

# **ADVANCED INDIAN CHILD WELFARE ACT CURRICULUM: Active Efforts - TRAINER'S GUIDE -**

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## **4 hour training**

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This module is an advanced curriculum and it should not be the participants' first introduction to the history of the Native American Indians or to the Indian Child Welfare Act (ICWA). This curriculum progresses beyond "Notice Requirements under the ICWA" and focuses on "active efforts" throughout the continuum of services to Indian families.

The time frame for this training is four hours, it is important to keep to the times as this can become an emotional and somewhat controversial topic and trainers need to make sure the material is covered in a respectful way that allows participants the time to ask questions. Every child, youth and family that comes in to the child welfare and delinquency system in best practice deserves to have "active efforts": this curriculum does not dispute this, what this curriculum does say is that every "Indian Child" under the ICWA legally needs to have "active efforts" provided to them.

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## **Back ground information and preparation**

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This curriculum is designed to be conducted by an ICWA expert and an attorney who have experience in this area. As such, it is expected that each trainer will add examples from the trainer's professional and personal experiences to help illustrate the points and clarify the material. Prior to the training the trainer should read and be familiar with the following documents that can be located on the Tribal Project Unit website:

- ✓ ICWA Bench Handbook
- ✓ ICWA tool kit
- ✓ ICWA 101 training
- ✓ Judge Thorne's video
- ✓ AOC ICWA resources and services by county
- ✓ AOC sheet resources for each discipline.

Additional material to be viewed:

- ✓ Trainer's guide
- ✓ Trainee's guide
- ✓ Power point
- ✓ Both videos for this curriculum

**Participant Handouts for this Curriculum:**

- ✓ Trainee's guide
- ✓ Consider copying the powerpoint

**Training Supplies Needed**

- ✓ Lap Top
- ✓ LCD
- ✓ Screen to project LCD on to
- ✓ Easel stand, paper and markers

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## SUGGESTED AGENDA – 4 hour training

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- I. Welcome and Introductions  
Initialing competencies and learning objectives (15 minutes)  
  
(Remember - If the training is held on Tribal lands, that it is respectful to ask ahead of time if a Tribal elder from that tribe to do the welcome)
- II. Self Assessment (5 minutes) (V1)
- III. 30 years later (in small groups brainstorm what participants see as the purpose of ICWA? Do they think that has a valuable purpose? If not why not? If so why? Do they think it is relevant today 30 years later? – 15 minutes) (V1)
- IV. Introduction to the historical context of ICWA. Video “Continuing the Dialogue” (25 minutes) (K6, V1)
- V. Activity: Ask the participants to discuss what attorneys and judges should expect regarding the requirements of ICWA, how would an ICWA case differ from a regular case in these areas?(15 minutes) (K2)
  - a. Prior to the matter coming to court?
  - b. Prior to Disposition
  - c. Post Disposition
- VI. Break (15 minutes)
- VII. Give copies of laws and provide a brief overview (ppt) and facilitated discussion regarding the ICWA, and family code §177(a); Probate Code §1459.5(b) and Welfare and Institution Code 361.7 and Rule 5.484 with emphasis on active efforts. (20 minutes) (K1, K4)

- VIII. Activity: Requirements revisited. After listening to the above lecture. Ask the participants to discuss what attorneys and judges should expect regarding the requirements of ICWA, how would an ICWA case differ from a regular case in these areas?(25 minutes) (K2)
- a. Prior to the matter coming to court?
  - b. Prior to Disposition
  - c. Post Disposition

- IX. Scenarios taken from case law and case plans to look at appropriateness. (Small group activity and then debrief as a large group – 20 minutes) (K2, S1, S2)

- X. Activity regarding the roles of each participant. Watch the video “Justine’s story” and in small groups answer the question “In what ways can the child welfare and probation system support a Tribal youth’s process of connecting with their culture?”

Using this story as a framework, what are the roles of:

Judge, Tribe, Attorney, Social Worker, CASA, Probation Officers, Therapist, Group Home staff etc. (30 minutes) (K5, K6, S2, S3, V1, V2)

- XI. Examples of active efforts: Given the handout comparing reasonable and active efforts: What do you do in your practice and in your county to provide “active efforts”? (15 minutes) (K3, V2)
- XII. Highlighting practices in other jurisdictions (Counties of Sonoma, Butte, Lake, LA. Tulare, Riverside, Kings, Ancestral Chart) (30 minutes) (V2)
- XIII. Wrap up and next steps (10 minutes)

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## COMPETENCIES AND LEARNING OBJECTIVES

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**Segment 1: Introductions, review of agenda, handouts, competencies and learning objectives:**  
**(15 minutes)**

1. Do a brief introduction of yourself and if you have one, your co-trainer.
2. Depending on the size of the class and whether the students know each other or not, you may ask people to briefly introduce themselves.
3. Review the agenda.
4. Ask people to read the competencies and learning objectives for this module. Ask them to:
  - a. Identify by initialing which learning objective or objectives are most important for you to learn today.
  - b. Ask a couple of people to tell you what is most important to them.
  - c. Is there anything else that they would like to be covered that isn't listed?

**TRAINING TIPS:**

1. Remember that this curriculum has been designed for attorneys and judges.
2. Prior to the training complete the information of your name and the date for the training on PPT slide #1.
3. The initialing competencies and learning objectives technique is useful as it requires the participants to review the competencies and learning objectives without you reading them out loud.
4. Let people know up front what is in the training and adjust their expectations, this alleviates possible future frustration.

PPT Slide 1-4

## **CONTINUING THE DIALOGUE: ICWA Self Assessment Quiz**

### **Segment 2: Self Assessment Quiz: “History of California Indians: Continuing the Dialogue” (5 minutes)**

1. The Self Assessment is in the “trainee guide” distributed at the beginning of the training. Ask the participants to take five minutes to answer the questions on the self assessment.
2. The answers will be part of the video in Segment 3 and some additional slides:

#### **TRAINING TIPS:**

This is an engagement exercise to guide participants to focus on the history of Native American Indians. It is a technique to demonstrate to some participants on an individual basis that this history is recent and continues to have far reaching consequences.

## **CONTINUING THE DIALOGUE: ICWA Self Assessment Quiz with Answers**

1. How many tribal courts are there in U.S? Over
  - a. 10
  - b. 50
  - c. 300
  - d. 500

Answer c.

2. In 1977 the American Indian Policy Review conducted research regarding the number of Indian children more likely to be in foster care or adopted by non-tribal families than their Caucasian counter parts.
  - a. 120% more likely to be adopted and 50% more likely to be in foster care
  - b. 240% more likely to be adopted and 100% more likely to be in foster care

- c. 500% more likely to be adopted and 150% more likely to be in foster care
- d. 840% more likely to be adopted and 270% more likely to be in foster care

Answer d

3. In 1840 there were 200,000 Indians in California in 1870 there were

- a. 12,000
- b. 24,000
- c. 85,000
- d. 100,000

Answer a.

4. Membership in a tribe is determined by

- a. The Federal Government
- b. The tribe
- c. The individual person
- d. The State Court

Answer b

5. How many years after 1851, when 18 treaties were signed by the Indians of California and Federal Government reserving 7.5 million acres for the Indians, were the tribes notified that the treaties had not been ratified?

- a. Never
- b. 10 years
- c. 50 years
- d. 100 years

Answer c

6. Instead of receiving the 7.5 million acres reserved for the Indians in the 1851 treaties, how many

acres did they receive?

- a. .5 million
- b. 1.5 million
- c. 4.5 million
- d. 7.5 million

Answer A

7. Which statement below does not describe the philosophy of the Bureau of Indian Affairs (when it was part of the war department)?

- a. Strip the Indian away and save the child
- b. Tradition is the enemy of progress
- c. You can be educated or Indian but you can't be both
- d. Indian tradition should be preserved

Answer d

8. The BIA relocated 60-70,000 Indians to San Francisco and Los Angeles, now over what % of California's Indian population traces their native ancestry to tribes outside of California?

- a. 10%
- b. 30%
- c. 50%
- d. 70%

Answer c

9. In 1870 the 15<sup>th</sup> amendment to the U.S. Constitution affirmed voting rights for emancipated slaves. In what year was the passage of the Federal Citizenship Act that granted Indians the right to vote most for the first time?

- a. 1870
- b. 1900
- c. 1924



d. 1963

Answer c

10. How many federally recognized tribes are there in California?

a. 67

b. 83

c. 109

d. 212

Answer c

PPT Slide 5

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30 YEARS LATER

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**SEGMENT 3: 30 years later: Small group activity**

**15 minutes**

1. Break the participants up into groups of 3-4 participants.
2. Ask the participants to brainstorm what the participants see as the purpose of ICWA? Do they think it has a valuable purpose? If not why not? If so why? How do they think it is relevant today 30 years later?
3. Ask each group to give you one of their thoughts, the trainer should chart some of the responses: Some of the following may be identified;
  - a. Seen as too difficult to follow
  - b. An impediment to doing the good work of protecting children

- c. Racism or favoritism toward one group
- d. Why aren't we applying the requirement of the Act to ALL children? Why should the Indian children receive the gold standard of inquiry and efforts, while other children get brass?
- e. Are "we more successful at raising and protecting children than the tribe is? Why?
- f. We don't have enough Native children in our county, so why do we have to bother?

( Of the 72, 221 children reported to be in the California foster care system as of July 2007, 1,024 were reported to be Native American. This may seem like a small number to some, however it represents over 2% of the total number of Native American children in California. This makes Native American children the second highest over represented population in foster care in California, the first being African American. (CFSR from CASA report)

PPT slide 6

#### **SEGMENT 4: Video: "History of California Indians: Continuing the Dialogue"**

**(20 minutes)**

1. This video was developed to help continue the dialogue that we started in Segment 3 regarding why the ICWA is still so important 30 years later.
2. This is a basic revision of the historical context of ICWA.
3. During the video ask participants to obtain the answers from their self assessment and reflect on anything that was surprising to them.
4. Facilitate a short discussion with the large group regarding some of their concerns from segment Highlight the recent historical context of ICWA and why we need to follow the letter and intent of the law.

[The video is ready for review online here \(click to launch in standalone Windows Media player\).](#)

PPT slide 7 - 9

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**HOW DOES AN ICWA CASE DIFFER FROM A NON-ICWA CASE?**

**What should attorneys and judges expect regarding the “active efforts” requirements of ICWA?**

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**SEGMENT 5: How do the requirements differ between an ICWA case and a Non-ICWA case?**

**(15 minutes)**

1. In small groups of 3-4 ask the participants to discuss requirements for an ICWA case and a Non-ICWA case?
  - a. Prior to the matter coming to court?
  - b. Prior to Disposition?
  - c. Post Disposition?
2. Ask the group to write on the handout provided their thoughts.

Training Tip:

This is an exercise to get the thought process and dialogue moving, it will be revisited.

PPT Slide 19

**SEGMENT 6 BREAK (15 minutes)**

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## THE LAW REGARDING ACTIVE EFFORTS AND COURT ENFORCEMENT

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SEGMENT 7: Overview of the ICWA, family code 177(a), Probate Code 1459.5(b) and Welfare and Institution Code 361.7 and Rule 5.484 with emphasis on active efforts.

(20 minutes)

Refer to the power point slides to give a brief overview of the law with emphasis on active efforts.

Trainer Tip: Information is in the background reading.

PPT Slide 12 - 19

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## HOW DOES AN ICWA CASE DIFFER FROM A NON-ICWA CASE?

**What should attorneys and judges expect regarding the “active efforts” requirements of ICWA? (Revisited)**

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✦ Prior to the matter coming to court?

\_\_ There should have been a basic inquiry of clients and readily available relatives regarding Indian ancestry, and the worker should document this inquiry with as many specifics as possible using ICWA-010(A) and a family tree. If ICWA may apply, the worker should have begun tribal and BIA notice processes. If extended family and specific tribal connections were identified, the worker should contact them, as well as any tribal social service agencies near the family. The purpose of this outreach is to

begin the process of engaging the child's potential tribe(s), extended family, and tribal community services to find appropriate services for the family, If the Tribes, extended family, and tribal social service agencies responded and made suggestions for services, cooperation through referrals and consultation regarding a case plan should have occurred.

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+ Prior to Disposition?

\_\_\_If the steps outlined above have NOT been taken, they must be now. If there is a report of Indian ancestry, a more thorough inquiry and outreach to relatives must be conducted. Working with the tribal social service agencies is critical and should not wait for confirmation of tribal membership or eligibility, since services may be available during the interim period. If the child is at risk of foster care, it is critical that the child's Tribe, extended family, and tribal social services be actively engaged to develop a culturally appropriate case plan with services identified by the Tribe, extended family, and tribal social service agencies in the community.If these steps are not taken by the disposition hearing, there will not be a basis for the court to make an active efforts finding.

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Post Disposition?

\_\_\_Once again, steps that SHOULD have been taken but have not gone forward, must be pursued throughout the case. Notice requirements must be met, but they are not sufficient to meet the active efforts mandate. Case management of a potential or confirmed ICWA case must include tribal outreach and enlistment of whatever services and assistance may be indicated and available. Follow through is critical and mere referrals may be sufficient. The risk of overlooking these steps may result in a failure to reunify a child with a parent or relative within a reasonable time for the child; or to delay the formation or implementation of an alternative permanent plan.

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## ICWA CASE HYPOTHETICALS FOR ACTIVE EFFORTS DISCUSSION

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Segment IX.

In addition to the questions posed, the trainer should make sure the following issues are addressed:

Case of Maria L.:

1. The allegations of serious neglect and lack of means to protect should be challenged. Ms. L is a tribal member and tribal resources and assistance should have been sought prior to the child being taken into custody or as soon as possible thereafter.

Maria is or may be a member of a tribe, but her status is unknown at the detention hearing. What steps should be pursued to determine this? Based on the statements and information from Ms. L., should the court proceed under the Act.?

2. The social worker could and should be offering “active effort” supportive service benefits based on the information from Ms. L. and the likelihood that the Act will apply. These could include:
  - a. Referrals for free or reduced cost food;
  - b. Assistance with housing and utilities;
  - c. Childcare programs for which the family may be eligible through the county, tribe, school or other provider;
  - d. Referrals for Ms. L. for mental health support and counseling, and Parenting Classes through resources such as Indian Health, Urban Indian Health providers, tribal social services through her tribe or other providers;
  - e. Offers of bus tickets or passes for Ms. L. and Maria;
  - f. Directions for Ms. L. to local job link programs through the county and /or Tribal or Tribal TANF programs in the area;
  - g. Contact with the child's aunt to see if she is available to support Ms. L. or Maria through financial assistance, child care, tribal enrollment of Maria and as a source of information.

Case of Johnny M.:

1. The Tribe should have been contacted prior to the detention hearing, and given an opportunity to attend or at least be consulted. The emergency nature of the situation may have precluded this at this time, but it should have been considered.
2. How should any Active Efforts finding be supported? Is there an expert witness to render the required opinions regarding removal and active efforts? Absent such evidence, the active efforts finding cannot be made.
3. The allegations should be questioned and more information sought. What is the evidence to support the conclusions that Ms. L. and the uncle are alcoholics?
4. There should be more information on the tribal members providing medical care and education;
  - a. Who are they and what has actually been provided?
  - b. Were these services that could have helped alleviate the circumstances leading to removal?
  - c. How were they utilized?
  - d. Were they in a position to assess the educational or medical needs of Johnny?
  - e. Were they able to counsel Ms. M. and other family members on childrearing, the differences between permissible corporal punishment and abuse?
  - f. Could the family access alcohol related programs such as Red Road to Recovery, Sweat Ceremonies, Talking Circles, Healthy Traditions, etc?
  - g. Could Johnny receive tutoring within the Tribe or elsewhere?
  - h. Has the family been referred to any tribal or county provided housing related programs to help alleviate stressors in the home?
5. Could Johnny return home if Ms. L. and the uncle were to leave the home or if they are in programs to address any alcohol abuse? Are there programs to help the family members learn what is appropriate child rearing according to the standards of the particular Tribe? Information about these must be made available to the court and all parties and counsel.

Case of Freddy and Frieda B.

1. What if the court finds that ICWA does not apply and the Tribe determines that the child is an Indian child and intervenes? The tribe can then file a motion to invalidate the entire proceeding; as can the attorneys for the Ms. B. and the children.
2. What inquiries regarding the tribal background of Ms. B. should have been made immediately after the birth of the twins? Were inquiries made regarding the grandmother and other relatives? Were they contacted immediately? Was the tribe?
  - a. At that time, the family could have been referred to a voluntary Family Maintenance caseworker and the grandmother appointed as the Indian Custodian while Ms. B. entered treatment.
  - b. If all the questions regarding the Act had been asked and answered and Ms. B. informed of the importance of making the information available, the case might have gone in a different direction from the outset.

- c. The Tribe, if promptly identified and notified either through the agency or the grandmother, might have been able to assist the family with additional counseling, parenting classes, drug treatment, assistance with job leads, transportation, contact with other relatives and other services.
3. Once it was learned from the Tribe that it believed the children were eligible for membership, the agency should have begun immediate work with the Tribe while additional information was being ascertained.
4. Even if the court proceeds and considers termination of parental rights, there must be compliance with the Act:
  - a. Active Efforts finding;
  - b. Findings based on the testimony of an expert witness;
  - c. Evidence Beyond a Reasonable Doubt;
  - d. The placement preferences and recommendations of the Tribe
  - e. Recognition that even if the rights of the parents are terminated, the rights of the Tribe cannot be severed.
5. What steps can be taken to assure the Active Efforts finding can be met?
  - a. The court can rule that because Active Efforts were NOT made, the agency must start over by working with Ms. B., the grandmother, tribal representatives and social workers to identify and craft a culturally appropriate service plan to address the use of methamphetamines and parenting issues.
  - b. All involved individuals should work concurrently on the placement issues, a long term plan if Ms. B. fails to reunify, enrollment of the children in the Tribe, and the offer of an exit agreement to stipulate to other options now available to assure permanence for Freddy and Frieda.
6. If the court does not apply the Act or make the required ICWA findings, supported by the evidence, Ms. B., the children and the Tribe should appeal the termination of parental rights.

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## ROLES OF THE PARTICIPANTS

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Segment X:

Watch the video Wakeem's story and using this as a framework answer what are the roles of the participants that are identified in the "Trainee's Guide".



Segment XI: What do you do in your practice and in your county to provide “Active Efforts”?

1. Facilitate a discussion between participants to share promising practices and challenges they are having in their county.

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## **PROMISING PRACTICES IN OTHER JURISDICTIONS**

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Segment XII.

Highlighting practices in other jurisdictions and refer participants to other jurisdictions that may be able to help solve challenges identified in Segment XI

Information taken from the ICWA tool kit and to be updated by AOC.