

Welcome to ICWA Training!

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“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.



Quiz



- ▶ How many Federally Recognized Tribes are located in Washington State?
- ▶ Are there tribes in Washington State that are NOT federally recognized?
- ▶ What is the biggest tribe by population in Washington State?
- ▶ What are those tall poles called? What Tribes in Washington State make those poles?

Introduction to Indian Child Welfare Law

October 26, 2022



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

Remember These five things.....

- ICWA applies only to **Indian Children in State courts**;
- **Political affiliation** determines if ICWA applies – Sovereign to Sovereign
- **The Tribe decides:**
 - Membership
 - Whether to take jurisdiction
 - Placement preference
- Advocates need to inquire about Native Ancestry
- Advocates Need to Be Proactive

Historical Perspective

Thank you to
Professor Thomas
Crofoot, PhD, for his
presentation on the
story of ICWA





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”

1978 - 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**

Who is an Indian Child?

- ▶ **25 USC 1903 (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;
- ▶ **25 USC 1912 (a)** In any involuntary proceeding in a State court, **where the court knows or has reason to know that an Indian child is involved**,
 - ▶ Notice is required to 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.



Why is “reason to know” important?

Reason to know Triggers:

- ▶ Application of ICWA protections
- ▶ Notice to parent/custodian, Tribe, BIA
- ▶ Higher standards of case work
- ▶ Placement preferences

AND –the standard for removal is different if there is “reason to know”



ICWA applies even before the very first hearing



“Imminent physical damage or harm”

What standard applies to ex parte pick up orders?

Pre- 2021

➤ **RCW 13.34.050**

- reasonable grounds that the child's health, safety, and welfare will be seriously endangered
- and at least one of the grounds set forth demonstrates **a risk of imminent harm to the child**

➤ **In re AW**

- If there is a “Reason to know”, the heightened emergency removal standard under ICWA is triggered
- The Court must find —that **removal was necessary to prevent imminent physical damage or harm** to A.W.

July 2023 – “**Keeping Families Together Act**”

- reasonable grounds to believe that **removal is necessary to prevent imminent physical harm** to the child due to child abuse or neglect
- This applies to ANY CHILD

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

WASHINGTON STATE LAWS



WICWA: 29 Washington Tribes

 2011
Washington
State ICWA
RCW 13.38
Applies to:

**Dependency and termination
of parental rights proceedings**

Dependency guardianships

**Minor Guardianships,
RCW 11.130. 250**

Adoption proceedings

WICWA 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

- ▶ **2020: In re ZJG, Reason to Know**
- ▶ **NAIR Inquiry to Tribe/Band/Nation/BIA**
- ▶ **Family Ancestry Chart**
- ▶ **Child Advocate Inquires into the child's Indian status 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.



²¹ 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 \
- ▶ LICWAC if no Tribe involvement



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 in all meetings and consultation



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

DISPROPORTIONALITY

Disproportion noun

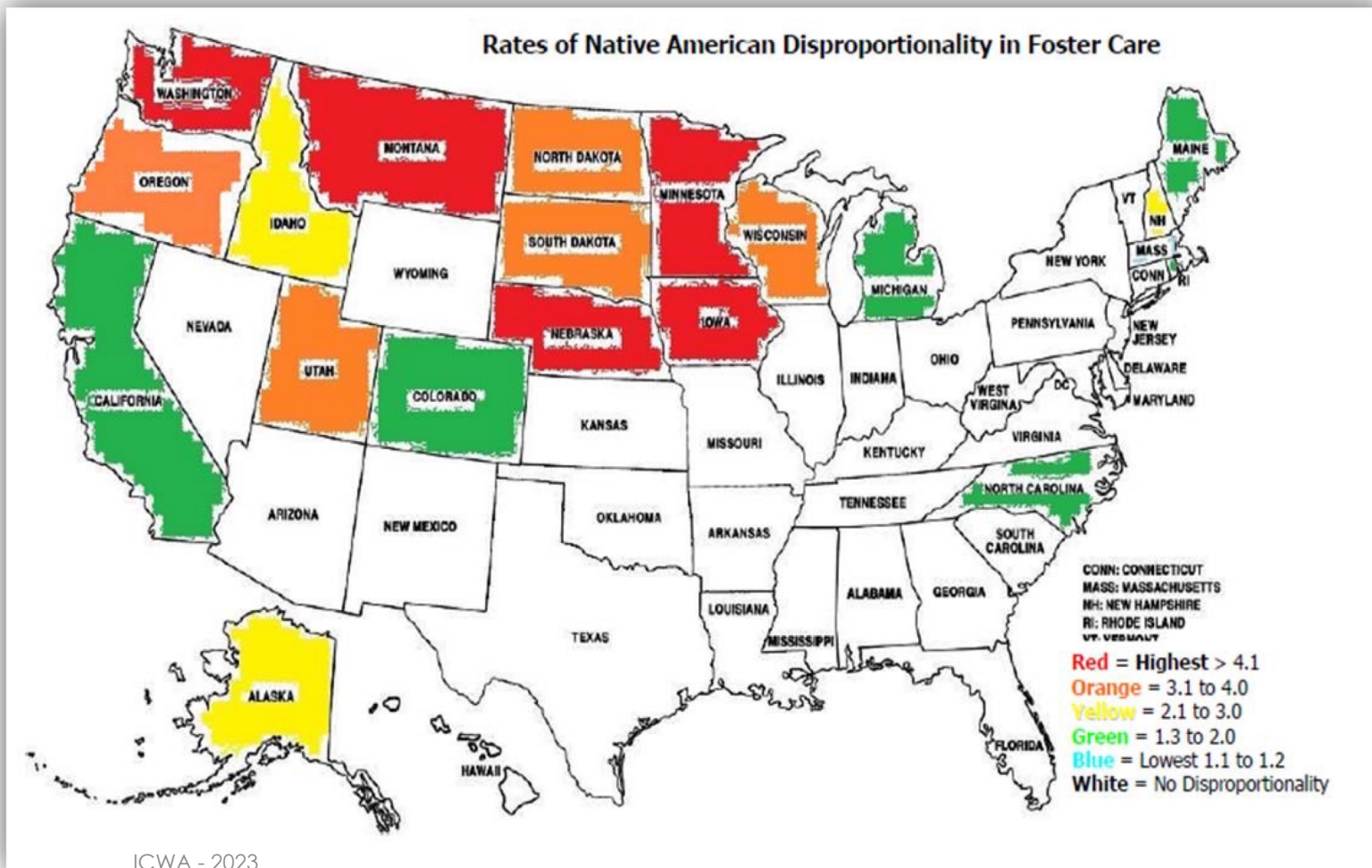
dis·pro·por·tion ,dis-prə-'pör-shən

Synonyms of *disproportion*

- : lack of proportion, symmetry, or proper relation
- : disparity also
- : an instance of such disparity

<https://www.merriam-webster.com/dictionary/disproportion>

Indian Children are Disproportionally represented in the dependency system



DISPROPORTIONALITY IN WASHINGTON STATE

Race	2017	2017 DEP	2018	2018 DEP	2019	2019 DEP	2020	2020 DEP	2021	2021 DEP
AI/AN	1.3	14%	1.3	15%	1.3	15%	1.3	16%	1.3	17%
Asian/PI	7.8	2%	8.0	2%	8.2	3%	8.4	1%	8.5	2%
Black	4.2	16%	4.2	16%	4.3	16%	4.3	15%	4.3	13%
Native Hawaiian/PI	.8		.8		.8		.8		0.9	
Hispanic/Latino	21.5	16%	21.8	16%	22.0	16%	22.2	16%	22.5	17%
Multi-Other	8.3	2%	8.4	2%	8.5	2%	8.6	2%	8.8	2%
White	56.1	50%	55.5	50%	54.9	49%	54.4	49%	53.8	47%

Demographic Characteristics of Children in Dependency Cases by Year of Petition

Appendix B: WA Racial Disproportionality Advisory Committee 2021

<https://www.courts.wa.gov/subsite/wscrr/docs/2021DTR.pdf>

Children's Bureau, office of Admin for Children & Families: Washington State Child Population Data

<https://cwoutcomes.acf.hhs.gov/cwodatasite/population/index>



Using the LAW & GALRs

to advocate for the
best interests of



**Native American and
Alaskan Native children**

30 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.

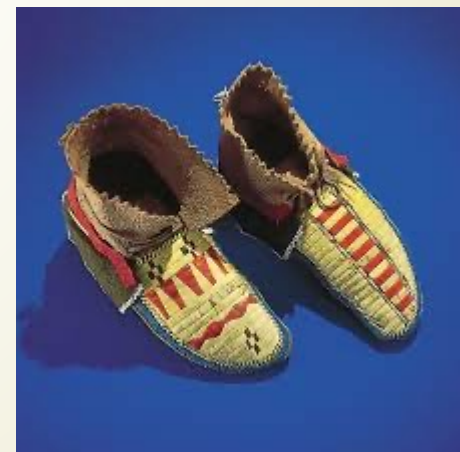
Under GALR 2(g) a GAL/Child Advocate must make reasonable efforts to contact all parties involved in the case.

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?



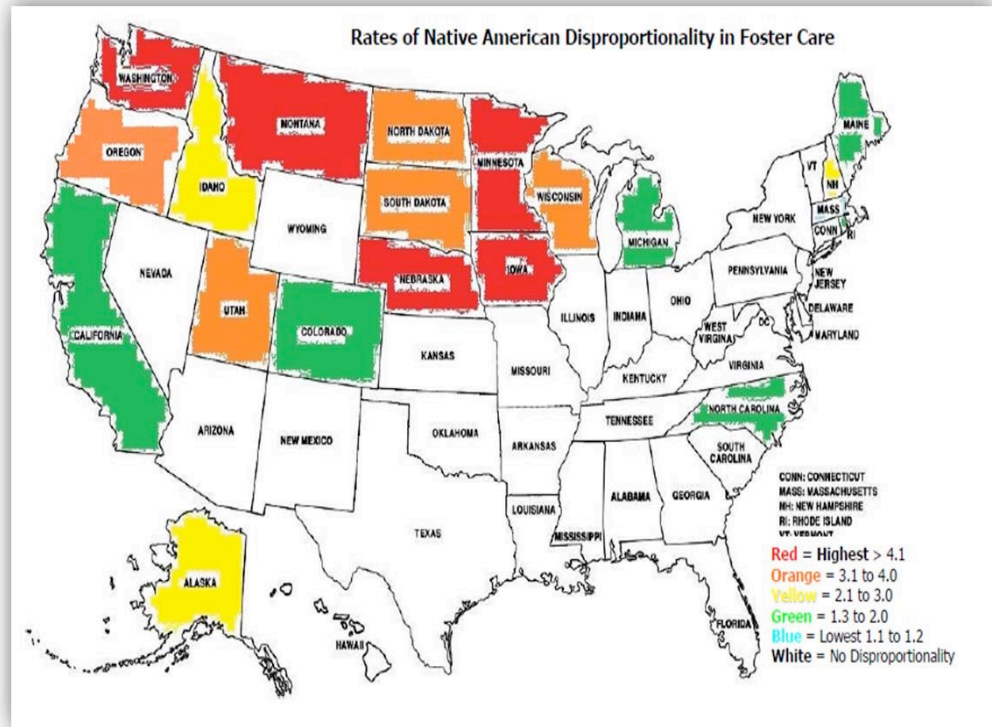
A GAL/Child Advocate may request a shared planning meeting to discuss an issue which has arisen in the case.

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.

Why is ICWA Important Today?



Disproportionality

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ICWA In the News: Brakeen



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=GsoiwY6YjSk>

- ▶ 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/>

- ▶ American Library Association

[Indigenous Tribes of Seattle and Washington | About ALA](#)

- ▶ STI Curriculum

[Since Time Immemorial: Tribal Sovereignty in Washington State | OSPI \(www.k12.wa.us\)](#)

- ▶ Native Knowledge 360 - Smithsonian National Museum of the American Indian

[Home | Native Knowledge 360° - Interactive Teaching Resources \(si.edu\)](#)



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Concepts of tribal sovereignty



“The ability of tribes to govern themselves and continue their lifeways.”

- 4th grade “Tribal Homelands” unit, “On Sovereignty” written by Carol Craig (Yakama) and Shana Brown (Yakama descendent)

“American Indian Tribes are recognized in federal law as possessing sovereignty over their members and territory. Sovereignty means that tribes have the power to make and enforce laws, and to establish courts and other forums for resolution of disputes. The sovereignty that American Indian Tribes possess is inherent which means that it comes from within the tribe itself and existed before the establishment of the United States government. Tribal sovereignty is further defined by the unique relationship of the tribes to the United States. In addition to inherent sovereignty, tribal governments may also exercise authority delegated to them by Congress.”

- 2006 Tribal Leaders Congress MOU

Sovereignty affects



- Indigenous Language
- Education
- Environmental Protection and Land
- Healthcare
- Courts & Judicial system - including civil and criminal jurisdiction
- Taxation
- Economic Development
- Nation to Nation or government relations
- Quality of life
- Decolonization



Tribes of Washington state



<http://www.washingtontribes.org/default.aspx?ID=2>

Colville
Confederated
Tribes

Confederated
Tribes of Chehalis

Confederated
Tribes of Yakama

Cowlitz

Hoh

Jamestown
S'Klallam

Kalispel

Lower Elwa Klallam

Lummi

Makah

Muckleshoot

Nisqually

Nooksack

Port Gamble S'Klallam

Puyallup

Quileute

Quinault

Samish

Sauk-Suiattle

Shoalwater Bay

Skokomish

Snoqualmie

Spokane

Squaxin Island

Stillaguamish

Suquamish

Swinomish

Tulalip Tribes

Upper Skagit