Office of Indian Affairs

<http://www.goia.wa.gov/>

- ▶ US Department of the Interior – Bureau of Indian Affairs

<http://www.bia.gov/>



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