



JUDICIAL COUNCIL OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS

ICWA Information Sheet: Delinquency – Child’s Indian Status – Right to Political and Cultural Connections – ICWA Requirements

Overview

The Indian Child Welfare Act (“ICWA” 25 U.S.C. §§1901 *et. seq.*) and corresponding state law are the source of significant legal rights and protections for Indian children and their tribes. Some, but not all of ICWA’s requirements apply to **all** juvenile cases, including delinquency cases. In addition, ICWA is not the **only** reason why a child’s Indian status and American Indian heritage is of importance in a delinquency case. Whether or not ICWA itself applies, children who identify as American Indian have unique legal protections and access to unique resources.

Duty of Inquiry

A juvenile probation department has an affirmative and continuing duty to inquire about a child’s Indian status, that is, whether the child is a member or eligible for membership in an Indian tribe and the child of a member of an Indian tribe. Inquiry must occur whenever the department makes contact with a child that could result in a petition under Section 601 or 602 (Welf. & Inst. Code § 224.2(a)) and whenever a child is placed in the temporary custody of the probation department pursuant to Welfare and Institutions Code § 307 (Welf. & Inst. Code § 224.2(b).) The duty to inquire begins at initial contact and the probation officer must complete this inquiry even if the child comes into contact with the probation department as a result of conduct that would be considered a crime if the child were an adult. (*In re. W.B.* (2012) 55 Cal. 4th 30, 40)

This duty of inquiry includes asking the child, parents, legal guardian, Indian custodian (if any), extended family members and others who have an interest in the child whether the child is, or may be, an Indian child and where the child, the parents, or Indian custodian is domiciled. (Welf. & Inst. Code § 224.2(b).) If this inquiry gives the probation officer “reason to believe” that the child is an Indian child, the probation officer must make further inquiry as soon as practicable. The purpose of further inquiry is to discover whether the child is a member (citizen) of a federally recognized Indian tribe and includes at a minimum:

1. Interviewing the child, parents, Indian custodian, and extended family members to gather the information required in Welf. & Inst. Code § 224.3(a)(5). (Welf. & Inst. Code § 224.2(e)(1)). Essentially this is a family tree back to great-grandparents;
2. Contacting the Bureau of Indian Affairs and California State Department of Social Services for assistance in identifying the names and contact information of the tribes the child may be a member or eligible for membership in; and
3. Contacting the tribes and any other person that may reasonably be expected to have information regarding the child's membership or citizenship status or eligibility. This contact with the tribes is distinct from sending notice on the form ICWA-030. You must make these contacts even if you are not required to send the ICWA-030 notice. This contact must include at a minimum contacting the tribe's designated agent for receipt of ICWA notice by telephone, facsimile or email and sharing information with the tribe necessary to make a membership determination. If the tribe determines the child is a member or eligible for membership you must share information about the current status of the child and the case. (Welf. & Inst. Code § 224.3(e)(3)).

If as a result of this inquiry the probation officer knows or has reason to know that the child is an Indian child, then ICWA requirements beyond inquiry may apply in certain circumstances.

When do ICWA requirements beyond inquiry apply?

All of the remaining ICWA requirements such as notice, active efforts, qualified expert witness testimony and heightened evidentiary standards apply only when a child is either in foster care or at risk of entering foster care and one of the three additional factors apply:

1. The petition under Welfare and Institutions Code section 601 or 602 alleges only status offenses and no conduct which would be criminal if the child were over age 18. (This includes allegations such as a child refuses to obey the orders of a parent or guardian, is beyond parental control, violates age-based curfew ordinances, or is truant or disobedient in school or has engaged in underage drinking or underage possession of alcohol or tobacco because even though this conduct is prohibited in the Penal Code, such conduct would not be a crime if committed by an adult.) (*In re. W.B.* at 42);
2. The court has set a hearing to terminate parental rights (regardless of whether or not there was "criminal" conduct) (*In re. W.B.* at 59); or
3. The court has placed the child in foster care, or in an adoptive or pre-adoptive placement, due to abuse or neglect in the child's home. (*In re. W.B.* at 60). In these situations, the court must make a specific finding that placement outside the home of the parent or legal guardian is based entirely on harmful conditions within the child's home. (*In re. W.B.* at 59) Without such a specific finding it is presumed that the placement is based at least in part on the child's criminal conduct. (*In re. W.B.* at 60) If there is such a finding, then ICWA requirements apply regardless of whether the conduct which brought the child before the court was criminal in nature.

Significance of Native American & Indian Identification (regardless of ICWA application)

Services for Native American Children

Following inquiry, if a child and the child's family identify as Native American, that is, as possessing native heritage or a cultural connection with an Indian tribe, then, whether or not ICWA itself applies, as **in all cases** the family's cultural identity is important for case planning and placement purposes. Native American children and their families may be entitled to a broad range of services which should be used whenever possible when developing case plans. You can find these services in your area by looking here <http://www.courts.ca.gov/5807.htm>. Programs may have different eligibility requirements. Some services are available to all individuals who self-identify as American Indian or indigenous while others may only be available to members of federally recognized tribes.

Following inquiry, if a child is an Indian child that is or may be placed in a foster care placement, identifying the child's tribe is important and legally required under the Welfare and Institutions Code apart from ICWA itself. A child's tribe is a required member of the Child and Family Team (CFT) convened for development of the child's case plan, including provisions relating to services and placement. Collaboration with the child's tribe is required as a matter of state law and may expand options available for the child through the provision of culturally appropriate services and through application of tribal standards to assessments and placement approvals. (Welf. & Inst. Code § 16501(a)(4))

Legal Rights of All Native American and Indian Children in Foster Care (regardless of ICWA)

If the child is a member or eligible for membership in a tribe, you are required to look to tribal members when seeking a foster care placement for an Indian child (ie a child who is a member or eligible for membership in a tribe) regardless of whether ICWA applies to the case. (Welf. & Inst. Code §§ 727.1 (a); 16501.1 (c))

All children placed in foster care have rights as specified in California law, commonly known as the Foster Youth Bill of Rights. (W.I.C. §16001.9) Native American children, regardless of membership in a federally recognized tribe, enjoy the following rights:

1. To receive adequate clothing and grooming and hygiene products that respect the child's culture and ethnicity.
2. To be placed with a relative or nonrelative extended family member if an appropriate and willing individual is available. (This is also the first order of placement in the ICWA placement preferences.)
3. To participate in extracurricular, cultural, racial, ethnic, personal enrichment, and social activities.

4. To attend religious services, activities, and ceremonies of the child's choice, including, but not limited to, engaging in traditional Native American religious practices.

Indian children who are placed into foster care are entitled to all the same rights as other foster children under WIC 16001.9 and also have unique protections for their cultural and political identity as Indian children. These protections for the cultural and political rights of Indian children in foster care apply equally whether they are placed in foster care under WIC §§300, 601 or 602 (WIC 16001.9(a).) These protections include the right to:

1. a placement that upholds the prevailing social and cultural standards of the child's Indian community, including, but not limited to, family, social, and political ties; (WIC 16001.9(a)(1))
2. be provided with names and contact information for representatives of the child's Indian tribe and to communicate with these individuals privately; (WIC 16001.9(a)(11))
3. have contact with tribal members and members of the child's Indian community consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe; (WIC 16001.9(a)(14))
4. engage in traditional Native American religious practices; (WIC 16001.9(a)(15))
5. have probation personnel who have received instruction on ICWA and on cultural competency and sensitivity relating to, and best practices for, providing adequate care to Indian children in out-of-home care; (WIC 16001.9(a)(20))
6. recognition of the child's political affiliation with an Indian tribe or Alaskan village, including a determination of the child's membership or citizenship in an Indian tribe or Alaskan village; to receive assistance in becoming a member of an Indian tribe or Alaskan village in which the child is eligible for membership or citizenship; to receive all benefits and privileges that flow from membership or citizenship in an Indian tribe or Alaskan village; and to be free from discrimination based on the child's political affiliation with an Indian tribe or Alaskan village; (WIC 16001.9(a)(21))
7. have a representative of the child's Indian tribe in attendance during hearings; (WIC 16001.9(34))
8. a case plan that includes protecting the essential tribal relations and best interests of the Indian child by assisting the child in establishing, developing, and maintaining political, cultural, and social relationships with the child's Indian tribe and Indian community; (WIC 16001.9(37))

Probation and social services must ensure that all of these rights are respected, including assisting a child to become enrolled with the child's tribe when the child is eligible for membership but requires enrollment.



Probation Departments Requirements

Indian Child Welfare Act, Federal ICWA Regulations & Guidelines, California Statutes & Rules of Court *

I. Investigation/Intake Requirements

- A. *Initial inquiry:* A juvenile probation department has a continuing duty to inquire about the child's Indian status, that is, whether the child is a member or eligible for membership in an Indian tribe and the child of a member of an Indian tribe. Inquiry must occur whenever the department makes contact with a child that could result in a petition under Section 601 or 602 (Welf. & Inst. Code § 224.2(a).) and whenever a child is placed in the temporary custody of the probation department pursuant to Welfare and Institutions Code § 307 (Welf. & Inst. Code § 224.2(b).) The duty to inquire begins at initial contact and the probation officer must ask the child, parents, guardians, Indian custodians (if the child is living with an Indian person), and available extended family and relatives whether the child may be an Indian child. (WIC, § 224.2(a); California Rules of Court, rule (hereafter "CRC") 5.481(a).)

Practice Tip: If you are making a "reasonable efforts" finding to support the possibility the child may enter foster care for the purposes of drawing down title IV-E funding, then it is essential the ICWA inquiry be made.

II. Further Inquiry

- A. *Further inquiry:* If, as a result of this inquiry or from any other source, you have reason to believe the child is an Indian child, then ask more questions to learn about the child's Indian status. You must (1) interview the child, parents, and available extended family members to gather family background information; (2) contact the Bureau of Indian Affairs (BIA) and the California Department of Social Services (CDSS) for assistance with contact information and in determining the tribes to contact if the information available identifies only possible ancestral tribal groups rather than federally recognized tribes; and (3) contact the tribe(s) the child is potentially affiliated with by fax, phone and email to determine the child's status. (WIC, § 224.2(e); CRC 5.481(a)(4).)
- B. *How do I know? Tips to help figure out if you have reason to know the child is an Indian child:*
1. If the child, an Indian tribe, an Indian organization, an attorney, a public or private agency, or a member of the child's extended family says or provides information to anyone involved in the case that the child is an Indian child;
 2. If the child, the child's parents, or an Indian custodian reside or are domiciled on an Indian reservation; or
 3. The child or parent possess an identification card indicating membership in a tribe or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service. (WIC, § 224.2(d); CRC 5.481(a)(5).)
- C. *Document inquiry on Juvenile Wardship Petition (Form JV-600) and ICWA-010(A):*
1. Item 2 on form JV-600 requires you to have conducted an initial inquiry and further inquiry if it is warranted.
 2. You are also responsible for documenting your investigation on ICWA-010(A) and having the parents complete the ICWA-020 forms. If the child is or there is reason to believe the child is an Indian child, you and the court will need to take specific steps to prevent the breakup of the child's Indian family.
- D. *Document active efforts if child taken into custody:* If you know or have reason to believe the child is an Indian child AND the child is already in foster care, or you think the child is at risk of entering foster care, then you must find resources and services that are culturally specific to the Indian child's family. These resources and services are the active efforts that you must document to show that you are actively trying to prevent the breakup of the child's Indian family. Just as you would document reasonable efforts in non-ICWA cases, you must also document these active efforts in the detention report. You can find resources to help fulfill the active efforts requirement at <http://www.courts.ca.gov/5807.htm> (25 U.S.C. § 1912(d); WIC, §§ 361.7; 727.4(d)(5)(D); CRC 5.484(c).)

*All citations in this chart are to the Indian Child Welfare Act (ICWA) (25 U.S.C. 1901 et seq.), Federal ICWA Regulations found at 25 C.F.R. Part 23, Federal Guidelines for Implementing the Indian Child Welfare Act available at <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf>, California Welfare and Institutions Code (WIC), and California Rules of Court (CRC) effective as of January 1, 2020.

II. Rights of all Indian Children in foster care

Indian children who are placed into foster care are entitled to all the same rights as other foster children under WIC 16001.9 and also have unique protections for their cultural and political identity as Indian children. These protections for the cultural and political rights of Indian children in foster care apply equally whether they are placed in foster care under WIC §§300, 601 or 602 (WIC 16001.9(a).) These protections include the right to:

1. a placement that upholds the prevailing social and cultural standards of the child's Indian community, including, but not limited to, family, social, and political ties; (WIC 16001.9(a)(1))
2. be provided with names and contact information for representatives of the child's Indian tribe and to communicate with these individuals privately; (WIC 16001.9(a)(11))
3. have contact with tribal members and members of the child's Indian community consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe; (WIC 16001.9(a)(14))
4. engage in traditional Native American religious practices; (WIC 16001.9(a)(15))
5. have probation personnel who have received instruction on ICWA and on cultural competency and sensitivity relating to, and best practices for, providing adequate care to Indian children in out-of-home care; (WIC 16001.9(a)(20))
6. recognition of the child's political affiliation with an Indian tribe or Alaskan village, including a determination of the child's membership or citizenship in an Indian tribe or Alaskan village; to receive assistance in becoming a member of an Indian tribe or Alaskan village in which the child is eligible for membership or citizenship; to receive all benefits and privileges that flow from membership or citizenship in an Indian tribe or Alaskan village; and to be free from discrimination based on the child's political affiliation with an Indian tribe or Alaskan village; (WIC 16001.9(a)(21))
7. have a representative of the child's Indian tribe in attendance during hearings; (WIC 16001.9(34))
8. a case plan that includes protecting the essential tribal relations and best interests of the Indian child by assisting the child in establishing, developing, and maintaining political, cultural, and social relationships with the child's Indian tribe and Indian community; (WIC 16001.9(37))

An Indian child's tribe is a required member of the child's Child and Family Team required to be consulted on development of the child's case plan and must be contacted concerning placement options when foster care placement is or may be required. (WIC §§ 16501a)(4); 727.1(a).)

You can find culturally relevant services at <http://www.courts.ca.gov/5807.htm>.

III. ICWA's requirements other than inquiry apply only to 602 cases where the child is in foster care or at risk of entering foster care AND one of the following:

1. The proceeding arises out of conduct which would not be criminal if committed by an adult;
2. The court is setting or considering setting a hearing to terminate parental rights; or
3. The court makes a specific finding that the foster care placement is based entirely on conditions within the child's home.

In these cases, and only in these cases, you must comply with all the substantive ICWA requirements¹ in addition to the duties of inquiry, further inquiry and protection of legal rights of all Indian children in foster care discussed above.

IV. ICWA Notice Requirements

- A. You must send notice in form ICWA-030 to the child's parents or guardians, the Indian custodian (if any), and the tribe(s) that the child may be a member or eligible for membership in (identified following inquiry and further inquiry), for any hearing that could result in a foster-care placement, termination of parental rights, pre-adoptive placement or adoptive placement. For all other hearings, once the child's tribe has been identified the tribe is entitled to the same notices as other parties. Because the detention hearing is considered an emergency proceeding, you are not required to delay the detention hearing to provide such notice (WIC § 224.1 (l).) However early notice to and contact with the child's tribe(s) is required for the report that must be submitted to the court and will allow a speedy determination of the child's tribal status and early identification of tribal resources that may be available to meet the child's needs, meet the requirements set out in section II above, and the *active efforts* requirements of ICWA. (25 USC § 1912(a); WIC, §§ 224.3, 319 (b); 727.4(a)(2); CRC 5.481(b).)
- B. *What to send:* Send mandatory form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*, including attachments and a copy of the petition and the report prepared for the hearing. (25 U.S.C. § 1912(c); WIC § 224.3(a)(5).)
- C. *Where/who to notice:* Notice must be sent to the child's parents, including the adoptive parents, the guardian(s), the Indian custodian (if any), the child's potential tribe(s), and in some cases the Sacramento area director of the BIA or the Secretary of the Interior. (See F. below).
- D. *How to send notice:* Notice must be sent by registered or certified mail, return receipt requested, but if a tribe intervenes in the case you may thereafter send notice to it in the same manner as to other parties.

¹ See *In re W.B.* (2012) 55 Cal.4th 30.

- E. *Where to send tribal notice:* When sending notices to the child's tribe(s), the notices must be addressed to the tribal chair or other tribal representative designated for receipt of ICWA notice. You can find a link to the most current list of agents for service of ICWA notice on the BIA website here: <https://www.bia.gov/bia/ois/dhs/icwa>. Send notice to all tribes of which the child may be a member or eligible for membership until the court confirms the child's tribe or if there is more than one tribe, the court determines which tribe is the child's tribe, after which notice need only be sent to that tribe. (WIC, §§ 224.2, 224.3; CRC 5.481(b).)
- G. *Purpose of notice:* The purpose of notice is to let the tribe(s) know of the involuntary child custody proceeding potentially involving an Indian child and allow the tribes to investigate to determine whether the child is a tribal member or eligible for membership and whether or not to participate in the proceedings. Therefore, it is important that the information you provide be complete and accurate. If it is not, your notice may be held to be inadequate. (25 USC § 1912(a); WIC, § 224.3; CRC 5.481(b).)
- H. *How to prove notice:* File with the court copies of all notices, with the certified mail receipts, any return receipts, and all responses from a tribe or the BIA. NOTE: It is not sufficient for you to state on the report that notice was sent.
- V. Detention Report Requirements for Indian Child in case when ICWA requirements apply** (25 U.S.C. § 1912(d); WIC, §§ 361.7, 636(c)(2); CRC 5.485(c).)
- A. Documentation to support your inquiry as to possible Indian ancestry and results of inquiry; and
- B. Documentation to support the required court findings regarding *reasonable efforts* and *active efforts* to prevent removal.
- VI. Disposition Report Requirements If an Indian Child Is Involved and It Is Probable the Child Will Be Entering Foster Care or Is Already in Foster Care**
- A. Document any further inquiry efforts you have made to determine if an Indian child is involved by completing and attaching ICWA-010(A) to the disposition report;
- B. Prepare a case plan in collaboration with the CFT within 60 days of removal or by the date of the dispositional hearing, whichever occurs first, that includes resources and services that are remedial, rehabilitative, and culturally specific to the Indian child's family and designed to prevent the breakup of the Indian family. (25 USC § 1912(d); WIC, § 361.7; CRC 5.485(c).) In preparing the case plan, you must solicit and integrate the input of the child's identified Indian tribe. (CRC 5.785(c)(2));
- C. Comply with ICWA notice requirements discussed in section IV above;
- D. Obtain a qualified expert witness (QEW) meeting the requirements of section VII(B) below to testify at the hearing;
- E. Make efforts to obtain a placement that complies with the ICWA placement preferences set out in section VII(D) and (E) below and document those efforts in your dispositional report; and
- F. Document in the report your active efforts and reasonable efforts and make recommended legal findings for the court to adopt. (25 U.S.C. § 1912(d); WIC, §§ 361.7, 706.5(a) and (b), 706.6.)
- VII. Placement Requirements**
- A. *ICWA preferences:* Where ICWA applies, the foster care placement of an Indian child requires placement in accordance with the ICWA preferences as further discussed in D below.
- B. *Evidentiary standard:* Where ICWA applies, the standard to support foster care placement is proof by clear and convincing evidence, including the testimony of at least one qualified expert witness, that, taking into account the prevailing social and cultural standards of the child's tribe, continued custody of the child with his or her parent or Indian custodian is likely to result in serious emotional or physical damage to the child. (25 U.S.C. § 1912(e); WIC, §§ 361, 361.31, 361.7(c); CRC 5.485(a).)
- C. *Qualified Expert Witness Testimony:* A QEW must be knowledgeable in the prevailing social and cultural standards of the Indian child's tribe, including that tribe's family organization and child-rearing practices. Persons most likely to meet the requirements are: 1) a person designated by the tribe as having the necessary expertise; 2) a member or citizen of the tribe recognized by the tribal community as having the necessary expertise; 3) another expert having substantial experience in the delivery of child and family services to Indians, AND with extensive knowledge of the prevailing social and cultural standards and child-rearing practices of the Indian child's tribe. NOTE that an employee of your probation department cannot serve as a QEW. (25 USC §1912 (e); WIC, § 224.6; CRC 5.485(a).)
- D. *Placement Preferences:* As with any child, the placement should be the least restrictive setting that best approximates a family and where the child's special

needs, if any, may be met. Unless the child's tribe has by resolution specified a different preference, preference must be given in order of priority to placement with (1) a member of the Indian child's extended family; (2) a foster home licensed, approved, or specified by the Indian child's tribe; (3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (4) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs. If no placement is available that meets these preferences, efforts must be made to place the child with a family committed to preserving the child's family ties and tribal relations. (25 USC § 1915(b); WIC, § 361.31; CRC 5.485(b).)

- E. *Documentation of efforts regarding placement:* Because the court must make a finding that the placement accords with ICWA, you must document in your report the efforts made to find a placement that meets the preferences of ICWA and the good cause for deviating from priority placements. These efforts would include contacts with members of the child's extended family, contacts with the child's tribe(s) seeking input and resources for placement, and contacts with other relevant Indian organizations. (See IID for resources.) These efforts should be made and documented each time there is a change in the Indian child's placement. (WIC, § 361.31; CRC 5.482(f).)

VIII. Status Review, Permanency Planning, and Postpermanency Planning Hearing Requirements

- A. Document further inquiry efforts you have made to determine if an Indian child is involved by completing and attaching ICWA-010(A) to the disposition report;
- B. Provide notice in accordance with section IV above; and
- C. Prepare and file a report with recommended legal findings and orders supported by evidence of continued compliance with:
1. Reasonable and active efforts requirement discussed in IID above; and
 2. Efforts to find a placement that complies with ICWA preferences as discussed in VIID above.

IX. Termination of Parental Rights Requirements (WIC, §§ 366.26; 727.31)

- A. Provide evidence supported by the testimony of at least one QEW **beyond a reasonable doubt** that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
- B. Prepare and file a report with recommended legal findings and orders supported by evidence of continued compliance with:
1. *Reasonable efforts* and *active efforts* requirements discussed in IID above (25 USC § 1912(d); WIC, §§ 361.7, 366.26(c)(2)(B); CRC 5.485(a)); and
 2. *Adoptive preferences:* Absent good cause to the contrary, for any adoptive placement of an Indian child preference of placement shall be given in priority order to (1) a member of the child's extended family, (2) other members of the Indian child's tribe or (3) other Indian families. (25 USC § 1915(a); WIC, § 727.3.)
- C. *Good cause not to terminate parental rights:* State law now recognizes that many tribal cultures do not believe in the termination of parental rights. Accordingly, it is good cause not to terminate parental rights if the termination would interfere with a connection to tribal community or membership or the child's tribe has identified guardianship, long-term foster care, or another permanent plan as the preferred plan for the child. (WIC, § 366.26(c)(1)(B)(vi); CRC 5.725.(2)(vi).)

State and Tribal Court Collaboration on Juvenile Delinquency Healing to Wellness Courts

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Panelists:

- Honorable Dean Stout, Chief Judge of the Bishop Paiute Tribal Court
- Honorable Stephen M. Place, Presiding Judge, Inyo County Superior Court
- Kristina Pacheco, Wellness Courts Specialist, Tribal Law and Policy Institute
- Anna Clough, Co-Director, Tribal Youth Resource Center, Juvenile Wellness Courts Lead

Objectives of Today's Presentation

1. Provide an overview of Tribal Healing to Wellness Courts, with consideration to both adult and juvenile approaches.
2. Discuss the need for collaboration to support effective Wellness Court referral and resource identification.
3. Hear a dialogue with judicial partners from the Bishop Paiute Tribe and Inyo County California.

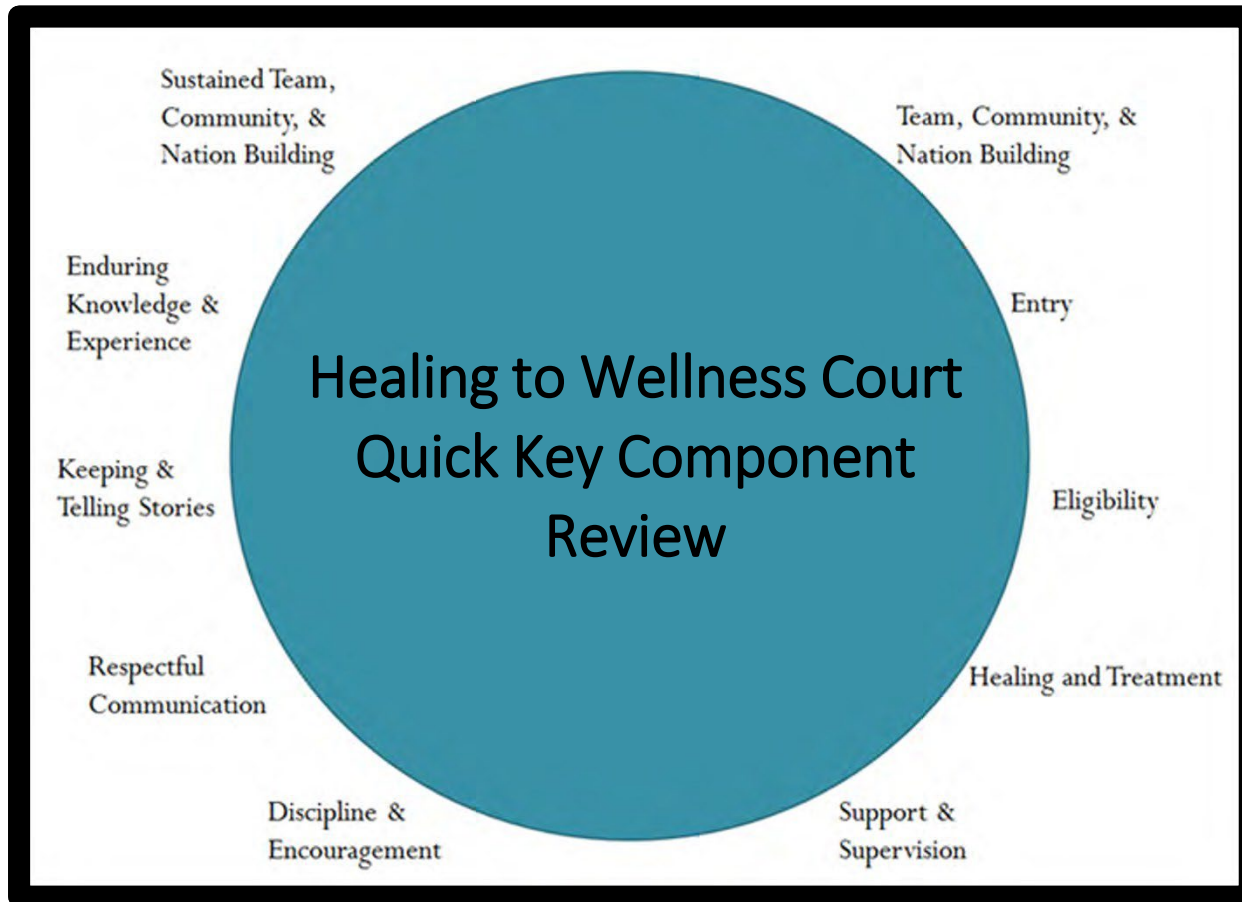
The “Why”

- Sovereignty is the ability to regulate the community within a territory. It is also the responsibility to do so. Particularly, communities have a responsibility to protect children and their families.
- Consideration for Federal, State, and Tribal statutory and regulatory provisions pertaining to tribal youth and their families.
- The need to address needed system-change to better serve and support tribal youth. Wellness courts are one avenue.

Tribal Healing to Wellness Courts

- Tribal Healing to Wellness Courts are an adaptation of the Drug Court Model.
- A non-adversarial process to address drug/alcohol use and crime prevalent in Indian Country.
- Innovative and collaborative legal process that adapts drug court concept and key components to meet tribal criminal, juvenile, and child welfare needs.

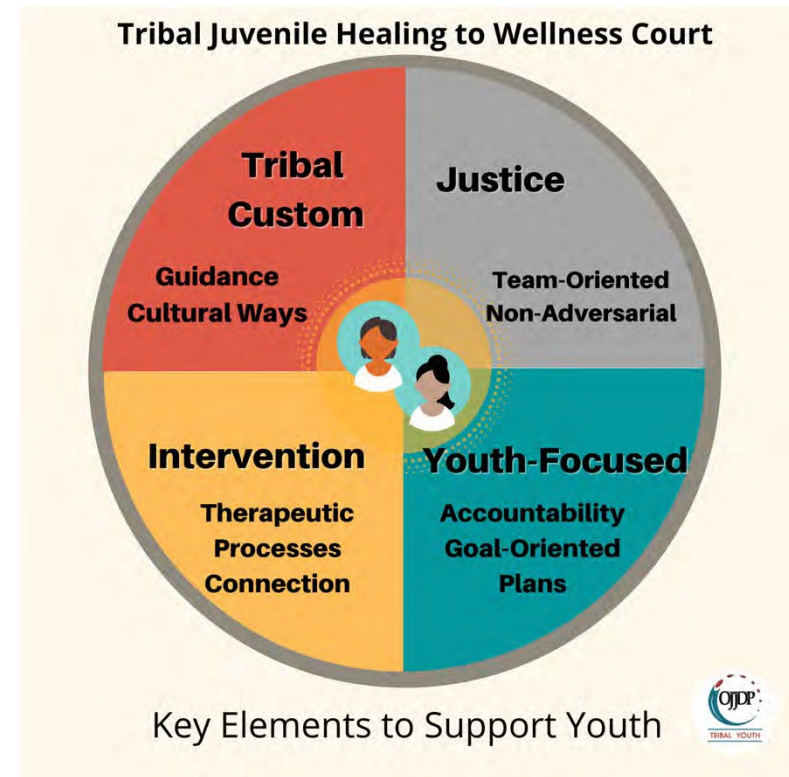
Tribal Healing to Wellness Courts



Tribal Healing to Wellness Courts

Juvenile-Specific Considerations:

- Family Services
- Method of Supervision
- Treatment Options
- Team Member Roles/Responsibilities
- Juvenile-Specific Statutory Requirements



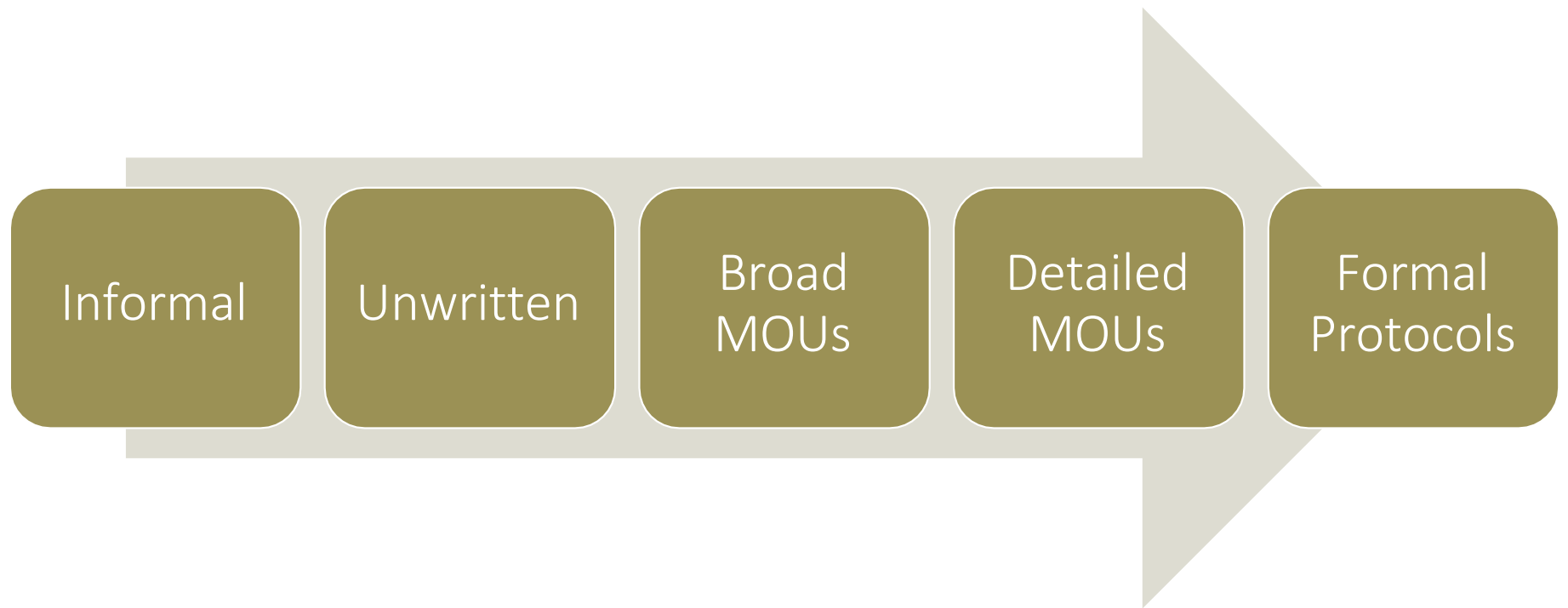
Collaboration in the Wellness Court

The Healing to Wellness Court model is premised on bucking the siloed status quo in favor of multi-disciplinary collaboration to improve the outcomes of court-involved substance abusers. Collaboration is essential. Intergovernmental collaboration is merely an extension of this premise. (van Shilfgaarde, 2021)

Collaboration

- Deliver culturally appropriate services/increase cultural competency/literacy
- Provide geographically relevant services
- Enhance supervision
- Coordinate multiple case plans
- Leverage legal incentives
- Maximize shared resources
- Respond to unique community needs
- Stay ahead of issues
- Increase funding opportunities
- Coordinate jurisdictional authority to provide necessary treatment and supervision
- Build positive relationships that can benefit other programs
- Exercise sovereignty

(Lauren van Shilfgaarde, "Tribal Healing to Wellness Courts: Intergovernmental Collaboration, 2021)



Kinds of Collaboration

Considerations for Tribal/State Collaboration in Wellness Court



Pre- or Post-Adjudication

Equal protection

Retention of carrot and stick

Coordination between attorneys



What triggers a referral? How will tribal members be identified?



Will probation and Wellness Court case plans/requirements be consolidated?



What authority will the Tribe have to issue incentives and sanctions?



Discharge – What's the incentive? Who authorizes?



Communication – How is case progression communicated? How is prior case info shared?

Bishop Paiute Tribe Juvenile Healing to Wellness Court



- Funding- FY2019 OJJDP Juvenile Healing to Wellness Court Grant
- Collaborative referral process between the Bishop Paiute Tribal Court and Inyo County Juvenile Probation to support youth diversion and access to treatment and other needed services.
- Early implementation phase with ongoing collaboration and communication between the Bishop Paiute Juvenile Probation Office and Inyo County Juvenile Probation Office.

Bishop Paiute Tribe and Inyo County Collaboration to Support Tribal Youth

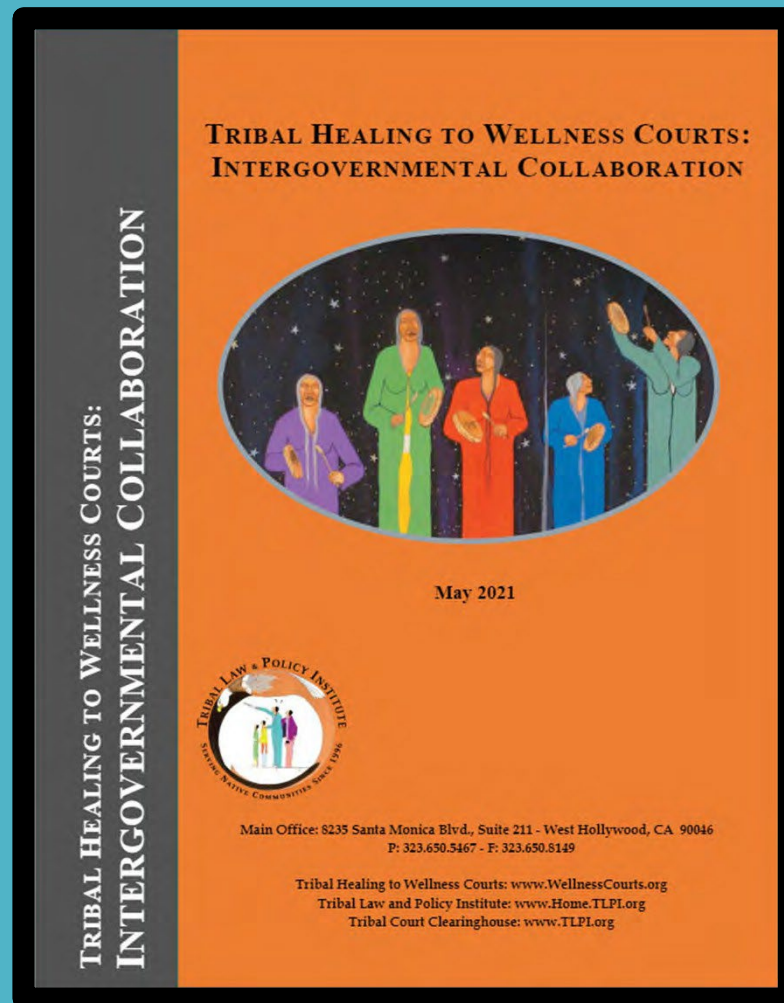
- Purpose/Local Needs
- Relationships
- Scope- Key Collaborators (Early Development)
- Mechanics
- Strengths
- Challenges
- Hopes for the Future

Questions?

- Thank you for your presence today.

Tribal Healing to Wellness Courts: Intergovernmental Collaboration

Published May 2021



Other Resources

Anna Clough, [Tribal Juvenile Healing to Wellness Court Handbook: Practical Planning and Supportive Tools](#), OJJDP Tribal Youth Training and Technical Assistance (2017)

William Thorne and Suzanne Garcia, [Crossing the Bridge: Tribal-State-Local Collaboration](#) (Tribal Law and Policy Institute, February 2019).

Jennifer Fahey, Hon. Korey Wahwassuck, Allison Leof, and Hon. John Smith, [Joint Jurisdiction Courts: A Manual for Developing Tribal, Local, State & Federal Justice Collaborations, 2nd ed.](#) (Project T.E.A.M., Center for Evidence-based Policy, Oregon Health & Science University, 2018).

Hon. Korey Wahwassuck, Hon. John P. Smith, and Hon. John R. Hawkinson, [Building a Legacy of Hope: Perspectives on Joint Tribal-State Jurisdiction](#), 36:2 WILLIAM MITCHELL L. REV. 859 (2010)

Hon. Korey Wahwassuck, [The New Face of Justice: Joint Tribal-State Jurisdiction](#), 47 WASHBURN L. J. 733 (2008).

Jennifer Walter and Heather Valdez Freedman, [Emerging Strategies in Tribal-State Collaboration: Barriers and Solutions to Enforcing Tribal Protection Orders: December 6, 2017 Meeting Report](#) (Tribal Law and Policy Institute, February 2019).

Heather Valdez Singleton, Kori Cordero, and Carrie Garrow, [Tribal State Court Forums: An Annotated Directory](#) (Tribal Law and Policy Institute, January 2016).

Carole Goldberg and Duane Champagne, [Promising Strategies: Tribal-State Court Relations](#) (Tribal Law and Policy Institute, March 2013).

Carole Goldberg and Duane Champagne, [Public Law 280](#) (Tribal Law and Policy Institute, March 2013).



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Disparities in Tribal Youth Incarceration

Tribal Youth Incarcerated 3X More Often Than White Youth

Tribal youth¹ were more than three times as likely to be detained or committed in juvenile facilities as their white peers, according to nationwide data collected in October 2019 and recently released. In 2010, Tribal youth's incarceration rate was 2.9 times as high as their white peers. In 2019, that ratio grew to 3.3, a 14% increase.²

There are 11 states with at least 8,000 Tribal youths,³ and Tribal youth are more likely to be in custody than white youth in all but two of these states: New Mexico and Texas.

Juvenile facilities, including 1,510 detention centers, residential treatment centers, group homes, and youth prisons⁴ held 36,479 youths as of October 2019. (These data do not include the 653 people under 18 in prisons at year-end 2019⁵ or the estimated 2,900 people under 18 in jails at midyear 2019.⁶) Between 2010 and 2019, juvenile placements fell by 48%. During these years, white youth placements declined faster than Tribal youth placements (48% vs. 39%), resulting in the growth of an already significant disparity.

Nationally, the youth placement rate was 114 per 100,000. The Tribal youth placement rate was 236 per 100,000, compared to the white youth placement rate of 72 per 100,000.

In the 11 states with at least 8,000 Tribal youths, disparities grew by more than 10% in four states and decreased by at least 10% in six states.

- In seven states, Tribal youth are at least three times more likely to be held in placement as are white youth: Minnesota, North Carolina, South Dakota, California, Washington state, Montana, and Alaska.
- North Carolina and California have seen their racial disparity more than double.
- Three states decreased their racial disparity by at least one-quarter: Montana, Texas, and New Mexico.

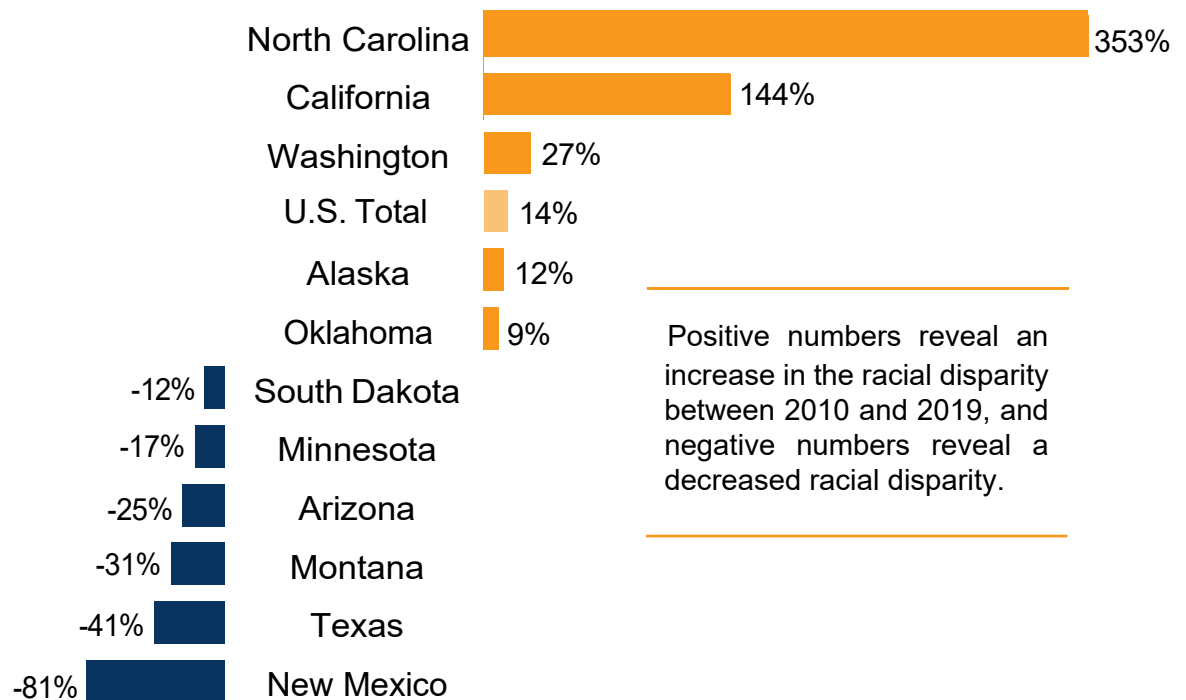
Tribal/White Youth Placement Rate per 100,000 (2019)

State	Tribal Rate	White Rate	T/W Disparity
Alaska	693	219	3.2
Arizona	101	62	1.6
California	212	48	4.4
Minnesota	852	73	11.7
Montana	332	100	3.3
New Mexico	62	277	0.2
North Carolina	296	37	8.0
Oklahoma	105	53	2.0
South Dakota	486	109	4.5
Texas	34	74	0.5
Washington	257	60	4.3
U.S. Total	236	72	3.3

The table above and the figure on page 2 are limited to the 11 states with at least 8,000 Tribal youths between 10- and 17-years old.

Numbers in the last column reveal the extent to which Tribal youth are more likely to be incarcerated than white youth. For example, in Alaska, Tribal youth are 3.2 times more likely to be held in a juvenile facility than their white peers. Numbers less than one reveal white youth are more likely than Tribal youth to be held in that state.

Change in Tribal/White Placement Disparity; 2010 vs. 2019



- 1 For the purposes of this fact sheet, all "Tribal youth" are by definition non-Hispanic/Latinx. (The underlying dataset labels them as American Indian.) See: Sickmund, M., Sladky, T.J., Puzzanchera, C., & Kang, W. (2021). *Easy Access to the Census of Juveniles in Residential Placement, Glossary*. National Center for Juvenile Justice. <https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/glossary.asp#Race>. There are roughly 620,000 American Indian youths in the United States, 52% of whom are not Latinx. American Indian youth who claim Latinx ethnicity are included only among the Latinx/Hispanic data; there is no option available to review disparities for all 620,000 American Indian youths in a comprehensive category.
- 2 Most data in this report are derived from Sickmund, M., Sladky, T.J., Puzzanchera, C., & Kang, W. (2021). *Easy Access to the Census of Juveniles in Residential Placement*. National Center for Juvenile Justice. <https://www.ojjdp.gov/ojstatbb/ezacjrp/>
- 3 Puzzanchera, C., Sladky, A. and Kang, W. (2020). *Easy Access to Juvenile Populations: 1990-2019*. National Center for Juvenile Justice. <https://www.ojjdp.gov/ojstatbb/ezapop/>
- 4 Puzzanchera, C., Hockenberry, S., Sladky, T.J., and Kang, W. (2020). *Juvenile Residential Facility Census Databook*. National Center for Juvenile Justice. <https://www.ojjdp.gov/ojstatbb/jrfcdb/>
- 5 Carson, E.A. (2020). *Prisoners in 2019*. Bureau of Justice Statistics. NCJ 25115. <https://bjs.ojp.gov/content/pub/pdf/p19.pdf>
- 6 Zeng, Z. and Minton, T. (2021). *Jail Inmates in 2019*. Bureau of Justice Statistics. NCJ 255608. <https://bjs.ojp.gov/content/pub/pdf/ji19.pdf>

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