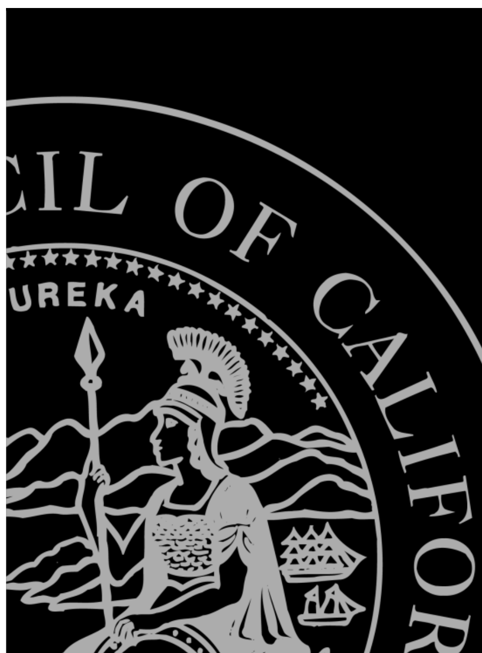

Tribal Court-State Court Forum Meeting

JUNE 11, 2015
9:30 A.M. TO 4:30 P.M.
SAN FRANCISCO, CA

JUDICIAL COUNCIL OF CALIFORNIA

TRIBAL COURT–STATE COURT FORUM

TRIBAL COURT–STATE COURT FORUM MEETING

JUDICIAL COUNCIL OF CALIFORNIA
TRIBAL COURT–STATE COURT FORUM

June 11, 2015
9:30 a.m. to 4:30 p.m.
Milton Marks Conference Center
Lower Level, San Diego Room
San Francisco, CA

Agenda

THURSDAY, JUNE 11

9:30 – 9:35 a.m. **Invocation**
Hon. Richard C. Blake, Cochair, Hoopa Valley Tribal Court

9:35 – 9:45 a.m. **Welcome and Introductions**
- Approve February 19th and April 16th Meeting Minutes

Hon. Richard C. Blake
Hon. Dennis M. Perluss, Cochair, Court of Appeal, Second Appellate District

9:45 – 10:30 a.m. **Session 1: Local Collaborations—Modeling Tribal/State/Federal Collaboration**
Facilitator: Hon. Cynthia Gomez, Tribal Advisor, Office of Governor Edmund G. Brown

Federal and State Agencies Join Yurok Tribe in Humboldt County to Address Environmental Degradation and Oust Pot Growers
Hon. Abby Abinanti, Chief Judge, Yurok Tribe
Officer Chance Landreneaux, DEA TFO/Humboldt County Drug Task Force, Humboldt County Sherriff's Department
Officer Tim Sanderson, Yurok Public Safety, Yurok Tribe

Los Angeles Roundtable: A Court-Coordinated Community Response to Indian Child Welfare Cases
Hon. Amy Pellman, Judge, Los Angeles Superior Court
Ms. Vida Castaneda
Mr. Tom Lidot, TribalSTAR

Action Items: Identify strategies to replicate collaborations.

10:30 – 11:30 a.m. **Session 2: Domestic Violence: Promoting Collaboration**
Mr. Bill Denke, President, Tribal Police Chiefs Association
Hon. Leonard P. Edwards (Ret.), Volunteer Mentor Judge
Hon. William Kockenmeister, Chief Judge, Bishop Paiute Tribe

Action Items: Identify strategies to establish and sustain law enforcement collaborations. Make education recommendations.

11:30 – 11:45 a.m.	**Break to Get Lunch**
11:45–12:45 p.m. Working Lunch	**Session 3: First Joint-Jurisdictional Court in California** *Hon. Suzanne N. Kingsbury, Presiding Judge, El Dorado Superior Court* *Hon. Christine Williams, Chief Judge, Shingle Springs Band of Miwok Indians* *Action Item: Solicit volunteers to replicate model*
12:45 – 1:15 p.m.	**Session 4: Celebrating Success Five Years Later and Strategies for Building on Success** *Facilitators: Hon. Richard C. Blake, Hon. Dennis M. Perluss, and Ms. Jennifer Walter* *Topics:* (1) Policies (2) Partnerships (3) Education *Action Items: Adopt communication toolkit. Using worksheet, in small groups at your lunch tables, reflect together on accomplishments by topic area, assess progress re policies, partnerships, education, and recommend next steps.*
1:15 – 2:15 p.m.	**Session 5: Ending Violence So Children Can Thrive (Final Report issued by the U.S. Attorney General's Task Force on American Indian/Alaska Native Children Exposed to Violence) – Federal Government Focus** *Presenters:* *Ms. Amber Blaha, Assistant Section Chief, Law & Policy Section, Environment & Natural Resources Division, U.S. Department of Justice* *Hon. Anita Fineday JD, MPA, Managing Director, Indian Child Welfare Program, Casey Family Programs and Member of the Advisory Committee to the U.S. Attorney General's Task Force on American Indian/Alaska Native Children Exposed to Violence Task Force* *Hon. Anne McKeig, Presiding Judge in Family Court, 4th Judicial District, Minnesota* *(To view final report, http://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2015/03/23/ending_violence_so_children_can_thrive.pdf)* *Action Item: Make recommendations to our federal justice partners.*
2:15 – 2:30 p.m.	**Break**

2:30 – 3:30 p.m. **Session 6: Indian Child Welfare Act: New Guidelines, New Regulations, Next Steps in Implementation- California Focus**

Facilitator: Ms. Ann Gilmour, Attorney, Tribal/State Programs

Presenters:
Ms. Rose Margaret Orrantia, TribalSTAR
Hon. Amy Pellman
Ms. Elizabeth Sandoval, Senior Staff Attorney, California Department of Social Services
Hon. Christine Williams, Chief Judge, Shingle Springs Band of Miwok Indians
Hon. Christopher G. Wilson, Judge, Humboldt Superior Court

Action Item: Using worksheet, individually complete worksheet to recommend policies, partnerships, and education to implement the regulations within the federal and state statutory framework.

3:30 – 4:30 p.m. **Session 7: Psychotropic Medication and Indian Children—"Drugging Our Kids"**

Dr. Art Martinez, Clinical Psychologist
Ms. Karen de Sá, Staff Writer, San Jose Mercury News

To view documentary in advance of the forum meeting:
http://webspecial.mercurynews.com/druggedkids/?page=pt5)

Action Item: Consider pending legislation and whether there are opportunities to propose amendments to support the policy of collecting data on Native American children affected by psychotropic medication or other recommended policies.

4:30 p.m. Adjourn

The forum is supported with funds from the Office on Violence Against Women, U.S. Department of Justice that are administered through the Governor's Office of Emergency Services (Cal OES), the U.S. Department of Health and Human Services, Court Improvement Program, and the California Department of Social Services.

Meeting Minutes

JUDICIAL COUNCIL OF CALIFORNIA

TRIBAL COURT–STATE COURT FORUM

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TRIBAL COURT–STATE COURT FORUM

MINUTES OF OPEN MEETING

February 19, 2015
12:15-1:15 p.m.
By Conference Call

Advisory Body Members Present:	*Hon. Dennis M. Perluss, Cochair,* Hon. Abby Abinanti, Ms. Jacqueline Davenport, Hon. Kimberly A. Gaab, Hon. Suzanne N. Kingsbury, Hon. Anthony Lee, Hon. Deborah A. Ryan, Hon. Deborah L. Sanchez, Hon. Christine Williams, Hon. Christopher G. Wilson, and Hon. Daniel Zeke Zeidler
Advisory Body Members Absent:	*Hon. Richard Blake, Cochair,* Ms. April Attebury, Hon. Mitchell L. Beckloff, Hon. Jerilyn L. Borack, Hon. Leonard P. Edwards, Hon. Bill Kockenmeister, Hon. Michael Golden, Hon. Cynthia Gomez, Mr. Olin Jones, Hon. John L. Madigan, Hon. Lester Marston, Hon. David E. Nelson, Hon. Kimberly J. Nystrom-Geist, Hon. Allen H. Sumner, Hon. Juan Ulloa, Hon. Claudette C. White, Hon. Joseph J. Wiseman, and Hon. Sarah S. Works
Others Present:	Ms. Carolynn Bernabe, Ms. Vida Castaneda, Ms. Kimberly DaSilva, Ms. Ann Gilmour, Ms. Marcia Hurd, Mr. Courtney Tucker, and Ms. Jennifer Walter

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:17 p.m., and took roll call.

Approval of Minutes

The Tribal Court-State Court Forum October 9, 2014 and December 18, 2014 meeting minutes.

DISCUSSION AND ACTION ITEMS (ITEMS 1–5)

Item 1
Cochairs Report

- Annual Agenda

Presenters: Hon. Dennis M. Perluss
Ms. Jennifer Walter

Ms. Walter described the forum's annual agenda and highlighted that the first part of the document lists the forum's projects for the coming year and the second part describes the forum's accomplishments. She explained that this year's annual agenda groups projects under three forum objectives that are aligned with the California Judicial Council's strategic plan. These three objectives are as follows:

1. Make policy recommendations that enable tribal and state courts to improve access to justice, to issue orders, and to enforce orders to the fullest extent allowed by law.
2. Increase tribal/state partnerships that identify issues of mutual concern and proposed solutions.
3. Make recommendations to committees developing judicial education institutes, multi-disciplinary symposia, distance learning, and other educational materials to include content on federal Indian law and its impact on state courts, including interjurisdictional issues.

Justice Perluss expressed that this new way of organizing projects under policy recommendations, tribal state partnerships, and judicial education will be easier for members, the council, and the public to follow. Ms. Walter walked the members through the document and then asked for their input. Forum members raised the serious fiscal challenge that tribes in California, as a Public Law 280 State, have in building tribal justice capacity. Members expressed appreciation for the Forum E-Update that lists grant opportunities for tribal courts, state courts, and tribal/state partnerships, but expressed the need for the identification of additional resources. Members discussed the need for a strategy that involves partnering with the federal government, the state, and private foundations to address the lack of funding for tribal justice systems nationwide. One member mentioned that the Judicial Council staff agency sometimes has funding opportunities that can be shared with tribal courts. For example, existing funding for pretrial release and reentry courts may provide an opportunity for tribal courts and state courts to partner to leverage these funds. After discussion, the forum agreed to revise the annual agenda to include two new projects: (1) under other policies, to develop a proposal to promote the education of federal Indian law in California law schools and (2) under tribal/state partnerships, develop and implement a strategy to increase resources for tribal courts and tribal court/state court partnerships.

Action Items: Staff directed to revise the annual agenda, send article on Federal Indian Law and the State Bar to the forum, and explore funding through reentry courts and other opportunities.

Item 2
Attorney General Holder Announces ICWA Initiative
Presenter: Marcia Hurd, Senior Counsel to the Director, Office of Tribal Justice
United States Department of Justice

Ms. Hurd gave a brief summary of her professional background as a prosecutor in Montana (7 years) represented social services agencies, guardian ad litem (2 years) for abused and neglected children, and U.S. Department of Justice (DOJ) in Montana (14 years), and most recently with DOJ-main justice, within the Office of Tribal Justice, which is the smallest office at DOJ. With only eight attorneys, the Office of Tribal Justice serves as the primary point of contact for Indian tribes, with the Department, as well as the resident legal experts to the U.S. Attorney General on issues pertaining to federal Indian law.

In December 2014, at the Tribal Nations Conference, the Attorney General announced the ICWA Initiative to promote compliance with the Indian Child Welfare Act.

The initiative involves the following 3 DOJ departments: OTJ, Civil Rights Division, and the Environmental and Natural Resources Division. The initiative will be holding a summit in

March and will bring together Health and Human Services, the Department of the Interior, and OTJ. The purpose of this summit is to bring all involved cabinet level departments together to coordinate and focus their resources on ICWA compliance. By December 2015, each department will have a strategic plan that can be implemented in a coordinated fashion with the other departments to improve compliance with ICWA.

The topics for the summit, which are also the activities of the Initiative, are as follows: (1) data gathering; (2) training for judges, parents, and state attorneys; (3) legal practice-- actively investigating ICWA cases and bringing civil rights cases, filing amicus briefs, and intervening; and (4) funding.

Ms. Hurd also informed members that HHS has developed judicial training that will be rolled out by the ABA and the National Council on Juvenile and Family Court Judges. David Kelly at Health and Human Services is the contact for this judicial education.

Ms. Hurd asked members what type of training should be offered in California. Members raised the need for specialized, mandatory training for attorneys representing Indian children and Indian parents. The discussion turned quickly to the two key components of the Initiative: civil rights and funding. Members discussed how the federal law created a right and conferred party status on tribes, but failed to provide funding for tribes to pay for lawyers. Members expressed doubt that training for lay tribal advocates would change anything and urged that this gap in funding be addressed. Given that the agency, parents, and children all have attorneys and tribes do not, no amount of training can create a level-playing field, and the result is devastating to tribes, because they continue to lose their children in state court proceedings.

Ms. Hurd concluded by inviting members to share ideas with her to further the forum-DOJ collaboration and offered to introduce the forum to federal representatives to continue the funding dialogue raised in agenda item 1.

Action Items: Ms. Walter to follow up with Ms. Hurd.

Item 3
Indian Child Welfare Act: Update on Proposed Draft Transfer Rule
Presenter: Ms. Ann Gilmour

Ms. Gilmour presented the revised draft transfer rule proposal after receiving input from the Appellate Advisory Committee, Family and Juvenile Law Advisory Committee, Probate Advisory Committee, and Mental Health Advisory Committee. The amendments are proposed in response to provisions of Senate Bill 1460 (stats. 2014; ch.772), which amended section 305.5 of the Welfare and Institutions Code and added sections 381and 827.15 concerning the transfer of juvenile court proceedings involving an Indian Child from the jurisdiction of the juvenile court to a tribal court, and in response to the decision of the first district Court of Appeal in *In re. M..M.* (2007)154 Cal.App.4th 897, which implicates an objecting party's right to appeal a decision granting a transfer to tribal court.

Judge Zeidler asked staff to delete the word, *court*, in rule 5.483(g)(2)(D) to clarify that the child's case file is intended by the rule.

Action Items: Ms. Gilmour to make revision to rule 5.483(g)(2)(D) and continue working with the other committees to prepare the proposal for public circulation.

Item 4
Blue Lake Tribe's Legislative Proposal to Amend Family Code to Authorize Tribal Court Judges to Solemnize a Marriage
Presenter: Hon. Lester J. Marston

Action Item: Deferred to the next meeting.

Item 5
CJER Governing Board Meeting Update
Presenter: Hon. Kimberly A. Gaab

Judge Gaab, who is a member of the forum and the CJER Governing Committee (committee), gave an update on the forum's request to the committee that it consider integrating federal Indian law into CJER educational programs and resources. Members of that committee acknowledged the need to have these resources and welcomed the forum's judicial toolkit on federal Indian law, which is posted online at http://www.courts.ca.gov/27002.htm. The committee agreed that its members who are on curriculum committees will use the toolkit as a roadmap to develop a plan for how federal Indian law will be incorporated into existing CJER materials and programming.

Item 6
Brainstorming Workshop Ideas for Beyond the Bench 23: User Experience
Dec. 2-4, 2015 in Southern California
Facilitator: Ms. Ann Gilmour

Ms. Gilmour described Beyond the Bench, an annual conference sponsored by the Center for Families, Children & the Courts that brings together multidisciplinary audiences to develop a systemic perspective on common issues. This year's conference's theme will be the court user and will feature 75 concurrent sessions. After reviewing some of the topics identified for this year's conference, Ms. Gilmour solicited additional topics and offered to assist forum members in submitting workshop proposals.

Action Item: Members to submit workshop proposals

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:11 p.m.

Pending approval by the advisory body on June 11, 2015.

JUDICIAL COUNCIL
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TRIBAL COURT–STATE COURT FORUM

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TRIBAL COURT–STATE COURT FORUM

MINUTES OF OPEN MEETING

April 16, 2015
12:15-1:15 p.m.
By Conference Call

Advisory Body Members Present:	*Hon. Richard Blake, Cochair, Hon. Dennis M. Perluss, Cochair,* Hon. Abby Abinanti, Hon. Kimberly A. Gaab, Hon. Michael Golden, Hon. Cynthia Gomez, Hon. Suzanne N. Kingsbury, Hon. Anthony Lee, Hon. Lester Marston, Hon. David E. Nelson, Hon. Deborah A. Ryan, Hon. Juan Ulloa, Hon. Christine Williams, Hon. Christopher G. Wilson, Hon. Joseph J. Wiseman, and Hon. Daniel Zeke Zeidler
Advisory Body Members Absent:	Ms. April Attebury, Hon. Mitchell L. Beckloff, Hon. Jerilyn L. Borack, Ms. Jacqueline Davenport, Hon. Leonard P. Edwards, Hon. Bill Kockenmeister, Mr. Olin Jones, Hon. John L. Madigan, Hon. Kimberly J. Nystrom-Geist, Hon. Deborah L. Sanchez, Hon. Allen H. Sumner, Hon. Claudette C. White, and Hon. Sarah S. Works
Others Present:	Ms. Carolynn Bernabe, Ms. Vida Castaneda, Hon. Anita Fineday, Ms. Ann Gilmour, Ms. Anne Ronan, Mr. Scott Stevens, and Ms. Jennifer Walter

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:17 p.m., and took roll call.

Approval of Minutes

No meeting minutes to approve.

DISCUSSION AND ACTION ITEMS (ITEMS 1–5)

Item 1
Cochairs Report

- The Executive & Planning Committee of the Judicial Council approved the 2015 forum annual agenda. During the meeting, the committee chair expressed his appreciation for the contribution and work of the forum.
- The Rules and Projects Committee of the Judicial Council approved for public circulation the forum's rule proposal, Family and Juvenile Law: Transfers to Tribal Court Under Indian Child Welfare Act.
- In response to a recent shooting involving the possession of a gun in violation of a tribal protection order, the National American Indian Tribal Court Judges Association issued a press release calling for direct access to federal and state protection order registries. In the State of Washington, the Washington State Police controls access to the protection order

registry. Tribal police departments are restricted from accessing the system because the language of state law does not include tribes as approved agencies. Following the decision to bar tribes from entering tribal protection orders in the state database, some tribes in Washington developed a protocol with local county superior courts by which the county court clerk enters the tribal orders into the state system. This system is not flawless and can result in misses and delays in the registration of tribal protection orders. Similarly, in California, tribes do not have direct access to these databases; the forum has recommended and the California Judicial Council has implemented work-around solutions as in Washington.
The Bureau of Indian Affairs recently issued Indian Child Welfare Act guidelines and proposed regulations. The forum reviewed a draft comment on the regulations, and after discussion, made several revisions relating to limiting judicial discretion, barring emergency removals longer than 30 days after a child is confirmed to be an Indian child, and other comments received from an appellate research attorney. The forum also discussed and rejected proposed revisions that were inconsistent with California statute and case law. Subsequent to the meeting and after the final version of the comment was approved by the forum and presented jointly to the California Judicial Council by the forum and the Family and Juvenile Law Advisory Committee with the recommendation that the council submit the comment to the Bureau of Indian Affairs, a number of tribal court judges submitted separate comments that were not in agreement with the comment submitted by the council.

- Discussed a proposed strategy to increase resources for tribal justice capacity in California. The strategy entails forming a Tribal Judicial Leadership Group that would seek support from all tribal court judges and tribal leadership of federally recognized tribes with tribal courts in California. This leadership group would then advocate with one voice for tribal court resources from the federal government, foundations, and other entities. The leadership group would start by adopting a resolution describing how tribal justice systems in California are disproportionately funded, as compared to tribes in other non-Public Law 280 states, and then seek adoption of the resolution by all tribal court judges and tribal leaders in California.

Item 2
Casey Family Programs
Presenter: Hon. Anita Fineday JD, MPA, Managing Director, Indian Child Welfare Program, Casey Family Programs

Judge Blake introduced Judge Anita Fineday, who is managing director of the Indian Child Welfare Program at Casey Family Programs and formerly Chief Judge for the White Earth Tribal Court for 14 years. Judge Fineday described the Casey Family Programs as the nation's largest operating foundation started by Jim Casey, who founded UPS. While it is a foundation, it does not award grants, but rather provides direct services aimed at safely reducing the need for foster care. With over 400 employees nationwide and field offices in Arizona, California, Colorado, Georgia, Idaho, New York, Texas, and Washington, Casey Family Programs focuses on promoting child welfare system improvement. In terms of improving compliance with the Indian Child Welfare Act, Casey Family Programs works with every state in the country and 6 tribes. One of Casey’s current projects is assisting states, tribes, and counties in convening roundtables, bringing tribal and non-tribal community members together. Roundtables have been held in Arizona, Michigan, and Washington. In California, Casey will be working with the Los Angeles Superior Court’s existing Roundtable.

Judge Fineday also described the role of Casey in sponsoring Native youth to attend the Generation Indigenous Native Youth Challenge at the 2015 United National Indian Tribal Youth (UNITY) Midyear Conference where Native youth and organizations across the country came together to become a part of the Administration's Generation Indigenous (Gen-I) initiative by joining the National Native Youth Network — a White House effort in partnership with the Aspen Institute's Center for Native American Youth and the U.S. Department of the Interior. Judge Fineday also described Casey's Judicial Engagement Team, led by Judge Macias, and some of their work with Tribal Star in San Diego.

Item 3
Discussion about Promoting Indian Law Proficiency for Law Students
Presenter: Hon. Abby Abinanti
Paul Spruhan Article: "Indian Law on State Bar Exams In the Age of the Uniform Bar Examination" by Matthew L.M. Fletcher

Judge Abinanti opened the discussion by asking forum members whether they would support the inclusion of federal Indian law on the California bar exam. After discussion, forum members agreed and recommended that the forum send a letter to the California Bar Examiners (CBE) making this request.

Action Item: Jenny Walter to draft a letter to the CBE

Item 4
California Tribal Court Opinions—Discussion About Establishing a Voluntary Repository for Tribal Court Cases
Existing Databases for Tribal Court Opinions
Native American Rights Fund- National Indian Law Library
Native American Rights Fund - Tips on How to Find Tribal Court Opinions
Tribal Law and Policy Institute
Versuslaw.com
Westlaw and Lexis
Presenters: Hon. Joseph J. Wiseman
Ms. Jennifer Walter

Judge Wiseman opened the discussion by asking whether forum members would find it useful to have a California database or reporter for tribal court opinions or at least case summaries. Forum members raised issues about the cost of, and limited case decisions reported in, some of the databases. After discussion, forum members agreed it would be valuable for both tribal and state court judges to have a database or reporter for California tribal court opinions.

Action Item: Judge Wiseman to learn more about the existing databases and report back the process by which they will accept for publication opinions from tribal courts in California.

Item 5
Rule 5.660(d)(3)- Proposal to Amend to Include ICWA Education
Presenter: Hon. Christopher Wilson

Judge Wilson proposed that the forum recommend a rule revision to include mandatory education on ICWA for children's and parents' attorneys. After discussion, the forum concluded it would support this proposal.

Action Item: Jenny Walter to draft proposal and work with cochairs to explore best approach to recommending proposal.

Item 6
California Department of Social Services (CDSS) Tribal Consultation Policy
Presenter: Mr. Scott Stevens

Mr. Stevens described the impetus for establishing a tribal consultation policy. He explained that Governor Jerry Brown's Executive Order B-10-11 established that all state agencies develop a tribal consultation policy and appoint a tribal liaison to facilitate effective communication between Tribal Governments and state agencies and departments. Mr. Stevens described the CDSS tribal consultation policy, which the agency established in 2013 and unveiled at ICWA statewide conference in June 2013. The agency held four listening sessions with tribes and drafted the policy, making revisions consistent with tribal input. Mr. Stevens described some of the challenges in developing such a policy in California with 110 federally recognized tribes and urban Indians from federally recognized tribes out-of-state. He expressed appreciation for the agency's partners, including the Inter-tribal Friendship House, the American Indian Enhancement Team, Tribal Star, and Casey, as well as Vida Castaneda from the Tribal/State Programs at the Judicial Council of California. He described the agency's outreach efforts to the urban Indian populations in Los Angeles and the Bay Area. The agency will either adapt the current tribal consultation policy to include urban Indians or adopt a second policy. The updated consultation policy or policies will be made available after review by the California Health and Human Services Department.

Item 7 (Deferred)
Bishop Paiute Tribe- County Law Enforcement Relations
Presenter: Hon. William Kockenmeister

Complaint filed by California Indian Legal Services- Bishop Paiute Tribe v. Inyo County (E.D. Cal.)

Related Articles:
Tension Between Tribe and California Sheriff
Courthouse News Service (March 11, 2015)

Bishop Tribe supports officer; Inyo County has response
Sierra Wave Media (February 17, 2015)

Tribal Cop Facing Charges
The Inyo Register (January 28, 2015)

Item 8
Blue Lake Tribe's Legislative Proposal to Amend the Vehicle Code to Authorize the Department of Motor Vehicles to Accept a Marriage License Issued by a Tribal Court
Presenter: Hon. Lester J. Marston

Judge Marston described the legislative proposal (AB 445) and explained that it would be amended by the author to include a revision to the Family Code providing expressly that a tribal court judge has the authority to solemnize a marriage. He also described the case that gave rise to the legislative proposal. Judge Marston represented a tribal member who was refused a drivers license and passport under her married name because the Department of Motor Vehicle

would not accept a tribal court order solemnizing her marriage and changing her last name to her husband's. She was also unable to obtain a passport without a CA drivers license. Judge Marston reported that he will forward the amended proposal after it is heard by the Judiciary Committee. After discussion, the forum decided to circulate the legislative proposal for forum review, and at that time, likely recommend that the Judicial Council of California support the bill.

Action Item: Judge Marston to notify Jenny Walter when the bill has been amended so that it may be circulated to the forum for members' consideration.

Item 9 (Deferred)
Recognition and Enforcement of Tribal Protective Orders
Presenter: Mr. Olin Jones

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:17 p.m.

Pending approval by the advisory body on June 11, 2015.

Session 1: Local Collaborations—Modeling Tribal/State/Federal Collaboration

Los Angeles Times (July 14, 2015)

Agencies launch raid on marijuana growers on Yurok reservation

We are coming close to being prisoners in our own land. Everything we stand for, everything we do is impacted.- Thomas O'Rourke, Yurok Tribal Chairman

By LEE ROMNEY

First, the out-of-state license plates came to the upper reaches of the Yurok Indian Reservation, followed by dump trucks of fertilizer and heavy equipment that punched roads into tribal land. Runaway marijuana cultivation had made it unsafe to hike, pray, gather medicine and materials for baskets, or prepare sites for ceremonial dances. Chemical runoff and silt harmed the salmon, and rodenticides poisoned the rare Humboldt marten and weasel-like fisher, which the Yurok consider sacred.

This year, as growers siphoned water directly from the streams that feed the Klamath River, persistent menace became imminent crisis: About 200 households that rely entirely on surface water are now at risk of running dry — with no alternative supply. On Monday, after years of effort, the pleas of Yurok tribal leaders for outside help with eradication were finally answered. Federal and state agencies launched a massive raid on and around reservation land that is expected to last more than a week and lead to the destruction of an estimated 100,000 marijuana plants. By early evening, only four of the 43 search warrants had been served. Yet officers working on properties tucked down miles of dusty, rutted roads had already seized nearly 4,000 plants, stuffing them into a mobile chipper.

Ten people were detained for questioning, one of them armed with a Glock pistol. At one tribal property, three people took off on foot after a motion sensor triggered at the gate. They left a vehicle with Utah plates and a wallet behind.

“We’re doing good,” Yurok Public Safety Chief Leonard Masten said. His next target was a property needed for the upcoming Brush Dance, as site preparation for the healing ceremony begins Wednesday.

Operation Yurok came at the request of tribal leaders and is targeting properties in the hills whose springs and creeks feed the Klamath River.

Yurok tribal police review a map of terrain where 40 search warrants will be served this week on and off the Yurok reservation. (Lee Romney / Los Angeles Times)

The first two targets Monday: a site just off the reservation that had already been raided five times with few lasting consequences (officials are hoping to file a federal case this time), and one where the cultivator had blocked access to ceremonial grounds.

Wearing the wide-brimmed hat that he never goes without, Yurok Tribal Chairman Thomas O’Rourke turned out early Monday to say thanks at a remote fire station where officers were staging.

“They're stealing millions and millions of gallons of water and it’s impacting our ecosystem,” he told them. “We can't … make it into our dance places, our women and children can't leave the road to gather. We can't hunt. We can't live the life we've lived for thousands of years.”

The operation will take down grows “in every direction you can go from here,” Lt. George Cavinta of the Humboldt County Sheriff’s Drug Task Force promised, gesturing to the rugged hills.

The breakthrough came in April when, thanks to urging from the governor’s office, the California National Guard’s counterdrug program stepped in and — along with Cavinta’s agency — orchestrated the massive raid.

In addition to Yurok police, other participating agencies included the federal Bureau of Indian Affairs, Bureau of Land Management, Drug Enforcement Administration, the California Department of Justice’s North State Marijuana Investigation Team and the California Department of Fish & Wildlife.

By Monday afternoon, with the raided sites secured, state environmental scientists were tracking irrigation pipe and scouring the hills near a massive community water tank to create a forensic map of just how growers were tapping in.

The crisis, O’Rourke said, was long in building. Though growers in the region once “brought their fertilizer in batches in the dark,” dump trucks now entered reservation land with impunity, he said.

Bald Hills Road, a route of stunning switchbacks that connects the upper reservation to tribal headquarters in Klamath, used to be traveled almost exclusively by tribal members, O'Rourke said. Now, “it's one in 10 that I recognize and every fifth car is an out-of-state plate,” he said.

The seriousness of the problem became undeniable last summer, when residents in the hills around the tiny tribal, one-store town of Weitchpec began complaining of plummeting water pressure. Tanks that were full on a Friday would be nearly empty by Monday, Masten said.

When tribal staff surveyed the land from a U.S. Coast Guard helicopter, they were startled at the number of grows.

Then the drought intensified. When the marijuana crop was planted in late spring, community water gauges abruptly swung low once again. And this time, creeks ran dry.

“Streams I’ve seen in prior years with more severe droughts where water ran, there’s no water now,” O'Rourke said.

To strengthen its enforcement abilities, the tribal council last fall approved a new controlled substance ordinance that allows authorities to seize cash and items such as vehicles and generators in circumstances where cultivation has harmed the environment. (Proposition 215 — the state medical marijuana law — is not honored by the tribe on reservation land.)

For the Yurok, the damage is multifaceted. Sediment and chemical runoff have suffocated juvenile fish, and warmer, shallower water has triggered an increase in Ceratomyxa shasta, a parasite that targets salmon.

The danger of encroaching on a guarded grow site has made it unwise to visit springs that tribal members have enjoyed for generations. But the infringement on ceremonial dance sites has hit closest to home.

“We are coming close to being prisoners in our own land,” O’Rourke said. “Everything we stand for, everything we do is impacted.”

On Saturday night, as the raid loomed, he and Masten were among participants in a Brush Dance — a ceremony held for the health and vibrancy of a child. At a village site near the mouth of the river, tribal members entered the dance pit in groups throughout the night as a medicine woman and two helpers tended to a young mother and her infant boy.

After Sunday’s sunrise, they donned elaborate regalia passed down for generations: Otter-skin arrow quivers intricately adorned with woodpecker scalps. Dresses of abalone and dentillium shells. Intricately woven basket hats.

The Brush Dance is hosted by family groups and the frequency of the ceremonies has increased in recent years as the tribe reconnects with its language and culture, and more young people participate.

“I think this is not only a strong opportunity to take back our land but to set an example that the tribe has got a zero tolerance policy” toward cultivation, Masten said. “Whether you're an Indian or a non-Indian, you've got to go.”

Rose Sylvia, 57, who lives downriver from Weitchpec, agreed that it’s time for tribal members to make their voices heard. She went on a trip earlier this year and came home to find an outsider planting a post on her road to put up a gate.

Though her parents always left the house unlocked for any stranger who might be “hungry or thirsty,” now that’s out of the question. She recently asked her partner for a bittersweet Christmas gift: a gun, to help her feel safer when home alone.

Added Josh Norris, 41, a Yurok tribal member and community organizer: “There are elders living near some of these grows with no telephone and without reliable transportation, and they’re scared.” Seeing the law enforcement presence Monday, he said, “It just feels like, wow, somebody finally cares.”

Humboldt County Sheriff's deputies and Bureau of Indian Affairs police work to shred 204 mature cannabis plants in a portable chipper Monday on a tribal property near Weitchpec. (Lee Romney / Los Angeles Times)

Hon. Amy M. Pellman, Judge of the Superior Court of California, County of Los Angeles, Indian Child Welfare Act (ICWA) Courtroom

Summary: Hon. Amy Pellman, judicial officer in the Indian Child Welfare Act (ICWA) Courtroom in the Los Angeles County Dependency Court shares about the collaboration she began creating in June of 2013, "The Los Angeles ICWA Stakeholders' Roundtable."

In June of 2013, I was assigned the ICWA courtroom at the Edelman Children's Court in Los Angeles. We are one of the only courts, across the country that designates a courtroom to hear all the ICWA cases (approximately 250 children); we also have a specialized unit of the Department of Children and Family Services designated for the Indian cases. Although I had spent the bulk of my professional life working in the child welfare area, I knew very little about the Indian Child Welfare Act (ICWA). Not only did I know very little about the laws, I knew very little about the culture and within my first two weeks, I inadvertently offended the community when I rearranged the décor in the courtroom. Luckily, I was introduced to a social worker from the Indian Unit, who kindly explained to me the significance and why the community was upset.

I realized at that moment that there needed to be healing between the court and the Indian community. Not just to address that small misunderstanding but to address communication on a larger scale. I wanted to set up a meeting with community members, service providers for the Indian community and the attorneys who worked at our court. I was fortunate to utilize the assistance of Vida Castaneda and Ann Gilmour from the Tribal/State Programs Unit at the Judicial Council of California (http://www.courts.ca.gov/programs-tribal.htm) and Tom Lidot and Margaret Orrantia from TribalSTAR, a training academy program based at San Diego State University (http://theacademy.sdsu.edu/TribalSTAR/Welcome.htm). We discussed at length creating an ICWA Stakeholders' Roundtable for Los Angeles County that would be inclusive rather than exclusive. After the first meeting we decided to break out into smaller subcommittees dedicated to addressing a few of the most important issues. These issues included: improving communication, engagement with local and out of state tribal communities, addressing the lack of Native American foster homes, learning of the resources for Native

American families, fostering ICWA compliance, collaborating between tribal and non-tribal communities, improving ICWA education, and increasing trust between the court, child welfare system and tribal communities.

The roundtable has successfully brought together parties who ordinarily had little opportunity to speak directly to one another. Not all conversations have gone smoothly but we endeavored to actively engage in problem-solving to begin to address some of the long-standing issues that have plagued our Los Angeles child welfare system. By allowing the tribal communities to speak, many of us have learned how important it is to listen. Perhaps what has been most exciting has been seeing some of the tribal community's concerns incorporated into court coordinated community responses.

One example, and a top priority for me, was addressing the lack of Indian foster homes. Despite Los Angeles being the largest urban Native American community in the country, we had not *one* certified or licensed ICWA compliant foster home. By shining a light on this very important issue, the subcommittee, with the full support of the Department of Children and Family Services (DCFS), created a public service announcement to recruit Native American foster homes that will air on local radio stations and brochures to encourage Native American families to become foster families, and began recruiting in-person at local Native American community events. Currently, we have five families who are going through the licensing process.

The roundtable has expanded over the past year and we have been honored that tribal elders, ICWA advocates, tribal community leaders, tribal TANF providers parent's attorneys, children's attorneys, county counsel, private adoption attorneys, representatives from DCFS, tribal representatives from tribes located outside California, service providers, Los Angeles County juvenile probation representatives, Casey Family Foundation and a host of others have been in attendance.

Another first was an effort to provide specialized ICWA education to judicial officers and attorneys working at the Edelmans Children's Court. With over 20 courtrooms devoted solely to abuse and neglect cases, organizing training was challenging. With the blessing of the Honorable Michael Nash, a former presiding judge of the Juvenile court, however, we were able to bring together nationwide ICWA experts and conduct a court wide program on December 5, 2014.

My vision was to bring together the ICWA stakeholders in Los Angeles for quarterly meetings to improve relations, increase effective communication, work on collaborative solutions for long standing issues, and provide better outcomes for Native American families. I am pleased that we have successfully established a strong collaboration among equal partners, working together in a culturally respectful way to address issues of mutual concern.

We are also working to establish our own version of a peacemaking project in Los Angeles. With the assistance of the Center for Court Innovation (CCI) and the Judicial Council's Tribal/State Program unit, we are in the process of making this vision a reality.

Creating a roundtable is challenging but, thanks to the great dedication of all the roundtable volunteers, the community has come to a greater understanding of the juvenile dependency system and ICWA and developed momentum to implement innovative solutions.

If you would like additional information on the ICWA Stakeholders' Roundtable and quarterly meetings, please contact Vida Castaneda at (415)865-7874 or vida.castaneda@jud.ca.gov.

Session 2: Domestic Violence: Promoting Collaboration

CALIFORNIA
TRIBAL COURT–STATE COURT
FORUM

June 2015

Native American Research Series: Tribal Justice Systems

Introduction

The Tribal/State Programs of the Judicial Council's Center for Families, Children & the Courts has developed a series of informational abstracts that bring together the available data from various sources on American Indians and Alaskan Natives (AI/AN) nationally, statewide, and tribally specific to California's AI/AN population. The purpose of these abstracts is to develop and disseminate justice-related information and links to reports to ensure the highest quality of justice and service for California's AI/AN population. This information is intended for the state judicial branch, tribal justice systems, tribal organizations, state agencies, and local agencies to support effective collaboration and tribal justice development.

Preface

This report will provide a general overview of tribal justice systems in tribes. The majority of California tribes still rely on local courts and law enforcement. However, the past 10 years has seen remarkable growth in both the number of tribal justice agencies, and the services offered.

We would like to extend special thanks to Bill Denke, Chief of the Sycuan Police Department and Chair of the California Tribal Police Chief's Association, for providing current information on tribal law enforcement agencies in California.

Jurisdictional Issues

As sovereigns, tribes have legal jurisdiction over both their citizens and their lands. According to most recent census data, California is home to more people of Native American/Alaska Native heritage than any other state in the country. There are currently 109 federally recognized Indian tribes in California and 78 entities petitioning for recognition. Tribes in California currently have nearly 100 separate reservations or rancherias. There are also a number of individual Indian trust allotments. These lands constitute "Indian Country," and a different jurisdictional scheme applies in Indian Country. For Indians and Indian Country there are special rules that govern state and local jurisdiction. There may also be federal and tribal laws that apply.

Please see http://www.courts.ca.gov/8710.htm and http://www.tribal-institute.org/lists/pl280.htm for more information on jurisdiction in Indian Country.

Tribal Justice Agencies
Law Enforcement

Law enforcement on tribal lands has historically been, and remains, a challenging task for tribal communities. According to the National Congress of American Indians (NCAI):[1]

- Police in Indian Country function within a complicated jurisdictional net, answer to multiple authorities, operate with limited resources, and patrol some of the most desolate of territory, often without assistance from partner law enforcement agencies.
- There are only 2,380 Bureau of Indian Affairs and tribal uniformed officers available to serve an estimated 1.4 million Indians covering over 56 million acres of tribal lands in the lower 48 states.
- On tribal lands, 1.3 officers must serve every 1,000 citizens, compared to 2.9 officers per 1,000 citizens in non-Indian communities with populations under 10,000.
- A total of at least 4,290 sworn officers are needed in Indian Country to provide the minimum level of coverage enjoyed by most communities in the United States.
- These departments rarely have more than one officer on duty at any time, and their officers often work without adequate backup.

Law enforcement jurisdiction varies by the location of the offense (on or off reservation land), the status of the parties (the race/ethnicity of the victim and offender), and the nature of the crime (major crime or misdemeanor). In California, a P.L. 280 State, officers who have jurisdiction on reservations include the following:

Tribal Security Officers
These officers are employed by tribes and have security duties on the reservation. They often are given jurisdiction by the tribal government to enforce tribal law and order codes violated by tribal members, and may be granted arrest powers over tribal members and Indians on the reservation only. They have arrest powers only in the capacity of a private citizen.

Tribal Police Officers
These officers are also employed by individual tribal governments and have tribal authorized police and arrest powers over tribal members committing violations of tribal law and order codes committed on reservation property. Currently, most tribal governments require at a minimum, graduation from a formal law enforcement academy.

Federally Deputized Police Officers
These include Bureau of Indian Affairs (BIA) Special Deputy Officers and Tribal Officers Holding Special Law Enforcement Commissions (SLECs). SLEC officers are a hybrid tribal/federal officer, paid by the individual tribal government, but deputized by the BIA as federal law enforcement officers with the same authority as BIA police officers. These officers are federally empowered to enforce federal laws on and off reservation if a nexus to the reservation exists. These officers may enforce

[1] http://tloa.ncai.org/documentlibrary/2011/08/Talking_Circles_Report_Final_Jul11.pdf (as of 6/14/12)

federal laws, and arrest non-Indians for violations of federal laws. In addition, these federal officers may enforce observed violations of federal laws while off the reservation, and conduct investigations off the reservation. There are federal hiring/training standards for those tribal police officers who are commissioned by the Bureau of Indian Affairs-Office of Justice Services as federal law enforcement officers.

A comparison of data collected for the 2002 Census of Tribal Justice Agencies[2] and more current information obtained from California Tribal Police Chief's Association shows a pattern of growth in tribal law enforcement across the state.

- In 2002, 20 Tribes (23 percent of California tribes, compared to 53% percent nationally) reported having a Tribal law enforcement agency. In 2012, this has grown to 39 tribes (about 37 percent of California tribes). The remaining tribes rely on some combination of state/local law enforcement.[3]
- In 2002, 10 agencies employed sworn officers; of these, 5 had a cross-deputization agreement with either the BIA (4) or "neighboring non-tribal authorities" (1). By 2012, this had grown to 17 agencies with sworn officers[4].
- The number of agencies which operate through a PL 93-638 or self-governance contract (6) has been stable from 2002 to 2012.
- Six tribal agencies had arrest authority over non-Indians in 2002. This has risen to 17 agencies in 2012.

We do not have data that allow us to compare current California figures with tribes outside of California, but data from the 2002 census shows that California tribes rely more heavily on local law enforcement than non-California tribes (see Table 1). This is in part due to California's status as a "PL-280" state, which cedes Federal law enforcement authority in Indian Country to some states[5].

Law Enforcement Collaboration
Since tribal police agencies are regulated by their respective tribal governments, there is no one-set-standard for hiring/training requirements. Historically this has made it uncomfortable for non-tribal justice agencies to work on collaborative projects with tribal justice agencies and has been a reoccurring stumbling block over the years. Tribal police agencies who require their respective sworn officers to be commissioned by the Bureau of Indian Affairs have enjoyed some reasonable and measurable success as of late in collaborating on such projects as entering into MOUs for direct prosecution with district attorney's offices, direct booking agreements with sheriffs' departments, access into regional interoperable radio communications systems, and local and regional justice information sharing system.

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[2] Steven W. Perry, Bureau of Justice Statistics, Census of Tribal Justice Agencies in Indian Country, 2002 (NCJ 205332,) Dec. 2005. http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=543 (as of 9/19/2011). Unless otherwise noted, the data presented in this section are drawn from independent analysis of this survey.
[3] Id.
[4] Four additional tribes are in the process of establishing law enforcement agencies.
[5] The implications of PL-280 are extremely complex. Please refer to the Tribal Court Clearinghouse web pages (http://www.tribal-institute.org/lists/pl280.htm, as of 3/27/12) for further discussion and references.

Table 1
Tribal Law Enforcement Functions – 2002[6]

Which of the following provide law enforcement functions for your tribe?

	California	Non-California
Sworn officers	11%	69%
BIA	7%	39%
State	19%	32%
Local	90%	37%
Tribal Law Enforcement	21%	68%
Traditional Law Enforcement	3%	7%
Game/Fish Wardens	7%	21%

Categories not listed are Village Police/Public Safety, Housing Authority, Casino Security, and "Other". Respondents could select more than one category.

- Among all reporting California tribes, 92 percent refer juvenile cases to county authorities, compared to 55 percent of non-California tribes. Eleven percent of California tribes referred juvenile cases to tribal authorities, compared to 56 percent of non-California tribes (see Table 2).

Table 2
Juvenile Justice – 2002

For Juvenile offenses committed on your tribal land, to which justice authorities may cases be referred?

	California	Non-California
Tribal justice authorities	11%	56%
County justice authorities	92%	55%
State justice authorities	10%	21%
Federal justice authorities	3%	24%

Respondents could select more than one category.

- Five tribal agencies in California operated a detention facility of some sort. Most (85 percent) relay largely on county facilities for all or some of their detention functions.
- Eighty-five percent of California tribal agencies, including all agencies employing sworn officers, recorded the number and types of crime incidents manually and/or electronically. Three tribes shared statistics with local or state agencies, and six shared statistics with federal agencies (FBI, BIA, or both).

Access to Criminal History/Justice Statistics

- Seventy-five percent of California tribes recorded crime incidents on the reservation manually and/or electronically.
- Over half of the tribes had access to the National Criminal Information Center (NCIC).

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[6] Steven W. Perry, Bureau of Justice Statistics, Census of Tribal Justice Agencies in Indian Country, 2002 (NCJ 205332,) Dec. 2005. http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=543 (as of 9/19/2011)

- An estimated 54 tribes submitted information on tribal sex offenders to the National Sex Offender Registry (NSOR).
- Less than 12 percent of the tribes reported their justice agencies were electronically networked with other justice agencies on or off the reservation.
- Fourteen tribes routinely shared crime statistics with neighboring local governments, the State, or the FBI.
- Tribal law enforcement officers do not generally have access to the California Law Enforcement Telecommunication System (CLETS). Because of a recent change to state policy governing the California Law Enforcement Telecommunications System (CLETS), BIA commissioned tribal police officers may be granted access to CLETS. The caveat to this that the BIA applies for the access for its commissioned officers on a tribal police agency case-by-case basis. Also, the information being accessed is for law enforcement purposes only.
- Tribal law enforcement officers have access to NLETS if they are Special Law Enforcement Commissions (SLEC) officers.[7] At this time, 7 California agencies have SLEC officers[8].
- California tribes have access to the California Courts Protective Order Registry (CCPOR).

Tribal Courts[9]

Tribal courts are formalized systems established by American Indian and Alaska Native tribes for resolving civil, criminal and other legal matters. There is a great deal of variation in the types of tribal courts and how they apply tribal laws. Some tribal courts resemble Western-style courts in that written laws and court procedures are applied. Others use traditional Native means of resolving disputes, such as peacemaking, elders' councils, and sentencing circles. Some tribes have both types of courts.

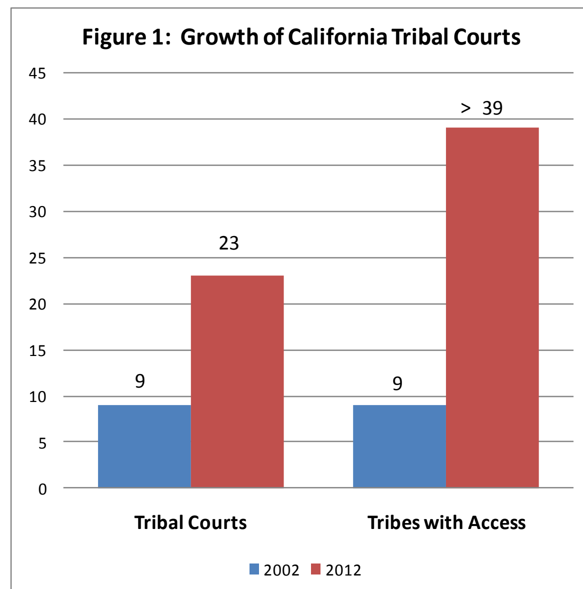
There are also a small number of Courts of Indian Offenses. These are courts (also known as "CFR courts") established by the Bureau of Indian Affairs for the benefit of tribes who do not operate their own tribal court.

Table 3
Tribal Justice Systems - 2002

	California *N=89*	Non-California *N=225*
Any Tribal Court System	**9 (10%)**	**180 (80%)**
Tribal courts	9	167
Appellate courts	4	99
Circuit rider system	0	2
Traditional Methods/Forums	2	37
Inter-tribal court system	1	14
Other	1	16

[7] Authority for the issuance of Special Law Enforcement Commissions is based upon Title 25, United States Code, Section 2804 (Pub. L. 101-379), 25 C.F.R. Part 12), and the Tribal Law and Order Act (Pub. L. 111-211). Under the Tribal Law and Order Act (TLOA) tribal agencies do have access to the National Law Enforcement Telecommunications System (NLETS).
[8] An additional 4 tribal law enforcement departments are in the process of obtaining SLECs.
[9] Steven W. Perry, Bureau of Justice Statistics, *Census of Tribal Justice Agencies in Indian Country, 2002* (NCJ 205332, Dec. 2005).

- In 2002, 9 tribes[10] of 89 participating California tribes (10 percent) reported having a tribal court, compared to 180 of 225 reporting (59 percent) of non-California tribes. About 84% of California's reporting tribes relied solely on state courts for services.
- In 2012, 39 tribes of 109 federally recognized California tribes (36 percent) either have a tribal court or access to a tribal court through an inter-tribal court coalition.
  - The Intertribal Court of Northern California (ICNC) serves 7 tribes.
  - The Intertribal Court of Southern California (ICSC) serves 12 tribes.
  - The Northern California Intertribal Court System (NCICS) serves 4 tribes.
- Most of these courts heard civil cases (7) and juvenile/family law cases (6). About half (4) heard domestic violence protective orders.
- Four of the tribal courts offered some kind of intermediate sanctions for adult offenders (e.g., drug/alcohol treatment, fines/restitution, counseling).
- Six tribes offered similar intermediate sanctions for juvenile offenders.
- None of the tribes maintained a probation function in 2002.
- The responding tribal courts report staffing levels of one to nine full time staff.



The number of tribal courts in California has more than doubled since the 2002 survey—from 9 to 23[11]. The number of tribes with access to a tribal court increases to 40 when the Intertribal Court of Northern California (ICNC), representing 7 tribes, the Intertribal Court of Southern California (ICSC), representing 12 tribes, and the Northern California Intertribal Court System (NCICS), are included. Additional tribes make use of these consortia on a more limited or contract basis (see Figure 1).

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[10] The Colorado River Indian Tribe did not participate, but it has been independently confirmed that they operated a tribal court at that time so they are included.

[11] To locate a Tribal Court in California, use the AOC Tribal Court Directory (http://www.courts.ca.gov/14400.htm). For a map of these courts, go to http://g.co/maps/cvdq8

Tribal courts in California currently hear more than 30 types of cases (see Table 5).

Table 5: *Case types heard by California tribal courts*[12]

Civil/Probate	Administrative	Family Law
Civil complaints for monetary damages/Small claims Civil disputes Conservator issues Contract disputes Dog/Animal control Evictions/land disputes/ possession of tribal lands Game fish and wildlife management Housing matters (unlawful detainer) Name & birth certificate changes Probate	Building codes Elections Employment Enrollment Administrative procedures matters Appeals from tribal ordinances **Criminal** Criminal offenses Environmental offenses Peace/security code violations Nuisance Torts Traffic Trespass	Dissolution of marriage Domestic relations Domestic violence restraining orders Protection/Restraining orders **Juvenile** Juvenile delinquency Juvenile wellness court Truancy Child abuse and neglect guardianships

The Tribal Law and Order Act of 2010 (TLOA)[13]

In recent years, the most significant development in tribal justice has been the creation of the Tribal Law and Order Act of 2010. A comprehensive description of this act and the programs and policies issuing from it is well beyond the scope of this discussion, but it would be incomplete without at least mentioning some of the major provisions contained in the TLOA.

- The TLOA requires greater accountability and coordination between federal and tribal justice authorities, for example, the filing of annual disposition reports by federal prosecutors. It also establishes the Office of Tribal Justice within the Department of Justice, providing a point of contact with tribal agencies to advise and provide technical assistance.
- It allows tribal authorities to impose increased penalties under certain circumstances (up to 3 years imprisonment and fines of $15,000 per offense).
- Tribes in PL 280 states are now allowed to petition the Attorney General to re-assert federal jurisdiction in tribal areas. This is additional to state authority, not a replacement of it. A separate, but related provision makes it possible for tribal law enforcement and prosecutors to obtain commissions granting limited federal authority.
- The TLOA authorizes funding and grant opportunities across most areas of tribal justice, including support and training for data collection, data sharing, and reporting.

Because it is fairly recent legislation (signed into law on July 29, 2010) the immediate impact of the TLOA is only now being felt, and any long-term benefits will take some time to be realized.

[12] The rules and procedures of each court will vary, and an individual court may not hear all of these types of cases.
[13] The full text of the TLOA is available at:
http://www.justice.gov/usao/az/IndianCountry/Tribal%20Law%20%20Order%20Act%202010.pdf

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The views in this research update are those of the author and do not necessarily represent the official positions or policies of the Judicial Council of California.

The staff names listed above have been updated as of October 2013; otherwise the content of this research update remains unchanged.

Examples of Law Enforcement Partnerships in California

Humboldt County LE DV Protocol- addresses tribal issues
http://www.victimsofcrime.org/docs/Information%20Clearinghouse/Model_H_County_Law_Enf_DV_Protocol.pdf?sfvrsn=8\

Olin Jones testimony
http://www.aisc.ucla.edu/iloc/resources/documents/ILOC%20FH_PortlandOR_110211_Testimony_OJones(2).pdf

Bill Denke testimony
http://www.aisc.ucla.edu/iloc/resources/documents/bd-testimony-inidan-lando-commision-final.pdf

Butte County Intertribal Community Task Force

The Intertribal Community Task Force (ITC) was established about 15 years ago as a way to make sense of and deal with a tragedy that resulted in the death of a tribal member on the Rancheria. Part of the issue stemmed from a disparity of opinion between the tribe and Butte County Sheriff's Office (BCOE). The tribe believed that foul play was the cause of death, while BCSO ruled the death a suicide.

ITC brings together Mooretown Rancheria, Enterprise Rancheria, and Berry Creek Rancheria with BCSO, City of Oroville Police, Feather River Tribal Health, probation officers, Butte County Office of Education, county communications, along with a plethora of other county, city, and tribal officials who meet on a bi-monthly basis to discuss issue the involve the local tribes and Indian Country as a whole. Integral to these meetings is the District Attorney for Butte County.

Humboldt County District Attorney and Tribal Governments Roundtable

The Humboldt County District Attorney and representatives from all of the Humboldt County Tribes and Rancherias committed to regular inter-governmental meetings to discuss concerns and devise strategies related to community safety and the administration of justice in Humboldt County. They agreed to call the group the Humboldt County District Attorney and Tribal Governments Roundtable, and they had their official meeting on April 26, 2007.

A copy of their official Memorandum of Understanding, including a mission statement is attached:

Humboldt County District Attorney and Tribal Governments Roundtable

Memorandum of Understanding

This Memorandum of Understanding (MOU) evidences the willingness and commitment of the signers to work toward mutual goals and foster stronger communication between the Humboldt County District Attorney's Office and Tribal Governments.

Mission
The mission of the Humboldt County District Attorney and Tribal Governments' Roundtable is to create and increase communications between sovereign Tribal Governments and the Humboldt County District Attorney's Office. The Roundtable fosters education of our mutual constituencies to meet our needs by multi-level training, in-services and presentations. The Roundtable is committed to ensuring a mechanism is emplaced to address concerns or issues between our entities.

Purpose and Scope
The Humboldt County District Attorney's Office and the sovereign Tribal Governments are forming a collaboration to address the mutual needs of our entities as we serve our constituents. Each participating organization is responsible for its own expenses related to this MOU. There will not be an exchange of funds between the parties for tasks associated with this MOU, except shared expenses as agreed to by members.

Responsibilities
Each signing entity will appoint a person to serve as the official contact and coordinate the activities of each entity in carrying out this MOU. All parties will work together on public education efforts, and will attend a monthly meeting.

Terms of Understanding
The term of this MOU is for a period of five years from the effective date of this agreement, and may be extended upon written mutual agreement. It shall be reviewed at least annually to ensure that it is fulfilling its purpose and to make any necessary revisions.

Authorization: On behalf of the entity I represent, I wish to sign this Memorandum of Understanding and contribute to its further development.

Riverside County Sheriff's Tribal Liaison Unit

In 2008, following a terrible reservation-based crime, the Riverside County Sheriff's Department realized that the level of service being provided on each of the Indian reservations it serves was not acceptable and that Department partnerships in Indian Country were basically non-existent. The poor level of service being provided resulted in a very negative perception and a lack of trust of the Sheriff's Department in Indian Country. Consequently, the Tribal Liaison Unit was created and given the mission of building trust and partnerships between the Department and the tribal communities of Riverside County's Indian Country. To

accomplish its mission, the Tribal Liaison Unit began by establishing communication with the tribal governments of each reservation to identify their needs and concerns. The end result has been positive changes in Department service and an improved quality of life in Riverside County's Indian Country.

San Diego County District Attorney/Sheriff/ Tribal Collaboration

In San Diego County, there are 18 federally recognized tribes with 10 operating state compacted gaming facilities, both more than any other county in the nation. California is a Public Law 280 state, in order to address the multitude of law enforcement and jurisdictional issues that arise on tribal lands, the District Attorney and Sheriff of San Diego County, in conjunction with the tribal leaders and their councils, formed a collaborative working group. The overall working group meets quarterly at a tribal leaders' luncheon hosted by one of the tribes. The tribal leaders, their council members, and tribal law enforcement are present. The Chief Judge of the Intertribal Court of Southern California is present. The District Attorney and Sheriff and their staff are present. The United States Attorney for the Southern District of California and her staff are present. Other law enforcement agencies such the California Highway Patrol, State Parole, the Probation Department, and the State Attorney General's Office are also present. Issues are discussed in an open forum, and there is often a topic speaker presented to address timely issues, such as sex offender registration and checks on reservation lands for example. The overall working group and both its law enforcement and tribal subsets have been very successful at working through issues such as service of subpoenas for witnesses and documents on reservation lands, adoption and enforcement of tribal court domestic violence restraining and child custody orders by the Sheriff and the District Attorney, trespassing on reservation lands, and investigation of casino based crimes. The communication though these working relationships has developed respect, trust and goodwill between the law enforcement agencies and the tribes, their tribal governments, and their members.

IMPROVING STATE COURT-TRIBAL COURT RELATIONS

By Judge Leonard Edwards (ret.)

Two separate court systems operate in California. One is the state court system which includes trial and appellate courts headed by the California Supreme Court. The other is a collection of tribal courts, operating in a number of tribal reservations within the state. These court systems are separate, yet they have a number of issues which cross over, one to the other. For example, will a state court recognize a tribal court order? If a state court issues a domestic violence restraining order, will a tribal court give full faith and credit to that order? Will law enforcement outside of Indian Country enforce a restraining order issued by a tribal court judge? Will the case of an Indian child in a state court delinquency or dependency proceeding be transferred to a tribal court?[1]

These are but a few of the many relationship issues that state and tribal courts encounter on a daily basis. While some state courts and tribal courts have developed protocols for the management of these issues, many have not. My proposal is that the tribal and state courts that have over-lapping jurisdictions form a local Tribal Court – State Court Council. The Council would be comprised of representatives from both courts and include members from each community, including judges, law enforcement, attorneys, social service representatives, probation, court clerks, and others. The council would meet from time to time and would develop protocols and procedures that address legal and other issues where the two court systems interact. There are several existing models for collaboration between state courts and tribal courts in California. My suggestion is not intended to change any of these collaborations.

The issues outlined above would be reasonably easy to address effectively as several model protocols have been developed by tribal and state courts including the Hoopa Valley Tribe and the Humboldt County Superior Court, the Shingle Springs Tribal Court and Superior Court of El Dorado County, and the Riverside Alliance.[2]

This idea comes from an article I wrote many years ago suggesting the creation of a Domestic Violence Council in every community in the United States.[3] The spread of domestic violence councils in California and around the country has been impressive. The establishment of a council gives credence to the notion that creating a problem solving atmosphere can produce positive changes in a community.

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[1] Appendix A contains a list of issues that the Council might discuss as well as suggestions for establishing a Council.

[2] http://www.riverside.courts.ca.gov/juvenile/tribalalliance.shtml

[3] Reducing Family Violence: The Role of the Family Violence Council," *Juvenile and Family Court Journal,* Vol. 43, No. 3, 1992, 1-18.

Moreover, there is technical assistance available for the start-up of a Tribal Court-State Court Council from the Judicial Council of California's Tribal/State Programs. And there is judicial expertise and leadership that can be tapped through the Tribal Court – State Court Forum, a coalition of the various tribal court and state court leaders who come together as equal partners to address areas of mutual concern. Jennifer Walter, supervising attorney of the Tribal/State Programs and counsel to the Forum can provide materials and facilitate site visits by experts in tribal court – state court relations.

I urge state and tribal court judges to reach out to one another and start to work together. Creating such a Council will serve all persons involved.

APPENDIX A – SUGGESTIONS FOR STARTING A COUNCIL

1. Who should take the lead in organizing the Council? Is either a Superior Court Judge or a tribal judge ready to contact the other and suggest creating a Council?
2. Where should meetings take place and how should they be run?
    a. Explore the logistics that create a safe, welcoming environment that promotes a positive government-to-government relationship, a sustainable partnership, and dialogue about areas of mutual concern.
    b. Consider having rotating locations for the meetings both in the county and on the reservation.
    c. Explore creating infrastructure so that partnerships forged go beyond the individual relationships and are sustained as turnover occurs.
    d. Who should be invited (are there representatives from all stakeholders)?
3. What are the barriers facing Native victims of domestic violence in the community?
    a. Explore why native victims may not report domestic violence.
    b. Explore why county law enforcement may not enforce protective orders in tribal communities?
    c. Explore why native victims may not go to court for protection in either tribal or state courts.
    d. What are the available services for native victims of domestic violence in the county and on reservations?
4. What are the procedures in place for ensuring that protective orders (whether issued by the tribal court or state court) are recognized and enforced? These would include procedures developed by law enforcement (city, county sheriff, state highway patrol, federal, and tribal police).
    a. What protocols for collaboration regarding enforcement have been developed by these agencies?
    b. Are there Inter-Court collaborative protocols/rules of court or other procedures between the state and tribal courts?
    c. What is the role of each stakeholder in protocol implementation?
    d. Do the protocols in fact work to protect victims of domestic violence?
5. What education is provided in the county?
    a. About the tribal communities in the county?

   b. About tribal courts in the county?
   c. About inter-jurisdictional legal issues?
   d. About culturally competent resources?
   e. Is education provided for specific audiences such as for judges, attorneys, service providers, law enforcement, probation, social services and others?
6. How can tribal representatives assist state courts in the implementation of the Indian Child Welfare Act (ICWA)?
   a. Are tribal representatives regularly noticed of cases involving Indian children?
   b. How do the new Bureau of Indian Affairs (BIA) Guidelines impact tribal court/state court relations?
   c. Will county social services provide services to Indian children living on the reservation?

Chapter 1

Reducing Family Violence: The Role of the Family Violence Council

By Judge Leonard P. Edwards

Reducing family violence is an important social goal. Family violence takes many forms and affects all members of the family. Both wives and children are frequently physically and sexually abused and subjected to emotional abuse and neglect, while other relatives and household members, particularly elders,[1] are also at risk of being victims of such conduct. Violence within the family cuts across all lines, including race, class, age, sex, handicaps, sexual orientation and socioeconomic status.[2] Family violence results in numerous social ills. Most important, it threatens the stability of the family and imprints upon all members of the family, especially children, that violent behavior is acceptable.

> Violence in the home strikes at the heart of our society. Children who are abused or who live in homes where parents are battered carry the terrible lessons of violence with them into adulthood. . . To tolerate family violence is to allow the seeds of violence to be sown into the next generation.[3]

Domestic violence occurs with alarming frequency in the United States. While it is estimated that one-third to one-half of all women in this country will be in a violent relationship during their lifetime,[4] and the Federal Bureau of Investigation reports that a woman is beaten by her husband or boyfriend every twelve seconds, the FBI also concludes that domestic violence "is under-reported by a factor greater than ten to one."[5]

Of the 1.5 million reported cases of child abuse and neglect each year,[6] and the estimated 1.8 million women beaten in their homes each year,[7] studies indicate that there is a co-incidence of approximately 810,000 families with both spousal and child abuse.[8] Pregnancy appears to be a particularly hazardous time for women:[9] 30% of all pregnant women are battered.[10] These women are two times more likely to miscarry and four times more likely to have low birthweight babies than the norm.[11] Shockingly, more babies are born with birth defects as a result of the mother's being battered than a combination of all diseases and illnesses for which we now immunize pregnant women.[12]

Children who witness abuse are dramatically affected. They are more likely to attempt suicide, to abuse drugs and alcohol, to run away from home, to engage in teenage prostitution and other delinquent behavior, and to commit sexual assault crimes.[13] Sixty-three percent of all males between 11 and 20 who are doing time for homicide in America killed their mother's batterer.[14] In Oregon 68% of the delinquent youth in treatment programs had witnessed their mother's abuse and/or had been abused themselves. Within this group 30% had committed arson, 63% assault, 7% rape, 7% murder, 90% were abusing alcohol and 89% abusing drugs.[15]

Other household members suffer from family violence. Approximately one million incidents of elder abuse occur annually in the United States.[16] Partners in gay male and lesbian relationships also suffer from violence within the home.[17]

Violent behavior in the family is illegal conduct in all states, but the legal proscription has not reduced, much less ended, this behavior. There

are several explanations for this failure to reduce the incidence of family violence. First, our society, and in particular our legal system, has been ambivalent about intervention after family violence has occurred. On the one hand the behavior is illegal, but on the other, it involves people with continuing ties who the next day may have a seemingly satisfactory relationship. Intervention becomes more difficult when the victim is reluctant to pursue the matter. Decision-makers in the justice system often conclude that family violence is not "real" criminal behavior, but that it is a family matter in which no action is necessary.

Second, the complex justice system has not been refined to deal with the special problems presented by family violence cases. These problems can occur at many junctures. Law enforcement may not have effective arrest or restraining order enforcement policies; district attorney's offices may not have the most efficient system for screening and prosecuting cases; and the courts may not have an effective system for issuing protective orders, for supporting victims as their cases move through the court system, for identifying family violence in other legal proceedings, or for monitoring offenders after judgment has been rendered. In addition, probation services and batterer's and other victim's programs may be ineffective in ensuring that the victim receives necessary support and that the batterer receives an effective program which will address the battering behavior. All of the persons and agencies which are supposed to carry out the goals of the legal system may in fact have such inadequate resources and training and insufficient expertise in family violence cases that they are unsuccessful in effectively completing their tasks.

Third, legal intervention on behalf of abused wives and children is a recent phenomenon. Until the late nineteenth century, wives and children possessed no legal status or rights under the law and lacked any legal remedy against family abuse. It was not until 1988 that all 50 states had enacted laws to provide civil and criminal remedies for victims of family violence.[18]

In spite of these barriers the reduction of family violence is now generally accepted as a critical societal goal. The strategy for change must be carefully planned, as an effective response to family violence cannot be accomplished piecemeal. No one agency or office can expect that internal changes will result in improvement in the entire justice system. There are too many agencies, courts and persons, and too many interactions, as family violence cases are detected, investigated, prosecuted and monitored. A failure in any part of the system will limit the success of the entire justice system.

What is needed is a systems approach, a strategy which includes all parts of the justice system. The plan presented in this article identifies the family violence council as the mechanism which can provide the framework in which the community and justice system response to family violence can be most effectively improved.

Two things are clear: first, over time, domestic violence will increase in both frequency and severity unless there is serious intervention[19] and, second, a coordinated response from the justice system is an effective mechanism to decrease substantially the incidence of that violence.[20]

This article addresses how a community can organize in order to reduce the incidence of family violence. It describes a process by which a community can provide a comprehensive response to domestic violence which addresses prevention, public education, intervention, and corrections including treatment and rehabilitation.

The article is divided into five sections. In the first section it will discuss what the purpose of a family violence council is and how the goals of the council can be identified.

In the second section the article will focus upon the creation of a family violence council. The discussion will include the framework for such a council, legislation which might be helpful to facilitate its creation, selection of council members, political considerations and a step-by-step methodology.

The third section addresses how the council will operate. This section includes discussions of meetings, committees, sub-committees and workplans.

The fourth section examines what can be accomplished by a family violence council, and includes references to model programs which operate in the United States. The fifth and final

section discusses the problems of maintaining a council over time. Interspersed throughout the article are references to exhibits which describe how a family violence council in Santa Clara County, California was created and is currently operating.

I. Purpose of a Family Violence Council

The starting point for a family violence council is agreement among community leaders that a coordinated response to family violence is necessary. Given the incidence of family violence throughout the United States and its impact upon children and families, it should not be difficult to persuade those leaders that such a response is necessary. Reaching agreement on the purpose of a family violence council is an effective means of focusing everyone on the community goals regarding family violence.

The purpose must be broad and comprehensive and address the concerns of the community in which the council will sit. While communities will differ over the details of the purpose, the following is offered as a useful example:

The general purpose of the Council shall be as follows:

(a) To effectuate coordination between agencies, departments and the courts with victims of domestic violence and abuse;

(b) to promote effective prevention, intervention and treatment techniques which will be developed based upon research and data collection; and

(c) to improve the response to domestic violence and abuse so as to reduce incidents thereof.[21]

The purpose clause of the council will assist the members as they identify specific goals for the council to accomplish. It will also educate the community on the reason for the creation and operation of the council.

In addition to a general purpose statement, it is useful to have more specific goals or duties of the council enumerated to assist the operations of the council. In Santa Clara County the Board of Supervisors adopted the following duties for the Council:

(a) Examine ways in which agencies, departments and the courts in Santa Clara County respond to domestic violence and abuse in order to improve that response.

(b) Improve the cooperation and coordination among all the participants in the justice system who deal with domestic violence and abuse.

(c) Make recommendations to the Board of Supervisors, agencies, departments, the courts and others regarding improving the response to domestic violence and abuse.

(d) Examine and review legislation that relates to domestic violence and abuse and recommend appropriate action to the Board of Supervisors' Legislative Committee.

(e) Encourage and promote public education regarding domestic violence and abuse.

(f) Address the recommendations of the report *Family Violence: Improving Court Practice*, written by the National Council of Juvenile and Family Court Judges.

(g) Make recommendations regarding the implementation of the Judicial Council Gender Bias Task Force Report recommendations relating to domestic violence and abuse.

(h) Make recommendations regarding the implementation of the Auditor General's report on the administration of the State's Domestic Violence Diversion programs.

(i) Form task forces or committees to assist in planning, policy, goal and priority recommendations, and such other functions as the Council deems necessary.

(j) Respond to related matters referred to the Council by the Board of Supervisors.

(k) Subject to the approval of the County Executive, request from county departments, information, services, facilities, and other assistance for the purpose of furthering the objectives of the Council.[22]

The description of duties will also clarify the jurisdiction of the council. In some communities other commissions or councils may be involved in work closely related to the work of the family

violence council. For example, in Santa Clara County there has been a Child Abuse Co-Ordinating Council in existence for years. In order to avoid conflicts between the two Councils the Board of Supervisors adopted the following language as a part of the Ordinance creating the Council:

> The Council shall ensure that its activities do not conflict with those of other boards, commissions, and councils in Santa Clara County. It shall endeavor to cooperate and coordinate with any other bodies with overlapping jurisdiction.[23]

II. Creating a Council

How a family violence council is created will have a great impact upon its later success within the community. The planning process must be carefully considered, so that the council begins on a solid foundation with support from the leaders within the community.

There is no fixed process for the creation of the council. Past methods include a state legislature passing legislation enabling the creation of councils in various communities within the state; a local Board of Supervisors or Commissioners approving an ordinance creating a council; and a governor or mayor providing the leadership role. The Attorney General or District Attorney are also possible leaders for the beginnings of a family violence council, as are judges. Community groups can also provide the leadership for such a council.[24]

There should be general agreement among the creators of the council as to its purpose, membership, and mode of operation. While the leaders in the community may be able to agree on these issues, it may be preferable to form a task force to examine whether a council should be created and to make suggestions to the political body under which the council will serve regarding its purpose, membership and operations.

In Santa Clara County, a Task Force headed by the Presiding Judge of the Juvenile Court and the Chairperson of the Board of Supervisors preceded the creation of the Family Violence Council. It included many of the people who would normally be considered for a family violence council. After several meetings and extended discussions, the Task Force delivered a report to the Board of Supervisors recommending the creation of a council and suggesting the purposes, membership and operations that the council should have, most of which were adopted.[25]

In San Diego County a Deputy City Attorney joined with community leaders in the creation of a Task Force on Domestic Violence. After two years of work and substantial accomplishments, the Task Force issued its final report and recommended the creation of a Domestic Violence Council. That Council was created in late 1991 by the Mayor of San Diego.

The group which starts the process should include leaders and key persons from all of the agencies, departments and groups which are a part of the system dealing with family violence. This includes law enforcement, prosecution, defense, probation, the courts (civil and criminal), court staff, corrections, social services, medical experts (including, perhaps, the coroner), counseling services for batterers and victims, community domestic violence groups, shelters, victim representatives, other relevant governmental agencies such as the Commission on Status of Women, as well as persons with special expertise in such areas as elder abuse, gay and lesbian abuse, research and data collection. Obviously, if leaders of these groups become members of the council, it is likely that their organizations will be ready to respond to suggested changes. Conversely, if the leader does not agree to participate or is not contacted at all, there is a possibility that the organization will not respond to the suggestions for change made by the council. Petty jealousies or similar motivations may lead some who are not a part of the council to hinder its success.

There is strong political appeal to the issues surrounding the creation of a family violence council. Reducing family violence is an attractive political goal which few community leaders will reject. However, given the demands on their time enlisting their personal participation may be difficult. Nevertheless, it is important to persuade them to become members of the council and participate in council meetings. Change can occur more quickly if community leaders are a part of the council.

The most difficult leaders to persuade to join the council may be the judges. Some may be reluctant to participate in a council which bears so directly upon the work of the court. Others may believe that there is at least the appearance of a conflict of interest.

Nevertheless, the absence of the courts will be a great loss to the family violence council. Judges have a unique perspective on the ways in which the court operates; they also control the court structure, including how parties have access to judicial intervention. Changes within the court system need both judicial understanding and input.

In addition, judges play a major role in deterring and controlling domestic violence. The courts are society's means of holding people accountable for criminal behavior and for providing protective orders for victims. As the U. S. Attorney General's Task Force on Family Violence indicated,

> Judges are the ultimate legal authority in the criminal justice system. If they fail to handle family violence cases with the appropriate judicial concern, the crime is trivialized and the victim receives no real protection or justice. Using the yardstick of the court to measure conduct, the attacker will perceive the crime as an insignificant offense. Consequently, he has no incentive to modify his behavior and continues to abuse with impunity. The investment in law enforcement services, shelter support and other victim assistance is wasted if the judiciary is not firm and supportive. . . [26]

Moreover, the courts have been identified as a major part of the problem in society's efforts to respond effectively to family violence.

> The whole area of family violence has long been a troublesome one for the courts. Frankly, we have not handled these cases well.[27]

Judges have been frequently identified as a group within the legal system needing training in domestic violence issues.[28]

It is important that there be judges serving on the council representing all parts of the court system which deal with domestic violence: juvenile, family, criminal, and civil. Not only will judicial participation facilitate a better understanding of how the system works and what is needed to improve its operation, but it will increase the judges' understanding about the dynamics of family violence. The council judges can then serve as an important link in educating their fellow judges about this area. Our experience in Santa Clara County is that the judges serving on the Council and its committees have learned a great deal about the different ways domestic violence cases are processed through the court system and have made significant administrative changes based on that knowledge.

At the time the council is officially created, its members will be selected by the body or person creating the council. One danger is that too many persons may ask to be on the council. In Santa Clara County, the interest was so great that the Board of Supervisors (elected county officials) had to expand the size of the Council to include more members, and still there were many disappointed applicants.[29]

III. How the Council Operates

The Family Violence Council should have regular, public meetings at which interested persons are given an opportunity to address the council. The agenda at council meetings may include presentations by council members or others about family violence, organizational matters and anything that serves the council and its purposes.

It is important to select a chairperson for the council who commands respect in the community and has a significant role in the operation of the legal system. Several councils have selected the district attorney to fill this role.[30] In others, a juvenile or family court judge has provided the leadership and convened the council.[31] In one community a regional organization spearheaded the efforts to coordinate a response to domestic violence.[32]

Working committees can be an effective way to identify the goals for the council. By including non-members on each committee, the number of individuals who have an opportunity to work to achieve the council's goals can be expanded. These committees may include community

education, medical, court systems, research, police/victim relations, legislation, and others. Membership should be composed of council members who have both an interest in and some relationship to the subject matter of the committee, as well as any other persons with an interest in the work of the committee. In Santa Clara County, the committees have as many non-Council as Council members.

The committees should meet separately from the council, develop goals and bring them back to the council for approval and advice on implementation. The committees may also receive referrals from the council which they can study and return to the council with recommendations.

One means of ensuring that the council has identifiable goals is to develop a workplan for each year of operation. The Santa Clara County Board of Supervisors added the following provision to the document creating the council:

> The Council shall report to the Board of Supervisors on its progress each year and shall indicate what it proposes to accomplish for the following year. Should the Council conclude that there is no further work for the Council, it shall report to the Board and request that the Council be disbanded.[33]

Consequently, the initial work of the Council and its committees was to write a workplan for the first year. Each committee proposed goals for its area, which were collected and put together into a general workplan by the workplan committee.

The first year workplan includes the following goals: better coordination between the different parts of the court system; better relationships between law enforcement and victims; drafting, monitoring and lobbying new legislation; data collection and research;[34] and community education about family violence. Within these broad headings more detailed tasks are outlined.[35]

After the workplan was approved by the Council, the tasks were assigned back to the committees for implementation. Each committee created a separate sub-committee for each goal. At the end of a year, the progress toward all of the goals will be documented and a report prepared for the Board of Supervisors, which will include suggestions the work of the Council for the next year.

IV. What Can Be Done?

A family violence council can accomplish a great deal through its operation. At the very least, if the principal persons in the legal system are present, communication and coordination should be improved within it. The council may facilitate the beginning of uniform data collection, standardized forms and reports, and the development of protocols and procedures approved by all participants in the justice system. The Santa Clara County workplan shows the range of the possible goals, though there may be many more, depending upon the needs of the particular community. A review of the policy recommendations in the book, *Family Violence: Improving Court Practice*, offers additional goals for the council to address.

The accomplishments of the San Diego County Task Force on Domestic Violence give an indication of what is possible for a community to do when a coordinated response to family violence is initiated.[36] After two years of work, the major accomplishments of the Task Force included substantial changes in all aspects of the legal system. A summary of these changes is found in Appendix D.

On some issues the council may need outside assistance. For example, the council may agree that a standardized program for batterers should be identified and adopted, but be unsure what the most effective program would be. The prosecutor or probation department may wonder if there is a better way to administer their offices, in order to give family violence cases the attention and expertise they need.

Technical assistance is available for this type of inquiry. A project at the National Council of Juvenile and Family Court Judges has identified model programs in all parts of the legal system from all over the United States. The forthcoming publication, *Family Violence: State of the Art Practices*,[37] describes model programs which a panel of experts selected as the best of their kind. Areas examined include criminal prosecution, civil protection orders, state court programs, comprehensive programs, offender treatment and accountability, coordinating councils, policy and legislation. These programs can provide the information for improvements within other

communities. The Family Violence Council can become the vehicle to identify the need and assist in the changes.

Additional technical assistance is available concerning model legislation for dealing with family violence. The National Council of Juvenile and Family Court Judges is conducting a three-year project to develop model state laws to deal with family violence. Sponsored by the Conrad N. Hilton Foundation, this project will provide jurisdictions throughout the United States with important information on the most effective statutory structure for dealing with family violence.[38]

V. Maintaining A Family Violence Council

Is the family violence council destined to be short lived? Will the council accomplish its goals in a few years and then lose its members and its resolve? I think not. Family violence is too pervasive in our society to be solved in a few years. The experience in Santa Clara County has been a sharp increase in the number of reported cases. Apparently, knowledge that people are concerned about the problem and that something may be done has encouraged victims to come forward in greater numbers.

Other communities have found that the creation of an effective system of prevention, education, intervention and correction/treatment creates lasting commitments from their leaders. No one seems prepared to suggest that domestic violence has ended or that the problem does not need our continued attention. Once the community has made a commitment through its leaders, the reduction of domestic violence is likely to become an enduring aspect of the community's public policy.

The cost of council operations should not hinder its continued operation. A council can function at minimal cost. In Santa Clara County the Council uses a government center for its meetings. So long as the time selected for meetings does not conflict with other meetings, there is no expense for the room.

The other potential operating expenses include staff to send out meeting notices, take minutes, and receive correspondence on behalf of the council. It is recommended that staff be hired for those services, but a less costly approach is to ask council members to contribute these services. If those responsibilities are rotated and thereby shared, the impact on any one council member's agency will be minimal.

There are changes that the council may recommend that will involve more significant costs. For example, the council may recommend that more staff be hired to upgrade the quality of service provided in a particular agency. The expenses related to such recommendations, however, would be borne by that agency if it decided to follow the council's recommendations.

Conclusion

Family violence is endemic in our population. Women and children are the usual, though not the exclusive, victims. Batterers utilize violence because it gives them power and control over others. But violence is a learned behavior. The learning process can be reversed. The steps necessary to assist victims to come forward and ask for help, to inform batterers that their behavior is unacceptable, and to monitor batterers so that they make changes in their behavior are complex. In order to deal effectively with the problem of family violence, a comprehensive change in the entire system which detects, investigates, prosecutes, and monitors family violence cases will be necessary. That change can be best accomplished through the workings of a family violence council.

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Notes

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[21]Santa Clara County Ordinance No. NS-300-475, Section A18-300 (reproduced in Appendix B).

The San Diego County Task Force on Domestic Violence adopted the following Statement of Purpose:

> The purpose of the San Diego County Task Force on Domestic Violence is to reduce and prevent domestic violence in San Diego by enhancing the response of primary service providers. Our goals are to: (1) provide a working forum for interaction and information exchange among agencies dealing with victims and

perpetrators of domestic violence; (2) identify and analyze the components of current responses to domestic violence and make recommendations to policy-makers regarding appropriate changes; (3) serve as a conduit to local news media for statistics and information compiled by task force participants; (4) through a legislation subcommittee, pursue legislation recommended by task force participants; (5) work toward the establishment of a coordinated, integrated system-wide response to domestic violence.

Final Report, San Diego County Task Force on Domestic Violence, City Attorney's Office, San Diego, California, 1991.

[22]*Ibid.*, at Section A18-303.

[23]*Ibid.*, at Section A18-305.

[24]*Family Violence: Improving Court Practice.* National Council of Juvenile and Family Court Judges, Reno, Nevada, 1990, at p. 15, hereinafter cited as *Family Violence: Improving Court Practice.*

[25]A copy of the final report of the Task Force appears in Appendix A.

[26]*Final Report,* United States Attorney General's Task Force of Family Violence, Washington, D.C. (1984) at p. 41.

[27]*Family Violence: Improving Court Practice, op. cit.* footnote 24, in Preface by Judge Stephen B. Herrell.

[28]*Family Violence: Improving Court Practice, op. cit.* footnote 24, at p. 16.

"Stop Family Violence Now: Steps Towards a Community Free of Family Violence" by the Human Services Roundtable, Seattle, Washington, September, 1990, at p. 17.

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"From Harassment to Homicide: A Report on the Response to Domestic Violence in Multnomah County" by Laurie Hubbard, City of Portland Bureau of Community Development, Portland, 1991, at pages 50-51, 53.

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[29]See Appendix B, Section A18-301 for the Council membership.

[30]In Los Angeles County, the first chair of the Domestic Violence Council was the District Attorney, John Van de Kamp. In Santa Clara County, the first chair was District Attorney George Kennedy.

[31]In Multnomah County, Oregon, for example, Judge Stephen Herrell convened a family violence council. *Family Violence: Improving Court Practice, op. cit.* footnote 24, at page 7 and see footnote 20 at p. 52 of that same book.

In the court system, juvenile and family court judges may be more accustomed to provide such leadership than judges from other divisions due to the nature of their judicial responsibilities. See "Deprived Children, A Judicial Response," NCJFCJ, Reno, Nevada, 1986, at pp. 10-12 and Rule 24, Appendix to California Rules of Court, Standards of Judicial Administration Recommended by the Judicial Council, West's California Juvenile Laws and Court Rules, 1991.

[32]In King County, Washington, the Human Services Roundtable, a local organization of elected and appointed officials working on human services issues, identified domestic violence as a problem needing an effective regional response. The Roundtable developed a mission, a vision and an approach to reduce and prevent domestic violence in the area. A work group met and developed a regional model for the integration and delivery of domestic violence services. The accomplishments to date have been impressive.

See "Stop Family Violence Now: Steps Toward a Community Free of Family Violence," Human Services Roundtable, Seattle, Washington, 1990.

[33]See Appendix B, Section A18-306.

[34]The importance of data collection and research cannot be over-emphasized. A system cannot evaluate its operation without collecting data. It cannot measure success without some idea of the effectiveness of certain procedures or responses. For example, in San Francisco County data were collected on the effectiveness of restraining orders. The one-year follow-up interviews of those who were granted restraining orders indicated that violence was reduced or eliminated in over 70% of the cases.

[35]See Appendix C for a copy of the workplan.

[36]*Final Report,* San Diego County Task Force on Domestic Violence, *op. cit.* footnote 21.

[37]*Family Violence: State of the Art Practice,* National Council of Juvenile and Family Court Judges, Reno, 1992.

[38]For further information and technical assistance contact Meredith Hofford, Project Director, National Council of Juvenile and Family Court Judges, P.O. Box 8970, Reno, Nevada 89507.

APPENDIX A

TRANSMITTAL MEMORANDUM
BOARDS AND COMMISSIONS

DATE: FEBRUARY 20, 1991
TO: BOARD OF SUPERVISORS
FROM: DOMESTIC VIOLENCE TASK FORCE
SUBJECT: RECOMMENDATIONS REGARDING THE CREATION OF A DOMESTIC VIOLENCE COUNCIL

A. *RECOMMENDED ACTION*

If approved in concept, refer matter to County Counsel for preparation of an enabling ordinance for the creation of a Santa Clara County Domestic Violence Council.

B. *FISCAL IMPLICATIONS*

Staff costs and materials: approximately $650.00 per month (administrative costs not included). The costs are absorbed by the Clerk of the Board's budget and result in no new expenses to the County.

C. *REASONS FOR RECOMMENDATION*

To effectuate coordination between agencies, departments and the courts with victims of domestic violence and abuse; to promote effective prevention, intervention and treatment techniques which will be developed based upon research and data collection; to improve the response to domestic violence and abuse so as to reduce incidents.

D. *BACKGROUND*

The Domestic Violence Task Force was created in November 1990, and was charged with determining whether the creation of a Domestic Violence Council would be advisable. The Task Force and its subcommittees collected data and heard from numerous persons involved in the detection, investigation, prosecution, sentencing and treatment of domestic violence. At its January 25, 1991 meeting the Task Force unanimously voted to recommend the creation of a Domestic Violence Council and adoption of the attached Constitution.

E. *CONSEQUENCES OF NEGATIVE ACTION*

The goals as stated in the By-Laws will be difficult, if not impossible, to attain without the creation of a Council. The Board of Supervisors will miss an opportunity to make a positive public declaration of its commitment to reduce domestic violence in Santa Clara County.

F. *SUPPORTING MATERIAL ATTACHED*

Proposed By-Laws for the Santa Clara County Domestic Violence Council.

G. *STEPS FOLLOWING APPROVAL*

a. Send original transmittal, with notification of Board action affixed, to Documents Librarian, Clerk of the Board.

b. Send copy of transmittal, with notification of Board action affixed, to Deputy Clerk of the Board, Domestic Violence Task Force.

c. Send copy of transmittal, with notification of Board action affixed, to Co-Chairperson Susanne Wilson, District Attorney George Kennedy, and Judge Leonard Edwards, Superior Court.

PROPOSED BY-LAWS OF THE SANTA CLARA COUNTY DOMESTIC VIOLENCE COUNCIL

PURPOSE: The general purpose is

(a) to effectuate coordination between agencies, departments and the courts with victims of domestic violence and abuse;

(b) to promote effective prevention, intervention and treatment techniques which will be developed based upon research and data collection; and

(c) to improve the response to domestic violence and abuse so as to reduce incidents thereof.

MEMBERSHIP:

The membership of the council shall consist of twenty-two (22) members nominated in the following manner and subject to appointment by the Board of Supervisors:

(a) A minimum of one (1) representative from each of the following activity areas: law enforcement, the District Attorney's Office, the court system (including Municipal and Superior Courts), battered women's shelters, batterers' treatment programs, pre-trial release services, the Bar Association, the Public Defender's Office, Legal Aid, Social Services Agency, Probation, research specialization, Commission on the Status of Women, the State Legislature, elder abuse, the gay and lesbian community.

Representatives should be at the policy making level of their respective organizations.

(b) Five (5) members from the public at large.

Each member shall have a term of three (3) years; however, eleven (11) of the initial members shall serve for two (2) years to establish staggered terms. The terms of the members shall be determined by drawing lots.

The Council shall report to the Board of Supervisors on its progress each year and shall indicate what it proposes to accomplish for the following year. Should the Council conclude that there is no further work for the Council, it shall report to the Board and request that the Council be disbanded.

The District Attorney of Santa Clara County shall serve as the Chairperson of the Council. The Vice Chairperson and other officers shall be elected by the Council at its first meeting.

POWERS AND DUTIES:

The following shall be duties of the Council:

(a) Examine ways in which agencies, departments and the courts in Santa Clara County respond to domestic violence and abuse in order to improve that response.

(b) Improve the cooperation and coordination among all participants in the justice system who deal with domestic violence and abuse.

(c) Make recommendations to the Board of Supervisors, agencies, departments, the courts and others regarding improving the response to domestic violence and abuse.

(d) Examine and review legislation that relates to domestic violence and abuse and recommend appropriate action to the Board of Supervisors' Legislative Committee.

(e) Encourage and promote public education regarding domestic violence and abuse.

(f) Address the recommendations of the report "Family Violence: Improving Court Practice," written by the National Council of Juvenile and Family Court Judges.

(g) Make recommendations regarding the implementation of the Judicial Council Gender Bias task Force Report recommendations relating to domestic violence and abuse.

(h) Make recommendations regarding the implementation of the Auditor General's report on the administration of the State's Domestic Violence Diversion programs.

(i) Form task forces or committees to assist in planning, policy, goal and priority recommendations, and such other functions as the Council deems necessary.

(j) Respond to related matters referred to the Council by the Board of Supervisors.

(k) Subject to the approval of the County Executive, to request any county department, information, services, facilities and other assistance for the purpose of furthering the objectives of the Council.

MEETINGS:

Meetings of the Council will be scheduled not less than monthly, and shall be open to the public.

STAFF ASSISTANCE:

The Clerk of the Board shall be ex officio secretary of the Council and shall provide secretarial assistance to the Council.

RELATIONSHIP TO OTHER BOARDS AND COMMISSIONS:

The Council shall ensure that its activities do not conflict with those of other boards, commissions and councils in Santa Clara county. It shall endeavor to cooperate and coordinate with any other bodies with overlapping jurisdiction.

APPENDIX B

ORDINANCE NO. NS-300-475

AN ORDINANCE TO ADD CHAPTER XVI (COMMENCING WITH SECTION A18-300) TO DIVISION A 18 OF TITLE A OF THE SANTA CLARA COUNTY ORDINANCE CODE RELATING TO THE ESTABLISHMENT OF A DOMESTIC VIOLENCE COUNCIL

SUMMARY

This ordinance creates a Domestic Violence Council which shall examine issues relating to domestic violence and make recommendations in regard to administrative and legislation issues relating to domestic violence.

The Board of Supervisors of the County of Santa Clara, State of California, do ordain as follows:

SECTION 1: Chapter XVI is added to Division A18 of Title A of the Santa Clara County Ordinance Code to read as follows:

CHAPTER XVI, Domestic Violence Council

Section A18-300. Establishment and Purpose

There is hereby established a Domestic Violence Council. The general purpose of the Council shall be as follows:

(a) to effectuate coordination between agencies, departments and the courts with victims of domestic violence and abuse;

(b) to promote effective prevention, intervention and treatment techniques which will be developed based upon research and data collection; and

(c) to improve the response to domestic violence and abuse so as to reduce incidents thereof.

Section A18-301. Membership

The membership of the Council shall consist of twenty-nine (29) members appointed by the Board of Supervisors. Members shall be representative of the following:

(a) Three representatives shall be from battered women's shelters:

(b) One representative shall be from each of the following activity areas: Police Chiefs Association, San Jose Police Department, Sheriff's Office, District Attorney's Office, Municipal Court, Superior Court, Family Court (Superior Court), batterers' treatment program, Pretrial Release Services, the Bar Association, the Public Defender's Office, Legal Aid, Criminal Defense Bar, Family Law Bar, Social Services Agency, Probation, research specialization, Commission on the Status of Women, the State Legislature, elder abuse, the gay and lesbian community. Representatives should be at the policy-making level of their respective organizations.

(c) Five representatives of the public at large.The terms of office of each member shall be three years; provided, the members first appointed shall classify themselves by lot in accordance with Section 506 of the County Charter.

Section A18-302. Secretary

The Clerk of the Board of Supervisors shall be ex officio secretary of the Council and shall be responsible for providing secretarial assistance to the Council.

Section A18-303. Meetings

Meetings of the Council will be scheduled not less than monthly, and shall be open to the public.

Section A18-303. Duties

The following shall be the duties of the Council:

(a) Examine ways in which agencies, departments and the courts in Santa Clara County respond to domestic violence and abuse in order to improve that response.

(b) Improve the cooperation and coordination among all the participants in the justice system who deal with domestic violence and abuse.

(c) Make recommendations to the Board of Supervisors, agencies, departments, the courts and others regarding improving the response to domestic violence and abuse.

(d) Examine and review legislation that relates to domestic violence and abuse and recommend appropriate action to the Board of Supervisors' Legislative Committee.

(e) Encourage and promote public education regarding domestic violence and abuse.

(f) Address the recommendations of the report "Family Violence: Improving Court Practice," written by the National Council of Juvenile and Family Court Judges.

(g) Make recommendations regarding the implementation of the Judicial Council Gender Bias Task Force Report recommendations relating to domestic violence and abuse.

(h) Make recommendations regarding the implementation of the Auditor General's report on the administration of the State's Domestic Violence Diversion programs.

(i) Form task forces of committees to assist in planning, policy, goal and priority recommendations, and such other functions as the Council deems necessary.

(j) Respond to related matters referred to the Council by the Board of Supervisors.

(k) Subject to the approval of the County Executive, to request county department, information, services, facilities and other assistance for the purpose of furthering the objectives of the Council.

Section A18-305. Relationship to Other Boards and Commissions

The Council shall ensure that its activities do not conflict with those of other boards, commissions and councils in Santa Clara County. It shall endeavor to cooperate and coordinate with any other bodies with overlapping jurisdiction.

Section A18-306. Annual Report

The Council shall report to the Board of Supervisors on its progress each year and shall indicate what it proposes to accomplish for the following year. Should the Council conclude that there is no further work for the Council, it shall report to the Board and request that the Council be disbanded.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California on April 23, 1991.

APPENDIX C

1991 - ONE-YEAR WORKPLAN
DOMESTIC VIOLENCE COUNCIL
SANTA CLARA COUNTY

A *COURT SYSTEMS COMMITTEE:*

1. Report on ways in which the court system can better coordinate its dealings with domestic violence issues.
2. Report on the services available for all members of families which have been exposed to violence and recommend what additional services are needed.
3. Report: Are respondents/defendants getting to court and receiving adequate representation in all legal settings?
4. Research Topics:
   a. What is the most effective form of restraining orders and court orders?
   b. Does court intervention help?
   c. Can listing of arrests and prior incidents be included in probation reports?
5. Plan and provide education and training for all persons in the court system. The training should include emphasis on the following:
   a. Mutual restraining orders/due process.
   b. Family violence dynamics.
6. Report on suitability and eligibility of persons for domestic violence diversion programs.
7. Report: From Family Court Services to the Council on the issue of mandatory mediation in domestic violence cases.
8. Report and recommendations on how can victims be notified when an alleged batterer is released from custody.

B. *COMMUNITY EDUCATION COMMITTEE:*

1. To provide education to community groups and to the community at large on violence within the family and in the home. Specific target groups shall include the following:
   (a) Jails, juvenile facilities, children's shelters.
   (b) School system.
   (c) Ethnic/cultural communities.
   (d) Gay/Lesbian communities.
   (e) Professional communities.
2. Public hearings throughout Santa Clara County.
3. Standardize batterer treatment programs.
4. Maintain and update a Domestic Violence Resource Directory including domestic violence and substance abuse programs approved by the justice system.

C. *DATE COMMITTEE:*

1. Standardize domestic violence data collection in Santa Clara County.
   (a) Recommend that all police agencies in Santa Clara County collect and report data on domestic violence in the same manner, e.g., victim profiles, police intervention standards, arrests and dispositions.

(b) Collect statistics from Next Door, Mid Peninsula and La Isla Pacifica.

(c) Collect District Attorney statistics - countywide.

(i) Determine prosecution requests and results (rejection rates and other dispositions).

(d) Court statistics - results of prosecutions including sentencing, violations of probation and successful completions of probation.

D. *LEGISLATION COMMITTEE:*

1. Review pending legislation and determine which bills are high priority. Bring them to council for approval and recommended action.
2. Review the *Family Violence: Improving Court Practices* report and the *Gender Bias* report and make recommendations for legislation.

E. *POLICE/VICTIM RELATIONS COMMITTEE:*

1. Collect and standardize:

(a) Police policies and procedures relating to domestic violence from each agency and academy.

(b) TRO forms from all over county-include identification of batterer on form.

(c) List of services and training available to police from community agencies including victim witness support groups.

F. *GOAL:*

To provide technical assistance to any member who wishes to seek grant funding for a domestic violence project.

G. *COORDINATE PILOT PROJECT FROM UNIVERSITY OF SANTA CLARA LAW SCHOOL:*

1. The University of Santa Clara is willing to set up a pilot program which would involve volunteer law students assisting victims of domestic violence. Law students can help victims process temporary restraining orders, accompany victims to court and assist wherever they are needed.

APPENDIX D

SAN DIEGO COUNTY TASK FORCE ON DOMESTIC VIOLENCE
Major Accomplishments

1. Created and implemented a complete domestic violence protocol for all law enforcement agencies in San Diego County.
2. Planned and facilitated multiple trainings for Family Court judges and staff on domestic violence.
3. Instituted a monthly victim orientation session co-sponsored by the District Attorney and City Attorney.
4. Prepared curriculum for training therapists on treatment and intervention issues related to domestic violence.
5. Presented testimony at the California Judicial Council Gender Bias Hearings.
6. Conducted a 90-day pilot project within the San Diego Police Department which utilized specialized reporting forms for all felony and misdemeanor domestic violence cases.
7. Drafted and circulated a county-wide protocol for hospitals and physicians who treat domestic violence victims.
8. Advocated successfully for creation of a specialized Domestic Violence Unit (six prosecutors) in the District Attorney's Office.
9. Prepared and implemented Standards for Treatment Providers for all programs providing services to court-ordered batterers.
10. Published an initial directory of all domestic violence related services in San Diego County.
11. Produced thirty-second public service announcements on audio and video cassette for use on area TV and radio stations.
12. Advocated successfully for funding for the City Attorney's Domestic Violence Unit (seven prosecutors).
13. Produced an Interim Report in August 1990.
14. Advocated successfully for the creation of a Domestic Violence Unit within the San Diego County Probation Department.
15. Conducted domestic violence trainings for Kaiser, Grossmont, and Sharp Hospital emergency room personnel.
16. Successfully lobbied the California Medical Association to adopt our reporting form as a model form for the California Physicians Manual.
17. Advocated successfully for creation of a Domestic Violence Coordinating Sergeant position with the San Diego Police Department.
18. Instituted a Police Conduct Reporting Form for use in the restraining order clinics to monitor potential misconduct by law enforcement officers regarding state mandates in domestic violence cases.
19. Assisted in creation of the Family Violence Project at Children's Hospital to create a national model for intervention in cases involving both child abuse and domestic violence.
20. Reduced the 1990 domestic violence homicide rate by 61% for the city of San Diego.

21. Utilized a Spousal Rape Working Group to address the handling of spousal rape cases within the criminal justice system.
22. Utilized an Abuse in the Church Working Group to begin a dialogue with local churches on effective intervention strategies for batterers within the religious community.
23. Surveyed 125 domestic violence cases in Family Court to evaluate the overlap between Family Court, Criminal Court, and Juvenile Court.
24. Conducted trainings for over 200 San Diego County probation officers.
25. Produced a professional domestic violence training video for all San Diego County law enforcement agencies.

Session 3: First Joint-Jurisdictional Court in California

Shingle Springs Band of Miwok Indians
and
El Dorado County, California

Family Wellness Court: Collaboration for Better Outcomes

GENERAL BACKGROUND

The Joint Jurisdiction Project Concept

The Superior Court of El Dorado County and the Shingle Springs Band of Miwok Indians Tribal Court have established a first-of-its-kind, joint-jurisdictional project that implemented a collaborative court for juvenile and family cases across the two jurisdictions.

Shingle Springs Band of Miwok Indians

- Established in 1916 through land purchase by BIA.
- 409 Tribal Members.
- 120 residents on the reservation.
- Located within El Dorado County

El Dorado County

- One of 58 Counties in California.
- Rural “Cow County”.
- Population 181, 737.
- Geographically large county.
  - 5 Courthouse locations.

Tribal Youth

- Historically, conflicts between Tribe and County.
- Created distrust of each other's government systems.
- Tribal Youth getting lost in the system.
  - Charter School.
  - Juvenile Records.

Leech Lake Band of Ojibwe-Cass County Wellness Court Model

- The Cass County/Leech Lake Band of Ojibwe Wellness Court (DWI Court) is designed to coordinate substance abuse intervention with judicial oversight through enhanced supervision and individual accountability.
- The need for a Wellness Court in Cass County and on the Leech Lake Reservation became clear as the number of DWI offenders increased over the years
- The Wellness Court is a post-sentencing DWI court admitting gross misdemeanor and felony driving impaired offenders.

Leech Lake Model Continued

- The Leech Lake Model has a Tribal and County Judge hearing cases together in the same courtroom.
- The Tribal Judge and County judge make rulings together which then become the order of the County Court.
- The model has been a success for the Leech Lake tribe and has grown to other counties in Minnesota as well.

Shared Jurisdiction

- Minnesota and California are both “PL-280 States”
- PL-280 Granted some states criminal and limited civil jurisdiction in Indian Country - on reservations.
- Concurrent jurisdiction over:
  – Criminal matters involving tribal members occurring on the reservation.
  – Juvenile matters involving tribal members
    - Please note this is a very simplified explanation of PL-280.

JOINT JURISDICTION PLANNING

The Technical Assistance Grant

- Tribal Court and County Courts already working together.
- Informal, not a lot of structure.
- Both courts applied together for the Technical Assistance grant to develop a Joint Jurisdiction Court.
- Based on the Leech Lake Band of Ojibwe-Cass County Wellness Court Model
- We were honored to be selected!!!

Strengths of Our Application

- Tribal Leadership supports the concept.
- Robust Tribal Health and Wellness Center.
- El Dorado County has extensive experience and success with "specialty" court models.
- Strong relationship with El Dorado County Court since Tribal Court began.
- Collaboration on Truancy Cases.
  - Student Attendance Review Board (SARB)

The TEAM

- The T.E.A.M. (Together Everyone Achieves More) included:
  - Judge Suzanne Kingsbury- El Dorado Superior Court
  - Judge John Smith – Minnesota Court of Appeals
  - Judge Korey Wahwassuck – Minnesota District Court of Itasca County
  - Judge Christine Williams- Shingle Springs Band of Miwok Indians Tribal Court
  - Attorney Jennifer Fahey – Jennifer Fahey Consulting, Boston, Massachusetts
  - Allison Leof, PhD – Oregon Health and Science University
  - Jennifer Walter – counsel for the California Tribal Court-State Court Forum

The T.A. Grant

- Funded by the Bureau of Justice Assistance, U.S. Department of Justice
- Assistance provided:
  - Facilitating meetings
  - Taking notes
  - Creating draft manuals
  - Organizing tasks and subcommittees
  - Tracking deadlines
- The Tribe provided meeting space and food for meetings

First Step - Key Players

- We identified the departments/agencies from the tribal and county sides that we needed in our planning process [see policy manual].
- We invited specific people from each of these to attend in-person planning meetings.
- Representatives from the following departments and agencies attended the planning meetings:

State/County/Local Representatives

- Judicial Council of California
- El Dorado County Board of Supervisors
- El Dorado County Superior Court
- El Dorado County Probation Department
- El Dorado County District Attorney's Office
- El Dorado County Public Defender's Office
- El Dorado County Sheriff's Office
- El Dorado County Counsel
- El Dorado County Health and Human Services
- El Dorado County Office of Education - SARB Chairperson
- El Dorado County Court Appointed Special Advocates (CASA)
- Court Appointed Counsel
- Placerville Police Department

Tribal Representatives

- Shingle Springs Band of Miwok Indians:
  – Tribal Council
  – Tribal Administration
  – Tribal Court
  – Legal Department
  – Health and Wellness Center – Behavioral Health
  – Tribal Police
  – Wellness Board

The Planning Process

- Project Team facilitated 3 meetings with all the players.
  - 2-3 days of consecutive meetings.
  - May, July, and October 2014
- Agreed upon ground rules to ensure everyone has a voice in our planning.
- Creating a manual to guide us as we implement our planning.

Ongoing Planning Process

- The T.A. Grant ended in November for 2014
- We have had Advisory Board meetings since then to continue our work
- Subcommittees have been working on tasks for larger group to finalize and approve
- The Family Wellness Court had our first hearings on April 8, 2015

An outline of the collaborative court vision

FAMILY WELLNESS COURT - VISION

Vision and Mission

- Collaboratively created a Vision and Mission:
- The Court's Vision: One safe, strong community of thriving families created through trust and healing.
- The Court's Mission: Joining together to provide justice through trust, respect, and love by empowering youth and families to create positive change.

Goals – Part 1

- Administer justice in a safe and supportive environment.
- Reduce incarceration.
- Reduce crime and prevent re-offenses.
- Improve public safety.
- Empower and support our youth and families.

Goals – Part 2

- Promote self-sufficiency through positive behavioral change.
- Promote community and family connections.
- Create more effective, cooperative interventions.
- Foster positive community relations.
- Celebrate cultural diversity and understanding.

Target Population

- We agreed as a team to include:
  - Tribal members
  - Juveniles and “transitional youth”

    (Up to age 24)
  - Not limited to drug offenses.
  - No offense restrictions, but…

Wrap-around

- We are planning to use a wrap around model to serve the whole family.
- Could mean having a youth who has a “dependency” case where we are providing services across several generations.

The nuts and bolts of how it is working so far

IMPLEMENTATION AND EVOLUTION

Screening

- Participants have to be screened and determined to be eligible.
- Ideally we would like to develop a multidisciplinary screening team.
- Right now the DA has become the main point of contact for screening.

Division of Work

- We will be relying on county probation and Tribal Services for supervision of this caseload.
- We will be relying on Tribal Health and Wellness Center for the majority of services.
- County DA and Public Defenders will play a role as well as Tribal Attorney.
- Plan to involve County CASA with special tribal recruitment and training.

Division of Work (2)

- Social Services from both sides.
- Law enforcement from both sides.
- Judges from both sides.
- Continued participation from the larger steering committee/advisory group regarding policies and procedures.

Referrals

- A case can be referred by almost any agency:
  - Tribal services
  - District Attorney
  - Public Defender
  - SARB
  - County Social Services
- County Judges are working on a script to allow Tribal Members an opportunity to learn more about the Family Wellness Court.

Hearing

- The Family Wellness Court Clerk (Clerk of the Tribal Court) receives the referral and sets a hearing.
- At the first Hearing Judge Kingsbury and Judge Williams sit together in the Tribal Courtroom and explain the option of Family Wellness Court.
  - Judges are cross sworn into both courts as pro tems.
  - If either Judge is unavailable the case can proceed with only one Judge or a pro tem can be appointed.

Accept or Reject

- The participant has the opportunity to accept the opportunity to participate in Family Wellness Court or to reject the option.
- If the option is rejected then the participant will continue in State and Tribal Court separately, without coordination of services or sentencing.

Medicine Wheel – 4 Phases

- 4 phases to the program
- Each phase has requirements for:
  - Court Attendance
  - Drug Screening/Testing
  - Service/Treatment
  - Education (attendance, behavior, academic progress)

Case Procedure

- Case File is maintained by Clerk of the Tribal Court working closely with the County Court Administration.
  - Jackie Davenport; Assistant Court Executive Officer; Superior Court of El Dorado County
  - Denise Williams; Clerk of the Court; Shingle Springs Band of Miwok Indians Tribal Court
- Minute Orders are signed by both Judges.

Graduation and Termination

- Participants move at their own pace through the program as long as progress is made.
  - On average 12 – 24 months
- If a participant is unsuccessful in the program they will be terminated.
- All the sanctions that would be available to both courts had the case not "transferred" to Family Wellness Court are still available.

Initial Caseload

- We have 2 active cases
  - Both referred from the county SARB – Student Attendance Review Board
  - One behavioral and one was attendance
- We have 2-3 more on the way being screened
  - One DA referral – attendance related
  - One dependency case
  - One criminal case

Dynamic Process

- The way cases are being referred is evolving.
- The scope of what cases we will hear is evolving.
- The end result regarding individual's "record" is dynamic and will most likely vary.

We still have work to do but it will be done and we will be successful in our goals.
Questions?

This project was supported by Grant No. 2012-IC-BX-K003 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Innovative Collaborative Court in California

By Judge Suzanne Kingsbury and Judge Christine Williams

Some people might think that the local state court in El Dorado County and the Shingle Springs Band of Miwok Indians are unlikely partners to have launched a first of its kind joint jurisdictional court, which is designed to address the needs of children and families by bringing together tribal and county services in one unified proceeding. Given the longstanding history of conflict between county government and tribal government in California, a tribal court judge and state court judge hearing cases together on the Shingle Springs reservation, and when appropriate, at the county courthouse (located a few miles away), is a welcome advance. We hope that this collaborative model will inspire more local-tribal partnerships across the state and the nation.

What unifies the two courts, and at the heart of this joint-jurisdictional model, are families. We are seeing multiple generations of our children who are funneled out of public schools and into the juvenile and criminal justice systems, however, we have a vision that will forge a new path for our families. The Shingle Springs Band of Miwok Indians community has been severely affected by cultural, historical and intergenerational trauma which has taken place during centuries of exposure to racism, warfare, violence, and catastrophic disease. Intergenerational trauma occurs when the trauma of an event is not resolved and is subsequently internalized, being passed from one generation to the next due to ineffective interventions. This court, named the Family Wellness Court aims to break the school to prison cycle of dysfunctional behavior by setting achievable goals for children and families, supporting them to make positive life choices and giving them a true connection to their tribal history and culture, all the while celebrating with them as they improve their self-confidence and become leaders in their community, inspiring others to join them in breaking the cycle.

The Family Wellness Court hears a wide range of cases, including juvenile (law violations or status offenses), child welfare (dependency), domestic violence (as part of a dependency, child custody, protective order petition), family, and criminal. Typically, the state court and the tribal court would hear these cases separately from one another, often making conflicting orders, working at cross purposes or failing to address the entirety of the families' issues in a holistic fashion. The Family Wellness Court aims to break down these impediments. As soon as a child or youth comes to the attention of tribal or county authorities (because the family is unstable and/or the child is at risk for substance abuse or behavior issues), the court can wrap the child and family with a multitude of tribal and county services especially designed to meet the needs of each family member. This approach maximizes the use of resources necessary to address the cultural, historical, and intergenerational traumas.

The Family Wellness Court has been enthusiastically embraced by members of the tribal community as well as members of the county as a whole. In its inaugural session on April 8, 2015, tribal members were provided with the option to participate in the Family Wellness Court in lieu of traditional state or tribal court sessions. All of the families referred to the Family Wellness Court have elected to participate in the process, even though that decision might require more effort. Tribal members realize that the court provides a safe and supportive environment that empowers children, youth (up to 24) and their families to work together with the treatment team and the court to effect positive change. Since the court is new, we cannot be sure of exact outcomes for families, but the tribal and nontribal community have high hopes that the court will reduce the number of children and youth entering juvenile detention centers; reduce recidivism; reduce the number of children and youth on probation; increase the number of children and youth who are actively engaged in cultural activities such as traditional ceremonial dance, song, drum, regalia making and language program; increase the number of children and youth who stay in mainstream schools (as opposed to the charter school); increase the number of youth who graduate from high school; and increase the number of youth who graduate from college.

Background:

In California, the two judges, Hon. Christine Williams, Chief Judge of the Shingle Springs Tribal Court, and Hon. Suzanne N. Kingsbury, Presiding Judge of the Superior Court El Dorado County, who created the court, are hoping to replicate it through the Tribal Court-State Court Forum.[1] The forum, at its first meeting, made it a priority to learn about and replicate the first joint jurisdiction tribal-state court in the nation, the Leech Lake-Cass County Wellness Court. Thanks to a national grant for technical assistance from the Bureau of Justice Assistance of the federal Department of Justice, the mentorship of Judge Korey Wahwassuck and Judge John Smith, who started the first joint jurisdictional court, and with the assistance of the California Judicial Council, Judges Williams and Kingsbury are available to assist any tribal and state jurisdiction to follow suit,

[1] For more information about the forum, see article by Judge Richard Blake and Judge Dennis Perluss in this issue.

Shingle Springs Band of Miwok Indians Tribal Court

and

Superior Court of El Dorado County

Family Wellness Court

Joint Jurisdictional Court Manual

2015

DRAFT

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Introduction

The maze of inter-jurisdictional challenges faced by tribal and non-tribal justice systems, put in place by federal policies, leave tribal and state justice systems at a disadvantage when trying to respond to problems in a holistic fashion. Often facing budget shortfalls and working with limited resources, local tribal and non-tribal communities must rely on their creativity and resourcefulness to find innovative solutions to issues caused by alcohol and drug addiction, chronic absenteeism/truancy, gang activity, and crime. Increasingly, tribal and state jurisdictions are joining forces in Joint Jurisdiction Courts to achieve better outcomes and avoid reactive, punitive-based responses from the justice system that are not as culturally appropriate as they could be.
California has the largest population of Indian people in the nation, with over 100 federally recognized tribes. California is a Public Law 280 state, and Tribes are not eligible to receive Bureau of Indian Affairs "638" funding for tribal law enforcement or tribal courts, which limits resources available to address public safety. The Shingle Springs Band of Miwok Indians (Tribe) tribal community has been severely affected by cultural, historical, and intergenerational trauma that has accumulated through centuries of exposure to racism, warfare, violence, and catastrophic disease. Many Tribal members also have the perception that they cannot trust the local justice system.

The Shingle Springs Band of Miwok Indians has committed to the idea that wellness is good governance. The Tribe promotes youth engagement in school, and has established a Wellness Board and a robust health clinic with many services on the reservation. El Dorado County has vast experience starting and sustaining specialty courts, despite fiscal challenges of its own. The Shingle Springs Tribal Court and the El Dorado County Superior Court have had a strong relationship, and Chief Tribal Court Judge Christine Williams and Presiding Judge Suzanne Kingsbury work together informally on a number of collaborative projects. Both Judge Williams and Judge Kingsbury share a commitment to addressing generational problems facing Native American families and are passionate about improving outcomes for children, youth, and families in their community.

After attending a conference at which she learned about the first Joint-Tribal State Jurisdiction Wellness Court in the nation, the Leech Lake Band of Ojibwe-Cass County Wellness Court[1], Judge Williams was convinced that by joining their courts and court-connected services, The Tribe and El Dorado County could break detrimental family cycles. According to Judge Williams, creation of a joint jurisdiction court could "save our future tribal leaders from alcohol and substance abuse, gangs, and ultimately, from juvenile delinquency and detention." Judge Kingsbury agreed: "I know we can improve outcomes for our Native children and youth and their families. If together, we provide wrap-around services by joining tribal and non-tribal forces and services, we will see a difference."

In late 2013, the Shingle Springs Band of Miwok Indians and the Superior Court of El Dorado County received a training and technical assistance grant from the Department of Justice, Bureau of Justice Assistance, to develop a Joint Jurisdictional Court to better serve system-involved

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[1] For more information about the Leech Lake-Cass County Wellness Court, follow links to the following articles: http://contentdm.washburnlaw.edu/cdm/ref/collection/wlj/id/5682 and http://web.wmitchell.edu/law-review/wp-content/uploads/documents/13.Wahwassuck.pdf.

young people and their families living on or near the Shingle Springs Rancheria. Judges Williams and Kingsbury intended to create a program that would not only address the issues facing tribal youth and their families, but would also serve as a model for other tribal and state jurisdictions in California.

The training and technical assistance T.E.A.M. (Together Everyone Achieves More) conducted three, two-day, on-site visits. The goals of the first visit were to open communication, develop stronger relationships, create a vision and mission statement, identify project goals, and map the current system. The goals of the second meeting were to envision desired changes in the system, identify how such changes could materialize, and develop a structural framework for a new joint-jurisdictional court. The goals of the third meeting were to have in place necessary information, documentation, policies and procedures, and desire to accomplish implementation. Much work was also accomplished between meetings.

At the fourth meeting, a name was chosen that reflected the goals of the new Court.

Family Wellness Court

This Family Wellness Court program is intended to provide system-involved youth and their families with a court-supervised alternative that emphasizes culturally-appropriate restorative justice practices. The program's wrap-around continuum of care consists of prevention, intervention, and post-adjudication services. Program staff uses a teamwork approach to address needs of program participants using a culture-specific, trauma-informed, strength-based, and evidence-based approach.

Individualized case plans measure and address participants' criminogenic needs, which include: antisocial/pro-criminal attitudes, values, and beliefs; pro-criminal associates; temperament and personality factors; a history of antisocial behavior; family factors; and low levels of educational, vocational or financial achievement. While some of these factors cannot be changed or influenced (e.g. prior record or family history of criminality), others can be. These "dynamic" factors include who a person associates with, that person's attitudes and values; lack of problem solving skills; substance use; and employment status. All these factors are correlated with recidivism, and all can be targeted for change.

Family, broadly defined, is an important part of Family Wellness Court. A young person is only as healthy as his family environment. A youth may leave a treatment program after a period of abstinence from substances only to return to a home where drugs and alcohol are prevalent. The Family Wellness Court program is based on voluntary participation but the young person and his or her family must agree to be held accountable through family service agreements and court orders. By signing a consent form, the parents agree to participate in the joint-jurisdictional court, which can provide services, but also administer consequences to participants for lack of compliance.

Because it is the intent of the Family Wellness Court program to promote legal, individual and family wellness, wrap around services are an important part of the program. While wrap around principles will be discussed in later pages, the foundation of this approach involves cultural, strength-based, collaborative decision making among service providers and the family, resulting in joint, outcome-based decisions for the individual needs of the young person and his or her family, with a focus on services being provided in his or her cultural community.

This document outlines foundational principles, strategic goals, collaborative partnerships, referral process, eligibility criteria, program model, staff composition, data collection, and as we move forward, lessons learned. We welcome interest in our program and encourage comments or questions.

Family Wellness Court Foundational Principles

The Court's Vision: One safe, strong community of thriving families created through trust and healing.

The Court's Mission: Joining together to provide justice through trust, respect, and love by empowering youth and families to create positive change.

The Court's Project Goals:

- Administer justice in a safe and supportive environment
- Reduce incarceration
- Reduce crime and prevent re-offenses
- Improve public safety
- Empower and support our youth and families
- Promote self-sufficiency through positive behavioral change
- Promote community and family connections
- Create more effective, cooperative interventions
- Foster positive community relations
- Celebrate cultural diversity and understanding

Family Wellness Court Collaborative Partners

The Court will collaborate with the following entities:

- Tribal Council
- Tribal General Counsel
- Tribal Law Enforcement
- Tribal Behavioral Health
- Tribal Services
- Tribal Wellness Board
- Foothill Indian Education Alliance
- Placerville Police Department
- El Dorado County Board of Supervisors
- El Dorado County Office of Education
- El Dorado County District Attorney
- El Dorado County Public Defender
- El Dorado County Sheriff
- El Dorado County Probation
- El Dorado County SARB (Student Attendance Review Board)
- El Dorado County Schools

- El Dorado County Counsel
- El Dorado County Human Services
- El Dorado County Court Appointed Special Advocates

Family Wellness Court Model/Approach

Court Model:

The Family Wellness Court model is a strength-based, client-centered, family-focused model, grounded in Native values and culture, guided by the Medicine Wheel teachings and the Ten Wraparound Principles of the *National Wraparound Initiative,* based on data-driven decision making and measureable outcomes. Family Wellness Court staff will work closely with youth and families to identify their strengths as well as needs and together create a culturally-based Family Service Plan to help the Family meet their short and long term goals.

Practice and research from multiple disciplines have shown that culture is an important protective factor for our young people. Research has shown that cultures and languages are protective factors against risk and contribute positively to health and wellness[2].

Our Approach:

Today's members of the Shingle Springs Band of Miwok Indians are descendants of the Miwok and Maidu Indians who once lived in this region. They continue the ways of their ancestors, honoring and protecting the Earth for future generations.[3] The Family Wellness Court incorporates Miwok-Maidu tribal culture through activities, education, ceremonies, and other strategies, including education on tribal life ways, tribal history, core values, and world views (including spirituality or religion). Being culturally informed enables participants to become more connected with their tribal culture and to rely on it as a resource during stressful times. Acquiring cultural knowledge also gives participants insight and connections into the ways of their culture to help them better understand themselves and their environment.

Cultural activities are an integral part of programming for participants, and include such things as: the sweathouse (used for ceremonies and purification rituals); communal gatherings and celebrations in the roundhouse; crafts such as drum- and rattle-making and basketry; traditional storytelling; gathering of plants and traditional foods; language; and traditional games such as hand games (a guessing game).

The Family Wellness Court also recognizes that today's mental health or alcohol and drug problems cannot be addressed without looking at their interrelationship with spirituality, feelings, thoughts or actions of human beings. To help participants examine their lives in a holistic way, the Family Wellness Court utilizes the Medicine Wheel teachings. The Medicine Wheel has a rich history in the culture of Native Americans and is a tool used in many

[2] McIvor, Onowa. *Language and Culture as Protective Factors for At-Risk Communities*, Journal of Aboriginal Health, November 2008, Vol. 5, Issue 1.
[3] For more information on the Shingle Springs Band of Miwok Indians, see http://shinglespringsrancheria.com/content/

disciplines that deliver services to Native Americans and non-native populations. The Medicine Wheel teachings show program participants how to develop as human beings and how to develop healthy, safe and happy relationships.

Cultural knowledge also serves as a protective factor for participants and promotes personal and community resiliency. Protective factors are conditions or attributes (skills, strengths, resources, supports or coping strategies) in individuals, families, communities or the larger society that help people deal more effectively with stressful events and mitigate or eliminate risk in families and communities. Studies have demonstrated that protective factors from delinquency and victimization include knowing one's Native Language, participating in traditional ceremonies, and understanding spiritual practices[4]. Strong cultural identity is associated with lower rates of substance abuse[5], incidences of suicide[6], and school drop-out rates[7]. Research has shown that developing a positive tribal community identity and participating in community and cultural activities are associated with lower depression, lower alcohol use, lower antisocial behavior, and lower levels of dysfunctional behaviors among Native youth[8].

The Superior Court and county government in El Dorado County have a strong commitment to collaborative, specialty courts. Collaborative justice courts, also known as problem-solving courts, combine judicial supervision with rehabilitation services that are rigorously monitored and focused on recovery to reduce recidivism and improve offender outcomes. Examples of collaborative justice courts in California are community courts, domestic violence courts, drug courts, DUI (driving under the influence) courts, elder abuse courts, homeless courts, mental health courts, reentry courts, veterans' courts, and courts where the defendant may be a minor or where the child's welfare is at issue. These include dating/youth domestic violence courts, drug courts, DUI court in schools program, mental health courts, and peer/youth courts. Collaborative Justice Courts are distinguished by the following elements:

- A problem-solving focus,
- A team approach to decision making,
- Integration of social and treatment services,
- Judicial supervision of the treatment process,
- Community outreach,
- Direct interaction between defendants and judge, and
- A proactive role for the judge inside and outside the courtroom.

[4] *A Newsletter for System of Care Communities in Indian Country*, National Indian Child Welfare Association (NICWA), Issue #6, May 2012 citing Mmari, Blum & Teufel-Shone (2010). What increases risk and protection for delinquent behaviors among American Indian Youth? Youth and Society, 41, 382-413.
[5] Id. citing Moran, J.R., & Reaman, J.A. (2002). Critical issues for substance use prevention targeting American Indian youth. The Journal of Primary Prevention, 22, 201-233.
[6] Id. citing Chandler, M.J. & Lalonde, C.E. (Unpublished manuscript). Cultural continuity as a moderator of suicide risk among Canada's First Nations.
[7] Id. Citing Feliciano, Cynthia. (2001). The benefits of biculturalism: Exposure to immigrant culture and dropping out of school among Asian and Latino youths. Social Science Quarterly, 82(4), 865-879.
[8] Whitesell, N. R. (2008). Developing a model of positive development for indigenous youth. Paper presented at the Society for Research on Adolescence, Chicago, March 8th.

The California Judicial Council's Collaborative Justice Courts Advisory Committee advises the council regarding collaborative justice, or problem-solving, courts. It makes recommendations to the council for developing collaborative justice courts, improving their processing of cases, and overseeing the evaluation of such courts throughout the state. For education and resources on collaborative courts, see http://www.courts.ca.gov/3079.htm

Family Wellness Court Referrals

Referrals to the Family Wellness Court may be made by the entities listed below. A referral form is to be filled out by the referring agency along with all available relevant information including but not limited to court orders, diagnostic assessments, general risk/need assessments, and other.

- Attorneys: Parents' Attorneys, Child's Attorney, County Counsel's Office, District Attorney's Office, Public Defender's Office
- Schools
- Law Enforcement
- Probation
- Court
- Employers/Supervisors
- Family
- Tribe
- Child Welfare
- Medical/Heath Personnel
- Faith Community
- Self-Referrals
- Court Appointed Special Advocates (CASA)
- Other jurisdictions
- Other

Referrals are deemed eligible or ineligible based on the following criteria:

Eligibility Criteria

- Native Youth exhibiting at risk behavior
- Native Youth who are at risk of court involvement
- Youth under 17 years old; Transitional Youth ages 18-24 years
- Types of cases may include delinquency, dependency, truancy, and criminal
- Participant Youth and Family must reside in Eldorado County and on or near the Shingle Springs Rancheria, or involved in a case that can be transferred
- Participants must accept the judges assigned to the Court
- Families with Native Youth who are involved in dependency court or at risk of dependency court involvement.
- Final decisions are made by the assigned judges with input from the Family Wellness Court team

Ineligibility Criteria

- Individuals with no connection to the Shingle Springs Band of Miwok Indians or not subject to the jurisdiction of El Dorado County Superior Court

Youth in the Family Wellness Court are those individuals and/or families who have the greatest needs and therefore require intensive intervention in order to sustain healthy behavioral change. Once an individual is determined eligible, staff will conduct a screening of the Family to identify any pending cases for potential consolidation. Such screening may be done by both the County Probation Department and the Tribal representatives.

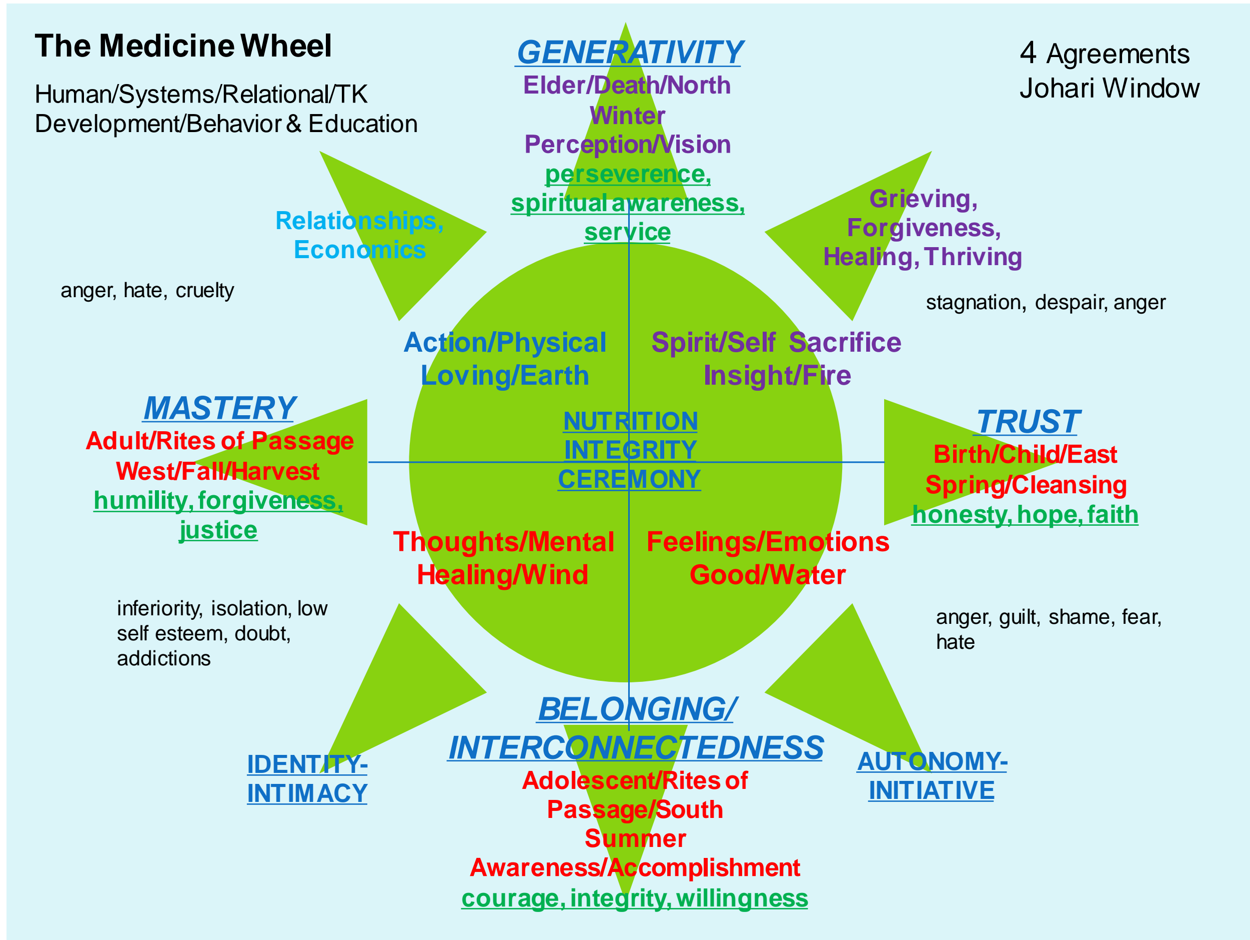
Family Wellness Court Team

The Family Wellness Court team shall together determine whether a Youth and Family are eligible for the Family Wellness Court Program. The Family Wellness Court team shall be comprised of representatives from the following disciplines as needed for the particular client:

- Probation
- District Attorney
- Child Protective Services
- Tribal Prosecutor
- SARB
- Wellness Board Member
- Volunteer Retired Professionals
- Victim Advocate
- Behavioral Health
- Law Enforcement
- Tribal Council Representative
- Defense Attorney
- Family Advocate/CASA
- Elders
- Tribal Court Advocate
- County Counsel
- Dependency Counsel

The Medicine Wheel:

The Medicine Wheel is the foundation of the Family Wellness Court.



<u>Wraparound Principles:</u>

The Family Wellness Court also utilizes the Ten Principles of the Wraparound Process:

1. *Family voice and choice*. Family and youth/child perspectives are intentionally elicited and prioritized during all phases of the wraparound process. Planning is grounded in family members' perspectives, and the team strives to provide options and choices such that the plan reflects family values and preferences.
2. *Team based*. The wraparound team consists of individuals agreed upon by the family and committed to them through informal, formal, and community support and service relationships.
3. *Natural supports*. The team actively seeks out and encourages the full participation of team members drawn from family members' networks of interpersonal and community relationships. The wraparound plan reflects activities and interventions that draw on sources of natural support.
4. *Collaboration*. Team members work cooperatively and share responsibility for developing, implementing, monitoring, and evaluating a single wraparound plan. The plan reflects a blending of team members' perspectives, mandates, and resources. The plan guides and coordinates each team member's work towards meeting the team's goals.
5. *Community-based*. The wraparound team implements service and support strategies that take place in the most inclusive, most responsive, most accessible, and least restrictive settings possible; and that safely promote child and family integration into home and community life.
6. *Culturally competent*. The wraparound process demonstrates respect for and builds on the values, preferences, beliefs, culture, and identity of the child/youth and family, and their community.
7. *Individualized*. To achieve the goals laid out in the wraparound plan, the team develops and implements a customized set of strategies, supports, and services.
8. *Strengths based*. The wraparound process and the wraparound plan identify, build on, and enhance the capabilities, knowledge, skills, and assets of the child and family, their community, and other team members.
9. *Persistence*. Despite challenges, the team persists in working towards meeting the needs of the youth and family and towards achieving the goals in the wrap-around plan.
10. *Outcome based*. The team ties the goals and strategies of the wraparound plan to observable or measurable indicators of success.

<u>Four Phases of the Family Wellness Court Program</u>

<u>Trust Phase:</u> Orientation and Assessment Phase

This first phase will require youth and family to meet with the Court on a **bi-weekly** (every other week) basis. During this phase, the client will agree to a treatment plan based on assessments completed and information collected on youth and family. Drug and alcohol testing may be conducted; Native teachings, activities and ceremonies may be performed; and incentives and consequences may be forthcoming based on compliance or non-compliance of court orders.

Progression from Trust Phase to Belonging Phase will be dependent upon successful completion of the treatment plan and approval of the judges. On average, this phase will last from 30 to 90 days.

Below is a selection of what may occur during the Trust Phase.

- A Family Wellness Court contract will be signed
- Crisis intervention and safety plans will be developed
- Mental health screening will be conducted and further assessment if necessary
- Substance abuse screening will be conducted and further assessment if necessary
- Risk/Needs assessment will be conducted and further assessment if necessary
- Historical trauma screening will be conducted and further assessment if necessary
- Developmental screening will be conducted including fetal alcohol screening and further assessment if necessary
- Physical/dental screening will be conducted and further assessment if necessary
- Functional/behavioral assessment will be conducted
- Spiritual/cultural assessment
- Family mapping
- Engagement in statutorily mandated program and treatment programs
- Drug and alcohol testing
- Interest inventory
- Medicine wheel teachings
- Seasonal activities
- Naming ceremony
- Journaling
- Incentives and consequences
- Petition by Participant(s) to move from Trust Phase to Belonging Phase

<u>Belonging Phase:</u> Education and Family Service Plan Phase

The Belonging phase will require Youth and Family to meet with the Court on a **monthly** basis. During this phase, Youth and Family will gain greater insight into their own risks and needs and continue working on developed treatment plans. On average, this phase will last from 30 to 90 days.

Below is a selection of what may occur during the Belonging Phase.

- Learning about issues and opportunities identified in the Belonging Phase
- Crisis intervention and safety plans will be reviewed
- Linking and implementing service plans for youth and family
- Continuation of programming
- Community involvement may be required
- Continuation of cultural practices and activities
- Petition by Participant(s) to move from Belonging Phase to Mastery Phase

<u>Mastery Phase:</u> Skill Development and Feedback Phase

The Mastery phase will require youth and family to meet with the Court on a **monthly** basis. During this phase, youth and family will focus on removing barriers to success, developing skills, and enriching their lives. On average, this phase will last from 30 to 90 days.

Below is a selection of what may occur during the Mastery Phase.

- Make amends, pay fines and restitution, etc.
- Complete community services
- Participate in a Vision Quest
- Re-administer risk/needs assessment
- Develop educational/vocational plans
- Gain financial skills
- Continuation of cultural practices and activities
- Petition by Participant(s) to move from Mastery Phase to Generativity Phase

Generativity Phase: Maintenance and Transition Phase

This fourth phase will require youth and family to meet with the Court **every six weeks**. During this phase, participant(s) will continue to work on healing and healthy behaviors as well as preparing to transition out of the court system. On average, this phase will last from 30 to 90 days.

The below items can be expected during the Generativity Phase.

- Continued identification of support people and systems
- Development of a family contract, youth behavioral plan, co-parenting plan, etc.
- Continued focus on educational/vocational skills
- Mentoring others
- Helping elders
- Presentation regarding how participant(s) benefitted from the Family Wellness Court
- Petition by participant(s) to move out of the Generativity Phase and out of the court system
- Commencement ceremony!

Family Wellness Court Cultural Activities

All participants will be involved in cultural activities and classes appropriate to the season of the year. Cultural activities are teaching tools, are pro-social activities, and provide for family and community and watershed connections. Through practicing these cultural activities, and learning the values and morals they impart, one achieves wellness. Some activities and teachings may occur at any time of the year, other activities and teachings are specific to the season. One of the most important outcomes from cultural activities is the strengthening of personal insight into one's own behavior and how it affects relationships by providing a place where each person finds trust, identity, initiative, belonging/interconnectedness, purpose and generosity.

Spring: Participants will participate in springtime activities including, but not limited to:

- Learning about, identifying, foraging/harvesting, processing, using and educating others about traditional indigenous spring food and medicine and their impact on our emotional, mental, physical and spiritual wellness.
- Learning about and participating in renewal (rain) ceremonies that cleanse and honor babies, children, Motherhood;

- Sweat Lodge, Tobacco Ceremonies, etc.
- Phenomenological Learning and sharing with others experientially:
  The Medicine Wheel (see attached training objective)
  Healthy Relationships (see attached training objective)
  Indigenous Wellness (see attached training objective)
  Indigenous Leadership (see attached training objective)
  Motherhood-Fatherhood is Sacred (see attached training objective)
  Establishing and Maintaining Relationships with the Natural World (see attached training objective)
  Identifying Watersheds and Sustaining Wellness
  Historical-Lateral Trauma (see attached training objective)
  Grieving, Forgiving, Healing and Thriving (see attached training objective)

All of these classes are designed to provide a sustainable wealth of cultural knowledge, skills and abilities to each participant so that they can apply wellness to their own lives and relationships.

Summer: Participants will participate in summertime activities, such as, but not limited to:

- Learning about, identifying, foraging/harvesting, processing, using and educating others about traditional indigenous summer food and medicine and their impact on our emotional, mental, physical and spiritual wellness.
- Learning about and participating in renewal (fire) ceremonies that cleanse and honor youth and Fatherhood;
- Sweat Lodge, Tobacco Ceremonies, etc.
- Phenomenological Learning and sharing with others experientially:
  The Medicine Wheel (see attached training objective)
  Healthy Relationships (see attached training objective)
  Motherhood-Fatherhood is Sacred (see attached training objective)
  Establishing and Maintaining Relationships with the Natural World (see attached training objective)
  Identifying Watersheds and Sustaining Wellness
  Historical-Lateral Trauma (see attached training objective)
  Grieving, Forgiving, Healing and Thriving (see attached training objective)

Fall: Participants will participate in fall time activities, such as, but not limited to:

- Learning about, identifying, foraging/harvesting, processing, using and educating others about traditional indigenous fall food and medicine and their impact on our emotional, mental, physical and spiritual wellness.
- Learning about and participating in renewal (wind) ceremonies that cleanse and honor adults and parenting;
- Sweat Lodge, Tobacco Ceremonies, etc.
- Phenomenological Learning and sharing with others experientially:
  The Medicine Wheel (see attached training objective)
  Healthy Relationships (see attached training objective)
  Motherhood-Fatherhood is Sacred (see attached training objective)

Establishing and Maintaining Relationships with the Natural World (see attached training objective)
Identifying Watersheds and Sustaining Wellness
Historical-Lateral Trauma (see attached training objective)
Grieving, Forgiving, Healing and Thriving (see attached training objective)

Winter: Participants may participate in wintertime activities, such as, but not limited to:

- Learning about, identifying, foraging/harvesting, processing, using and educating others about traditional indigenous wintertime food and medicine and their impact on our emotional, mental, physical and spiritual wellness.
- Learning about and participating in renewal (earth) ceremonies that cleanse and honor elders, the dead and introspection;
- Sweat Lodge, Tobacco Ceremonies, etc.
- Phenomenological Learning and sharing with others experientially:
  - The Medicine Wheel (see attached training objective)
  - Healthy Relationships (see attached training objective)
  - Motherhood-Fatherhood is Sacred (see attached training objective)
  - Establishing and Maintaining Relationships with the Natural World (see attached training objective)
  - Identifying Watersheds and Sustaining Wellness
  - Historical-Lateral Trauma (see attached training objective)
  - Grieving, Forgiving, Healing and Thriving (see attached training objective)

Each participant will be expected to teach other participants either formally or informally.

Family Wellness Court Rules and Regulations

The Rules and Regulations of Family Wellness Court include, but are not limited to the following:

Participants must:

1. Consent to the judges assigned to hear their case.
2. Sign Informational and Consent Form.
3. Report to probation as directed by the court or treatment staff if applicable
4. Report to treatment and follow all aftercare recommendations as directed by the court, treatment staff, and/or probation officer.
5. Report for random and scheduled urinalysis (UA) and chemical tests (CT) whenever directed to do so by the court, a probation officer or treatment provider.
6. Complete all assignments and/or consequences ordered to be completed by the court in a timely fashion.
7. Abstain from the use and/or possession of all drugs of abuse and alcohol, unless drugs are prescribed by a treating physician. Do not be in the presence of others using drugs or alcohol. Participant may not use drugs of abuse. In the event a doctor prescribes a drug of abuse, participant must ask about alternatives and contact participant's probation officer, treatment provider or the Family Wellness Court clerk of the court for additional information. Medical marijuana is prohibited from use.

8. Obey all laws. If a participant engages in a criminal act, he or she can be prosecuted for the new offense(s) and can be discharged from the Family Wellness Court program.
9. Attend school or work as required by the Family Wellness Court.

Family Wellness Court Consequences and Incentives

Consequences and incentives subcommittee will further develop this section.

Possible consequences for violating the Family Wellness Court Program and/or Court order(s) may include, but are not limited to the following:

- Verbal reprimands and warnings from the judges
- Written and or oral assignments
- Community service
- Apologies and amends
- Electronic monitoring
- Volunteer work on or off of the Rancheria
- Imposition of curfew
- Increased restrictions (additional drug tests, additional court appearances, etc.)
- Detention/flash incarceration
- Phase regression
- Inpatient Treatment
- Increased support group meetings
- Increased contacts with probation officer
- Transfer to Superior Court as appropriate
- Termination from the Family Wellness Court

Possible incentives for compliance with the Family Wellness Court requirements may include, but are not limited to the following:

- Verbal recognition/praise
- Applause
- Decreased restrictions (fewer drug tests, fewer court appearances, etc.)
- Gift certificates from local businesses
- Tokens in recognition of achievement (can we get these?)
- Reduced fines or fees
- Certificates of accomplishment
- Possible reduced consequences or sentences
- Phase advancement
- Decreased contacts with probation officer
- Fewer restrictions
- Graduation from the program

The court will use both positive and negative consequences. There is a constant reassessment by the court of what is or may be the most appropriate approach with the particular participant at the time. The Family Wellness Court team will meet bi-weekly prior to court for ongoing evaluations and will advise the Family Wellness Court judges of the progress and status of each participant. Decisions about consequences are almost always made after consideration of the recommendation of the Family Wellness Court team. They are imposed in different ways depending on the needs and circumstances of the participant.

Family Wellness Court Case Tracking

The Tribal Clerk of the Court is the Family Wellness Court Coordinator and shall be responsible for evaluating and maintaining current and accurate information tracking. The Clerk of the Court shall also provide timely information as requested by the Family Wellness Court team.

Family Wellness Court Data Collection

Client Files:

Client files contain the following documents:

- referral form
- file check list
- encounter log
- general intake
- consent for treatment
- service agreement
- service plan
- referral
- screening and assessment results
- release of information
- drug test
- lab results
- court orders
- team court reports
- probation reports
- police reports
- diagnostic assessments
- mental health evaluations
- psychological evaluations
- assessment (substance abuse) recommendations
- treatment reports
- discharge summaries
- truancy reports
- school records including attendance, discipline and grades

- letters
- correspondence
- vouchers
- file documentation
- progress notes from team
- copies of billing slips

<u>Database:</u>

Our participant database is designed to track baseline data, progress indicators and outcomes. Database fields include:

1. *General Information* which tracks name, birth date, age, gender, highest grade completed, care coordinator assigned, current offense, referring court, placement facility, date of enrollment, release date, current address, number of address changes in the past year;

2. *Risk and Needs* which tracks whether a family service plan was developed and when, whether housing is needed, whether the client has received a diploma or GED, whether client is eligible for health services, whether youth or family has attended parenting classes, whether transportation services are needed, whether youth has a driver's license, whether food, clothing, or incidental vouchers are needed;

3. *Programs* which tracks whether the client has been involved in mental health services, substance abuse services, employment readiness services, pro-social activities program, cultural programming, and other programming, whether client is employed, whether client is enrolled in school or a GED program, and dates of referral, enrollment, completion, and completion status for all programs;

4. *Housing and Debts* which tracks when clients obtain short term housing, long term housing, housing independence, and whether child support, restitution, and other offense related debt payments are current or paid in full;

5. *Technical Violations and Completion* tracks whether technical violations have been committed and whether client has been terminated from the program and whether that termination was a result of successful program completion.

<u>Case Management/Supervision</u>

A case manager will be assigned to the client. Case managers may be staff from county probation, county human services, or the Tribal Wellness Board depending on the needs of the client. Following client assessment, case managers may be reassigned if the court’s assessment of the client’s needs change. Case managers will be responsible for supervising the client, ensuring the client complies with court orders, assist in securing services, and provide reports during court staffing meetings.

Interns and Volunteers

The Clerk of the Court shall be charged with management of persons who are engaged on behalf of the Family Wellness Court as a volunteer, or intern. The Clerk of Court shall conduct background checks on all volunteers and interns. Volunteers may be graduates from the Family Wellness Court.

Termination from Family Wellness Court

The Family Wellness Court team reserves the discretion to determine which violations of the Family Wellness Court rules and regulations or conditions of probation will result in termination. In addition, termination may occur when a Participant commits a new offense or for other actions that compromise public safety or the welfare of the child.

Commencement from Family Wellness Court

A Participant is eligible to graduate from the Family Wellness Court upon completion of the following minimum requirement:

1. Participation in the Family Wellness Court
2. Completion of the Family Wellness Court four-phase program by demonstrating to the team an understanding of individual challenges and strategies for addressing them
3. Clean UAs/CTs for a minimum of 180 days, which includes no missed UAs/CTs, and no UA/CT tampering
4. Gainfully employed or actively engaged in school or vocational training
5. Payment of restitution if applicable
6. Safe and stable living environment
7. Definitive aftercare plan
8. Completion of the volunteer requirement

Appendix:

The following programs, components and principles may also provide guidance to the Family Wellness Court Program:

1. the Healing to Wellness Program components: http://www.wellnesscourts.org/files/KeyComponents_2003.pdf;
2. the BJA Drug Court components: http://www.courts.ca.gov/documents/DefiningDC.pdf; and
3. the 11 principles of CA's collaborative courts. Please see page 14 of this report at link: http://www.courts.ca.gov/documents/California_Story.pdf.

Superior Court of California
County of El Dorado
Policy and Procedures

FAMILY WELLNESS COURT (FWC)

Section: General	**Section Number:** To Be Determined
Policy Title: Family Wellness Court Process	**Issue Date:** May 7, 2015 **Revised Date:** MAY 28, 2015

Explanation:

The Superior Court of El Dorado County and the Shingle Springs Band of Miwok Indians Tribal Court have established a joint-jurisdictional project that creates a collaborative court for juvenile and family cases across the two jurisdictions. This court, named the Family Wellness Court, hears a wide range of cases, including juvenile (law violations or status offenses), child welfare (dependency), and domestic violence (as part of a dependency, child custody, and protective order petition), family, and criminal. Family Wellness Court matters are heard by the Tribal Court Judge and Superior Court Judge together at the Shingle Springs Tribal Court facility. A Superior Court Clerk and Court Reporter staff the Family Wellness Court when there is an underlying Superior Court case along with the Tribal Clerk.

Process When Superior Court Case:

- Tribal youth with Superior Court case referred to the Family Wellness Court (FWC). (Delinquency, Dependency or Criminal case filings)
  - Superior Court Judge may be informed of referral during court proceeding.
  - For criminal and delinquency case filings the District Attorney may at the time of filing present an offer/recommendation for the defendant/minor to participate in the FWC. The offer/recommendation to FWC may require an admission and conditions to be imposed prior to referral to FWC
  - For dependency and family case filings County Counsel or the attorney for the minor or parents/guardians/parties may make a recommendation to the court for the minor and family to participate in the FWC
  - If an offer/recommendation to FWC is filed, the clerk will flag the case so the judge is aware the defendant/minor is a potential FWC participant.
  - Upon receipt of an offer/recommendation to FWC, the Superior Court Judge will state on the record:

    Your case has been identified as eligible for possible participation in the Family Wellness Court, a joint-jurisdiction court with the El Dorado County Superior Court and the Shingle Springs Band of Miwok Indians. The Court is designed to provide you with the culturally specific services and a wellness plan agreed upon by you, the County and the Tribe.

If you are interested, we can continue your case so you can learn more about participation in the Family Wellness Court from Tribal Services on the Rancheria and be referred into the court by the District Attorney's Office.

    - After the recommendation to FWC has been made, the Judge will schedule the case on the next FWC calendar for determination of eligibility and agreement by the participants. Case is calendared in the "FWC" department.
    - FWC hearings are heard the 2nd and 4th Wednesday of each month at 4:00 p.m. FWC staffings are scheduled at 3:15 p.m.
    - The Superior Court Judge may put the matter over for 2 to 3 weeks for review. If acceptance to FWC is received the clerk will vacate the review hearing scheduled in Superior Court.
- Tribal Court Clerk schedules the case for hearing on next FWC calendar and sends Notice of Hearing to participants (defendant/minor/parents/guardian) and FWC staffing team.
    - Notice of Hearing to Superior Court is by email to Rosalie Tucker, Doralyn McPeake, Vicki Stilwell, Tracy Barbour, Sara Dahlgren and Jackie Davenport.
- Superior Court clerk confirms the case is calendared for the FWC hearing at the Tribal Court.
    - Superior Court will provide a court reporter and courtroom clerk for all FWC hearings.
    - Superior Court clerk will complete minutes for each FWC hearing and will maintain filings and orders in the Superior Court case file.
- Superior Court case will continue to trail the FWC case. Each FWC hearing will be scheduled in the Superior Court case and appropriate minutes completed.
- Tribal Court Clerk will provide copies of the following FWC filings and orders for inclusion in the Superior Court case.
    - Notice of Hearings
    - Information and Consent
    - Court Orders
    - Participation Agreement – Dependency
    - Participation Agreement – Probation
    - Other filings as requested by the Superior Court
    - Superior Court clerk will place documents such as Participation Agreements, reports, etc. in the confidential section of the criminal case file.
- If the tribal youth successfully completes the FWC or terminates from the FWC as unsuccessful the disposition of the FWC case and the Superior Court case will be handled by the FWC judges. Both FWC and Superior Court cases will be dispositioned based on the FWC's orders.
- Superior Court clerk will complete appropriate disposition paperwork such as the DOJ-8715, sentencing abstract, etc.

Superior Court of California
County of El Dorado
Policy and Procedures

Process When Superior Court Case For Parent of Tribal Youth Referred To FWC:

- Tribal youth is referred to FWC by SARB, Probation or other agency. Coinciding with the referral to FWC the DA files a Superior Court criminal complaint against parent(s) for failure to send child to school (EC 48293) or other charges.
- The Superior Court may hold the criminal case in abeyance pending the outcome of the FWC proceedings. If case is held in abeyance the following applies:
  - ➢ The disposition of the Superior Court criminal case will continue to trail the FWC case and disposition of the Superior Court criminal case will be addressed by the FWC upon successful or unsuccessful termination of the FWC case.

Civil & OTS Codes:

Action Code	Description	Update Code
FWCH	FAMILY WELLNESS COURT HEARING	
FWCR	FAMILY WELLNESS COURT REVIEW HEARING	
FWCV	FAMILY WELLNESS COURT - VIOLATION OF PROBATION	
Minute Code	**Description**	**Update Code**
CIRFWC	CASE IDENTIFIED AND REFERRED TO FAMILY WELLNESS COURT ON THE RECORD.	
CHA	CASE HELD IN ABEYANCE PENDING OUTCOME OF FAMILY WELLNESS COURT CASE NUMBER %XX%	
Department Code	**Department**	
FWC	Family Wellness Court	

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495 Main Street Placerville, CA
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Shingle Springs Band Of Miwok Indians
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Family Wellness Court Information and Consent

The Family Wellness Court ("Court") was created to provide you and your family with a court-supervised alternative to proceedings in the California Superior Court ("local state court"). This alternative Court was created to help children and transitional youth, ages zero to 24 years old, as well as their families, who are either currently engaged in local state court proceedings or who are at risk of local state court intervention. This alternative Court will create a culturally appropriate wellness plan specifically designed for you and your family in collaboration with the Shingle Springs Band of Miwok Indians ("Tribe") and its many services and programs.

Court Model: The Family Wellness Court will be presided over by two judges--one from the Tribe and one from the local state court, who will act together with input from a team of Tribal and County service providers and departments. Court will be held the second and fourth weeks of each month. The County and tribal service providers will meet with the judges before your hearing to review your case and progress with your wellness plan.

Family Wellness Court Participation: The Family Wellness Court will take you through four stages towards wellness, with each stage having various requirements and incentives for participation. The goal of the Court is to help you achieve:

- Stronger family relationships and spiritual awareness grounded in Native values
- A better life for you and your family, free from anger, guilt, fear, shame or hate
- A healthier sense of self-worth through courage, integrity, and hope

Rewards: Depending on your progress in the Family Wellness Court and the circumstances of your case, you may earn:

- Reduced court sanctions, fines, and fees;
- Dismissal of charges;
- Reinstatement in school or assistance in completion of a GED certificate; and
- Family recreational activities and trips.

Consent to Participate in Family Wellness Court and Share Information

I, (name) ______________________________, understand the Family Wellness Court model and consent to participate in the Family Wellness Court.

My Existing Court Case Will Be Transferred: I understand that if I have a pending case in local state court, my case will be transferred to the Family Wellness Court. I understand that while I am in Family Wellness Court, I may also be on probation.

I am Submitting to the Jurisdiction of the Family Wellness Court: I am consenting to the jurisdiction of the Family Wellness Court, and its authority to:

- make decisions in my case;
- make orders requiring me to appear in court for hearings on my case;
- make orders requiring me to participate in the programs or services recommended by a team of Tribal and County providers.

I Have Received the Family Wellness Court Participant Manual: I have been given the Family Wellness Court Participant Manual. I understand its contents, and I agree to the program requirements.

The Program is Unique to Me: I understand that the Family Wellness Court is an individualized program. I understand that team decisions are made based on my personal circumstances in order to provide the best program available to suit me and my family's needs and as a result, not everyone in the Family Wellness Court will have exactly the same requirements.

The Length of the Program: I understand that this Family Wellness Court Program will last a minimum of 12 months, but could last longer. I understand that I will be required to appear in the Family Wellness Court on a regular basis and that the number of times I am required to appear depends upon which phase of the Family Wellness Court I am in.

My Failure to Appear: I understand that my failure to appear in Family Wellness Court, even when Court is on the Shingle Springs Rancheria, will result in a warrant being issued for my arrest and detention in the County jail until I can come to Court.

I Agree to Share My Information: I understand that in order to provide me with a personalized wellness plan and Family Wellness Court experience, information must be shared between the Family Wellness Court Team and all providers identified below.

I, (name) ______________________________________, authorize the following agencies to obtain and share the specific types of information described below for the purpose of creating and managing my personalized wellness plan:

1) Court Judicial Officers and Coordinators (Family Wellness Court)
2) Shingle Springs Tribal Health Services
3) Shingle Springs Tribal Services Department
4) Shingle Springs Tribal Administration
5) School Personnel (El Dorado County Office of Education and Student Attendance Review Board)
6) El Dorado County Health and Human Services Agency (Mental Health, Public Health, Social Services, and Community Services),
7) County Law Enforcement (El Dorado County Sheriff's Office)
8) Local Police Department (Placerville Police Department)
9) El Dorado County Probation Department
10) Substance Abuse Treatment Program and Counselor:
    a. Program Name: ____
    b. Program Phone: ____
11) Court-Appointed Counsel:
    a. Parent's Attorney(s): _______________________________________
    b. Child's Attorney(s): ____
12) County Public Defender
13) Court-Appointed Special Advocate
14) County Counsel
15) District Attorney

The above agencies may obtain and share records containing the following specific types of information:

1) My participation and attendance in court-ordered services
2) My progress in my Family Wellness Plan
3) My general emotional, physical, spiritual health and well being
4) My drug and alcohol records, including assessments, recommendations, treatment and testing
5) My mental health records, including psychiatric records, psychiatric hospitalization records if any, and progress reports from therapists or counselors
6) My housing and employment status
7) My criminal history
8) Other____

In making this consent to obtain and share specific types of information about me, I understand and agree to the following:

1. I have been given the El Dorado County Notice of Privacy Practices.
2. I am giving my consent voluntarily.
3. I can revoke my consent at any time.
4. I understand that I cannot participate in the Family Wellness Court unless I give my consent.
5. I understand that information about my case could be used for the purposes of program evaluation and analysis. Any information used for this purpose will be anonymous.

I understand that I have the right to receive a copy of this signed authorization.

This consent expires eighteen months after the date it is signed, or upon completion or discharge from the Family Wellness Court.

____________________	____________________	____________________
Participant Signature	Printed Name	Date
____________________	____________________	____________________
Parent/Legal Guardian/ Conservator Signature (if participant is unable to sign)	Printed Name	Date
____________________	____________________	____________________
Attorney’s Signature	Printed Name	Date

Resources

In General

The required elements of a valid authorization are set forth in the Code of Federal Regulations Title 45 section 164.508 & California Civil Code sections 56.11, 56.12, 56.13, 56.14, 56.21.

Federal Laws Relating to Privacy and Confidentiality

42 CFR Part 2 (Privacy of Substance Abuse Patient Records: Part 2 of Title 42 of the Code of Federal Regulations are federal regulations prohibiting most disclosures of patient information that could identify a patient as a drug and/or alcohol abuser by a federally assisted substance abuse program. Form of valid written consent (42 C.F.R. 231)

To be valid, the authorization must be:

1. The name/general designation of the program/person permitted to make the disclosure.
2. The name/title of the individual or the organization to which disclosure is to be made.
3. The name of the patient.
4. The purpose of the disclosure.
5. How much and what kind of information is to be disclosed.
6. The signature of the patient and/or the patient's authorized representative, as required.
7. The date on which the consent is signed.
8. A statement that the consent may be revoked at any time except where the entity originally permitted to make the disclosure has already acted in reliance on the consent.

Health Insurance Portability and Accountability Act of 1996 (HIPAA)

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule regulates the use and disclosure of "protected health information" (PHI) by health providers, health insurers, and other designated "covered entities." The Privacy Rule broadly defines PHI as including information about an individual's health status and receipt of care, but expressly excludes information maintained in records subject to the Family Educational Rights and Privacy Act (FERPA) regulation.

The Family Educational Rights and Privacy Act (FERPA) protects the privacy of information maintained in student education records. It applies to all education agencies and institutions that receive federal funds including public elementary and secondary schools and both public and private colleges, universities, and professional schools. Private and religious elementary and secondary schools are largely exempt from FERPA.

State Laws Relating to Privacy and Confidentiality

Civil Code §56.11-16 (Privacy of Medical Information) A person or entity that wants medical information and is not authorized to receive it, must obtain a valid authorization for release of information. To be valid, the authorization must be:

1. Handwritten or typed by the same person who signs it for the purpose of executing the authorization
2. Signed and dated by the patient, the legal representative, spouse, beneficiary or personal representative of the patient (if deceased)
3. States the specific uses and limitations of the types of medical information to be disclosed
4. States the name of the provider of health care, health care service plan, pharmaceutical company, or contractor that may disclose the medical information
5. States the name or functions of the persons or entities authorized to receive the medical information
6. States the specific uses and limitations on the use of the medical information by the persons or entities authorized to receive the medical information
7. States a specific date that the authorization expires when the provider, health care service plan, pharmaceutical company, or contractor is not authorized to disclose the medical information
8. Advises person signing that they have a right to receive a copy of the authorization.

CA State Agency

California Office of Health Information Integrity (CalOHII), in partnership with stakeholders, has worked to develop *Patient Authorization Guidance Tools*. Recognizing the complexity of federal and state laws, this tool is envisioned to provide simplified decision support for providers.

The Authorization Tools provide guidance on when patient authorization is needed for the disclosure of health information in California, according to federal and state law. The tool is designed to help healthcare providers determine when they need to obtain a patient's authorization to send that patient's information to another provider. The intent is to guide providers who are exchanging health information electronically, though the rules described also apply to information in paper form. This tool applies only to healthcare providers as defined by both HIPAA and the Confidentiality of Medical Information Act (CMIA).

For Substance Abuse Treatment Records

For Mental Health Treatment Records

For treatment of records involving the Lanterman, Petris, Short Act

Handbook
Understanding Confidentiality and Minor Consent in California (2010) Covers all federal and state laws on confidentiality.

Consent Form
Requirements for Valid Consent Form

California's Confidentiality of Medical Information Act (Cal. Civil Code § 56 et seq.)
http://www.healthinfolaw.org/state-topics/5,63

FAMILY WELLNESS COURT

Superior Court Of California,
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495 Main Street Placerville, CA 95667
www.eldoradocourt.org

Shingle Springs Band Of Miwok Indians
P.O. Box 531, Shingle Springs, CA 95682
www.shinglespringsrancheria.com

In the Matter of: ________________________________ Case No.: ________________________________

FAMILY WELLNESS COURT PARTICIPANT AGREEMENT-PROBATION

________ 1. I will participate in and complete the Family Wellness Court.

________ 2. I will report to the probation officer as directed by the probation officer.

________ 3. I will obey all city, county, state, federal and tribal laws and ordinances.

________ 4. I will obey my parent(s), legal guardian, or caregiver, and follow the directions of the probation officer.

________ 5. I will keep the probation officer informed of any changes in address, phone number, family, school, or

________ 6. I will attend school regularly, obey school rules and regulations, and not leave the school campus during school hours without permission of school officials or the probation officer.

________ 7. I will seek and maintain employment as directed.

________ 8. I will not use, possess, or be under the influence of any alcoholic beverage or illegal or intoxicating substance, or possess any associated paraphernalia.

________ 9. I will not use, possess, or be under the influence of the following: ________________________.

________ 10. I will not possess, own, or handle any firearm, knife, weapon, fireworks, explosives, or chemicals that can produce explosives.

____

________ 11. I will not contact or associate with: ____.

________ 12. I will engage in my case plan to assist in my treatment and achieve my goals.

________ 13. I will participate in individual, group, or family counseling, as directed the probation officer.

a. ☐ Alcohol and other drug counseling
b. ☐ Anger management counseling
c. ☐ Family Counseling
d. ☐ ____
e. ☐ ____

________ 14. I will immediately submit to chemical testing in the form of, but not limited to, blood, breath, urine, or saliva on the direction of the probation officer or a peace officer.

________ 15. I am subject to search and/or seizure of my person, vehicle, or place of residence, or any place under my control, at any time, day, or night, without a search warrant and without probable or reasonable cause, on the direction of the probation officer or a peace officer, for detection of the possession of (specify) ____.

________ 16. I will perform _____ hours of community service.

________ 17. I will be at my place of residence between the hours of _____ p.m. and _____ a.m. unless with a parent, legal guardian, or caregiver or with prior permission of the probation officer.

________ 18. I will comply with the following terms regarding victims:

a. ☐ I will write a letter of apology, to be submitted to the probation officer for approval, by *(date):* ____________________

b. ☐ I will have no contact in person, in writing, by telephonic or electronic means, or directed through a third party with any person known to me to be a victim of my offense.

c. ☐ I will remain at least _____ yards from the following addresses (residence, place of employment, etc):____

____

☐ unless accompanied by a parent, guardian or caregiver.

__________ 19. I will comply with the following terms regarding gangs:

a. ☐ I will not be a member of, or associate with, any person that I know, or should reasonably know, to be a member or to be involved in the activities of a criminal street gang.

b. ☐ I will not wear or display items or emblems reasonably known to be associated with or symbolic of gang membership.

c. ☐ I will not acquire any new tattoos or gang-related piercings and have any existing tattoos or piercings photographed as directed by the probation officer.

__________ 20. I shall reside in the custody of:

a. ☐ parent *(name):* ______________________________ ☐ mother ☐ father

b. ☐ parent *(name):* ______________________________ ☐ mother ☐ father

c. ☐ legal guardian *(name):*____

d. ☐ under terms and conditions described herein.

__________ 21. My legal parent or guardian and I will pay a restitution fine of $____________________.

__________ 22. With my legal parent or guardian, I will pay restitution to each victim *(name each):*

a. ____

b. ____

☐ in the amount of $____________. ☐ in the amount and manner to be determined.

__________ 23. ____

__________ 24. ____

______________________________ ____________________
Participant Date

______________________________ ____________________
Parent or Guardian Date

______________________________ ____________________
Probation Officer Date

FAMILY WELLNESS COURT

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P.O. Box 531, Shingle Springs, CA 95682
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In the Matter of: ______________________________________ Case No.; ______________________

FAMILY WELLNESS COURT PARTICIPANT AGREEMENT- DEPENDENCY

_______1. I acknowledge the following harm or risk of harm to my child or children:

____
____
____

_______2. I understand the Family Wellness Court is an alternative to Superior Court proceedings regarding my child or children and my eligibility for the Family Wellness Court is conditioned on my active participation in the Family Wellness Plan established by the Family Wellness Court.

_______3. I agree to participate in my Family Wellness Plan until the Family Wellness Court determines that I am eligible to graduate from the program.

_______4. I understand that my Family Wellness Plan will include four phases, and that completion of the program will take a minimum of 12 months and no longer than 24 months.

_______5. I agree to attend all Family Wellness Court hearings on time.

_______6. I agree to remain in contact with my Case Manager and to keep my Case Manager informed of any changes in my address, phone number, living arrangements, family circumstances or employment. I am currently residing at:

____
____
____

The following people reside in my home: ____
____

The phone number where my Case Manager can reach me is: ______________________________
____

My current place of employment is: ___________________________at the following days and times:
____

_______7. I agree that my Case Manager may visit my home at any time without prior notice to me.

8. I will not use, possess, or be under the influence of any alcoholic beverage or illegal or intoxicating substance, or possess any associated paraphernalia.

________9. I will not use, possess, or be under the influence of the following: ________________________________

________10. I agree to submit to chemical testing in the form of, but not limited to, blood, urine, breath or saliva on the direction of my Case Manager.

________11. I understand that if my child or children have been removed from my care by the Superior Court, and the Family Wellness Court determines that I have failed to make substantial progress in my Family Wellness Plan within the first six months of the program, my case may be referred to the Superior Court for a selection and implementation hearing under Welfare and Institutions Code section 366.26. Such a hearing could result in the termination or modification of my parental rights and adoption of my child or children.

________12. I also agree to:____

____

____

____

____

____

____

____

____ ______________________

Participant Signature Date

____ ______________________

Parent or Guardian Date

____ ______________________

Parent or Guardian Date

____ ______________________

Case Manager Date

FAMILY WELLNESS COURT

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REFERRAL FORM

Name ____ Telephone ____________________________

Address ____

I recommend that the above Native Youth be considered as a participant for the Family Wellness Court. It is my belief the following eligibility criteria are met (all that apply are checked):

- ☐ Native Youth exhibiting at-risk behavior
- ☐ Native Youth under the age of 17 years
- ☐ Transitional Native Youth between ages 18-24 years
- ☐ Delinquency ☐ Dependency ☐ Chronic absenteeism/truancy ☐ Criminal case
- ☐ Participant Youth and Family reside in El Dorado County and on or near the Shingle Springs Rancheria, or are involved in a case that can be transferred
- ☐ Native Youth and Family accept the Judges assigned to the Family Wellness Court
- ☐ Other:

____
Print Name / Signature of Referring Party

____ ____________________________
Agency/Service Date

The participant is:

☐ eligible ____

____

☐ not eligible ____

____

____ ____________________________
Honorable Judge Christine Williams Date

____ ____________________________
Honorable Judge Suzanne Kingsbury Date

CONFIDENTIAL FORM

FAMILY WELLNESS COURT

Superior Court Of California,
County of El Dorado
495 Main Street Placerville, CA 95667
www.eldoradocourt.org

Shingle Springs Band Of Miwok Indians
P.O. Box 531, Shingle Springs, CA 95682
www.shinglespringsrancheria.com

IN THE MATTER OF:

____

Family Wellness Court Case No.____________________
El Dorado Superior Court Case No. __________________

Court Minute Order
[FOR COURT USE ONLY]

Family Wellness Court hearing held (Date) , at (time) at the Shingle Springs Tribal Court.

PERSONS PRESENT: (List parties, attorney for party if represented, Probation, Tribal Services, etc.)

____
____
____
____

HEARING SUMMARY:
Chambers Conference held with Family Wellness Court team / not reported/recorded.

____
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____
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____
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COURT ORDERS:

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REVIEW HEARING: Family Wellness Court hearing set for (date) at (time) at the Shingle Springs Tribal Court.

CUSTODY STATUS:

- ☐ Participant released to the custody of _________________
- ☐ Participant released on______________________________
- ☐ Participant is remanded forthwith
- ☐ Other: ____

SO ORDERED.

____
CHRISTINE WILLIAMS, CHIEF JUDGE DATED: ____________________________

____
SUPERIOR COURT JUDGE DATED: ____________________________

CC: DA PD PARTICIPANT JAIL PROB ATTY POLICE SHERIFF CHP TRIBAL SERVICES

FAMILY WELLNESS COURT
LIST OF FORMS

NAME OF FORM	APPROVED	REVISED
Behavioral Health Progress Report		05/2015
Community Service Report		05/2015
Court Minute Order		05/2015
El Dorado County Notice of Privacy		02/2008
Information & Consent		01/2015
Memorandum of Understanding		01/2015
Notice of Hearing		05/2015
Participant Agreement-Dependency		05/2015
Participant Agreement-Probation		05/2015
Participant Agreement-SARB (Mandate Form Currently)		06/2010
Participant Survey		05/2015
Probation Progress Report		05/2015
Referral Form		05/2015
Request for Records-Juvenile JV-569-573		04/2015
Transcript Order Form-El Dorado County		10/2014
Wellness Board Case Plan		05/2015
Wellness Board In-take Questionnaire		05/2015
Wellness Board Petition to Graduate		05/2015
Wellness Board Phase 1-2 Petition		05/2015
Wellness Board Phase 2-3 Petition		05/2015
Wellness Board Phase 3-4 Petition		05/2015
Wellness Plan Progress Report		05/2015
Wellness Plan Order		05/2015

Session 4: Celebrating Success Five Years Later and Strategies for Building on Success

Session 4: Building on Success

With your colleagues at your lunch table, identify a recorder, reflect on the following questions, and record your responses. The goal of this exercise is to give direction on specific policies, partnerships, and educational projects you would like the forum to undertake or continue.

1. Since its inception, the forum has made child welfare issues and domestic violence prevention its top two concerns. Review the attached document, *Issues by Case Types*, and discuss together whether the forum should continue to prioritize these two areas.

   Yes, the forum should continue to give priority to these two areas because:

   No, we think the forum should give priority to the following areas because:

2. Select two or more case types from the 9 case types listed in the attached *Issues by Case Type* document. Discuss together and identify issues, policies, partnerships, and/or educational projects that you would like to see the forum undertake or continue to pursue.

   Case Type:___________________________

   What are the key issues of mutual concern to tribal and state courts?

   What policies should the forum recommend to address these issues?

   What local or statewide partnerships should be undertaken or continued?

   What educational projects should be undertaken or continued?

Case Type:____________________________

What are the key issues of mutual concern to tribal and state courts?

What policies should the forum recommend to address these issues?

What local or statewide partnerships should be undertaken or continued?

What educational projects should be undertaken or continued?

3. How do you promote collaboration and resource sharing? (for example, developing local protocols/practices/mous/moas; making presentations locally, statewide, or nationally; convening cross-court cultural exchanges or other stakeholder groups; distributing the Forum E-Update; posting tribal laws, forms, opinions etc.)

Issues by Case Type

1. **Child Custody and Child Support:** The forum began looking at these issues in 2013 and 2014. The most common issues that arise include having tribal custody and visitation orders recognized and enforced outside of tribal lands and having child support orders from a state court enforced on tribal lands.

   Federal law contains certain mandates regarding full faith and credit for child support and custody orders. In particular, title 18 United States Code section 1738A requires states to give full faith and credit to child custody and visitation orders from another "state." The definition of "state" in section 1738A does not include "tribe." Title 18 United States Code section 1738B requires "states" to give full faith and credit to child support orders of another state. The definition of "state" in section 1738B includes "Indian country." Family Code section 3404 provides that a child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this part of the code (part 3, also known as the Uniform Child Custody Jurisdiction and Enforcement Act) must be recognized and enforced under chapter 3, commencing with section 3441. Some tribes in the United States operate title IV-D child support programs; currently the Yurok Tribe is the only tribe in California to operate such a program, although some other tribes are in the process of starting one. Some tribes in California are operating title IV-A TANF programs.

   The forum prioritized the need for consistent procedures for determining the orderly transfer of title IV-D child support cases from the state superior court to the tribal IV-D child support court when there is concurrent subject matter jurisdiction. The forum developed rule 5.372 to establish such a procedure; the California Judicial Council adopted the new rule, which became effective January 1, 2014.

2. **Child Welfare:** The forum established child welfare as one of its top priorities at its first meeting. Over the past five years, the forum has identified and addressed issues by recommending policies relating to appeals, access to juvenile records, juvenile delinquency cases, the transfer of cases, and tribal customary adoption. The forum also promotes partnerships and education through projects staffed by the tribal/state programs, such as S.T.E.P.S. to Justice- child welfare, and the ICWA Initiative, which has provided education and other legal services to courts since 2005.

   Federal law mandates full faith and credit for tribal court custody orders concerning Indian children. In particular, the Indian Child Welfare Act (25 U.S.C. § 1911(d)), or ICWA, addresses the issue of jurisdiction over child welfare proceedings involving Indian children.

   <u>Next Steps</u>

   1. The forum has identified the following two policies that are within purview: mandatory attorney training (raised at April 2015 meeting) and mandatory judicial training (raised at March 2014 meeting).
   2. The forum has identified the following tribal/state/federal partnerships and policies:
      i. Electronic Notice: Recommend a pilot project that would provide electronic notice to tribes in Indian Child Welfare Act (ICWA) cases.

ii. Tribal Representation: Recommend a pilot project to fund attorneys for tribes.

iii. Agents for Service: recommend development of federal online site to improve notice and recommend a pilot project to centralize notice function in California.

iv. Title IV-E: recommend changes in federal laws relating to title IV-E funding and permanency

    Currently, title IV-E funding does not follow the child when a case is transferred from state court to tribal court. By providing greater flexibility in title IV-E funding, counties and tribes would be encouraged to work together in placing Indian children. Recommend that title IV-E foster care funding for foster care placements continue to be provided by a county when a child's case is transferred to tribal court.

    Currently, legal permanency is defined without reference to how permanency is defined by tribal communities. By providing special recognition to traditional forms of permanency in tribal communities and defining legal permanency in those terms, an Indian child living with an Indian custodian may be in a more permanent family setting than an adopted Indian child. Recommend that legal permanency for Indian children be revaluated with input from tribes and redefined.

v. Recommend title IV-E reviews include ICWA compliance in the federal child welfare outcome measures.

vi. Qualified Expert Witnesses: recommend training to ensure qualified expert witnesses who meet tribal-specific standards are available and called to testify in ICWA cases.

vii. Attorneys representing Indian Parents and Children – recommend that attorneys appointed to represent Indian Parents and Indian Children have minimum specialized training on the Indian Child Welfare Act.

viii. Indian Foster Homes: recommend funding to recruit, train, and support culturally, appropriate tribal foster homes.

3. **Civil Money Judgments:** The forum began looking at the issues relating to recognition and enforcement of civil judgments in 2013 and 2014. The forum learned that a party seeking enforcement of a civil tribal court judgment in a state superior court must do so under the Uniform Foreign-Country Money Judgments Recognition Act, a time consuming and expensive procedure, in which parties sometimes unnecessarily re-litigated what has already been decided by the tribal court, costing both the parties and the state courts time and expense. The forum developed a legislative proposal to streamline and simplify these procedures to make it easier and less costly for parties and state courts to enforce tribal court judgments, already enforceable under current law and principles of comity. The forum recommended, and the Judicial Council sponsored, legislation to clarify and simplify the process by which tribal court civil judgments would be recognized and enforced in California, in the form of the Tribal Court Civil Judgment Act. The legislative proposal provided a discrete procedure for recognizing and enforcing

tribal court civil judgments, to provide swifter recognition of such judgments while continuing to apply the provisions of comity appropriate to judgments of sovereign tribes. The proposal was later limited to civil money judgments (See SB 406, Chapt. 243, 2014).

Next Steps

1. California Law Review Commission is studying the law.
2. Sunset provision (2016) needs to be lifted.
3. Incremental policy changes to extend the scope of the law to other (non-money) civil judgments.

4. **Conservatorships and Guardianships:** The forum began looking at these issues in 2011 when it formed a joint working group with the Probate and Mental Health Advisory Committee. The type of cases discussed ranged from court supervision of settlements involving minor and mentally-challenged adult plaintiffs, guardianships of the estate, conservatorships of the person and/or estate for adults who cannot properly care for their own daily personal needs (Lanterman Petris Short Act-type cases) and other types of conservatorships of the person and/or estate relating to persons who are gravely disabled as a result of a mental disorder or impairment by chronic alcoholism. In 2013, the forum identified issues and recommended revisions to the then pending Uniform Adult Guardianship and Protection Proceedings Jurisdiction Act (UAGPPJA). The "home state" analysis in the UAGPPJA did not address jurisdictional issues between California state and tribal courts. Because California tribal lands are located within the state of California, an individual who is physically present on tribal lands could have two "home states" for the purposes of UAGPPJA's jurisdictional analysis. Further, tribal court jurisdiction may often extend to tribal members who are not physically present on tribal lands. Tribes provide services to and exercise jurisdiction over their members living on and near tribal lands. The forum's recommended revisions addressed these unique jurisdictional issues which may arise between California state and tribal courts and can lead to uncertainty and unnecessary jurisdictional confusion and conflicts to deal specifically with interactions between California tribal courts and state courts in matters covered by UAGPPJA. The UAGPPJA, incorporating the forum's recommended revisions, was adopted in California in 2014 (See SB 940, Chapt. 553, 2014).

As a general matter of federal law, state courts have no jurisdiction to adjudicate guardianship/conservatorship-like proceedings involving Indians in Indian Country. Federal and tribal courts have exclusive jurisdiction over these cases. (See, e.g., Guardianship of Sasse (1985) 363 N.W.2d 209.)

In California this jurisdictional scheme is somewhat altered due to the civil provisions of Public Law 280 (codified at 28 U.S.C. § 1360) which grants California "jurisdiction over civil causes of action between Indians or to which Indians are parties . . ." that arise in Indian Country ". . . to the same extent that such State has jurisdiction over other civil causes of action . . . ." There are, however, limits contained within PL-280. Specifically in adjudicating such matters subsection (c) requires:

> *(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.*

Further, subsection (b) puts a variety of limitations on the state court's jurisdiction:

> *(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian . . . held in trust by the United States or is subject to a restriction against alienation imposed by the United States …or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.*

This means that state courts may be limited in their ability to protect important assets of tribal members. For instance a state court has no jurisdiction to issue an order concerning the use or occupation of tribal lands or other real or personal property held in trust by the federal government for the benefit of tribes or individual Indians.

5. **Criminal:** The forum has provided education on criminal jurisdiction when it comes to tribal and state courts in California, and specifically has examined the Tribal Law and Order Act, however, it has not identified inter-jurisdictional issues relating to the recognition and enforcement of criminal laws.

   Public Law 280 transferred federal criminal jurisdiction on states and state courts in the six mandatory Public Law 280 states, which includes California. Public Law 280 is now codified in federal law 18 U.S.C. § 1162 regarding criminal jurisdiction.

6. **Protection Orders:** The forum established domestic violence prevention and the recognition and enforcement of tribal protection orders as a priority at its very first meeting. The California Judicial Council conducted a statewide needs assessment, which serves as blueprint and guide to the forum in addressing the problem of domestic violence in tribal communities. The forum also promotes partnerships and education through projects staffed by the tribal/state programs, such as S.T.E.P.S. to Justice- domestic violence and the online Judicial Toolkit- domestic violence (http://www.courts.ca.gov/14851.htm).

   The federal Violence Against Women Act (42 U.S.C. chapter 136, subchapter III), or VAWA, was enacted by Congress in 1994 to address the problem of states' inconsistent enforcement of domestic violence laws. VAWA's purpose is "to encourage States, Indian tribal governments, and units of local government to treat domestic violence as a serious violation of criminal law." Congress amended the act in 2000 and 2005. Both VAWA and California law mandate full faith and credit for protection orders issued by tribal courts in accordance with VAWA requirements. (See 18 U.S.C. § 2265 and California's Uniform Interstate

Enforcement of Domestic Violence Protection Orders Act (Fam. Code, §§ 6400–6409).) Under these laws, a protection order issued by a tribal or sister-state court is entitled to full faith and credit and enforcement and does not need to be registered in California.

In practice, despite the full faith and credit mandate, many law enforcement agencies and officers will not enforce a protective order unless it can be verified in the California Restraining and Protective Orders System (CARPOS) through the California Law Enforcement Telecommuni-cation System (CLETS) and double-verified by confirming with the agency that entered the order into the statewide database. Unfortunately, very few tribal law enforcement agencies or courts currently have access to these systems to post their orders or review orders posted there by state agencies. The forum has worked extensively on these issues, coming up with two work-around solutions.

1. *California Courts Protective Order Registry*. Through this dedicated online database state courts and tribal courts can view each other's protective orders. The courts that have access are better able to protect the public, particularly victims of domestic violence, and avoid issuing redundant or conflicting orders. Learn more at www.courts.ca.gov/15574.htm.
2. *Registering Tribal Protective Orders.* Effective July 1, 2012, rule 5.386 of the California Rules of Court requires state courts, on request by a tribal court, to adopt a written procedure or local rule permitting the fax or electronic filing of any tribal court protective order entitled under Family Code section 6404 to be registered. Learn more about the new rule at www.courts.ca.gov/documents/SPR11-53.pdf.

7. **Traffic:** The forum began looking at the issues relating to traffic during its first two years. The issue statement below summarizes the forum's understanding of these issues.

   Generally California motor vehicle registration and driver's license requirements are not subject to enforcement against Indian tribal members on roads within their reservation because the California motor vehicle scheme is "civil/regulatory" rather than "criminal/prohibitory." (See 89 Ops.Cal.Atty.Gen. 6 (2006).) However, specific aspects of the overall scheme governing traffic, such as the prohibition against driving while under the influence, can fall into the criminal/prohibitory category. (See State v. Barros (1998) 957 P.2d 1095; State v. Warden (1995) 906 P.2d 133.) Where a tribal court is exercising jurisdiction over traffic matters on the reservation, including the prohibition of driving under the influence, is there a mechanism for tribal court orders to be acknowledged within the state system? In particular, if a tribal court suspends an individual's driver's license subsequent to a finding of guilt for driving under the influence; can that suspension be given full faith and credit or otherwise recognized by the California Department of Motor Vehicles DMV)?

   Requests for DMV Records

   - By amending Vehicle Code sections 1808.21(a) and 1812 to add tribal courts to the government entities listed, tribal courts would have direct access to residence address information and would not be charged a fee for requesting DMV records.

- By amending Title 13, California Code of Regulations, Section 350.02, to include tribal courts as a government entity, tribal courts would have direct access to DMV records.
- Title 13 California Code of Regulations, Section 350.06, requires government entities to comply with various security procedures and DMV Form INF 1130 requires that they agree to various contractual provisions to obtain access such as audits, security procedures, and (in some cases) indemnification of DMV. Those issues would have to be addressed vis-à-vis the legal status of tribes.

Access to DMV Records- Tribal Courts to Input Information
Legislative changes would be required to the provisions of Vehicle Code section 1800 *et seq.* to include tribal courts in the definition of courts that are permitted to input convictions of the offenses currently reported to DMV by state courts.

Next Steps
These policy changes are outside of forum purview, which means that any legislative recommendations would need to be taken up by a forum member or members who are tribal court judges.

8. **Trespass:** The forum began looking at some of the issues relating to trespass during its June 29, 2010, but more discussion is needed to identify enforcement issues and develop policies, partnerships, and education that would address these issues. The issue statement provided at that meeting is presented below.

   As sovereign entities, tribes have the right to control who enters their tribal lands. In some cases, tribes will specifically exclude certain individuals from their tribal lands. An order of "exclusion" can be among the remedies that a tribal government or tribal court uses against an individual found to have committed family violence on tribal lands. Can/will local (non-tribal) law enforcement assist to remove an individual who is trespassing on tribal lands? Local law enforcement does not enforce orders of exclusion made under a tribal code or ordinance. Only if the action in question met all of the elements of "trespass" as defined under California law would a local law enforcement officer have authority to take action.

9. **Warrants, Subpoenas, and Discovery**
   Both federal and state law[1] establish requirements for mutual recognition and between tribal and state courts reciprocal enforcement for certain types of final orders in some specific types of cases. In other areas, the principles of comity apply. The forum identified early on at one of its first meetings the cross-jurisdictional recognition and enforcement of other forms of court process, such as warrants and subpoenas. Should the forum develop a mechanism whereby tribal court processes also receive full faith and credit?

[1] Tribes are included within the definition of state found in section 2029.200(d) of the Code of Civil Procedure.

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date
May 27, 2015

To
Members of the California Tribal Court–State Court Forum

From
Hon. Richard C. Blake, Cochair
Chief Judge of the Hoopa Valley Tribal Court
Chief Judge of the Smith River Rancheria Tribal Court
Chief Judge of the Redding Rancheria Tribal Court

Hon. Dennis M. Perluss, Cochair
Presiding Justice of the Court of Appeal,
Second Appellate District, Division Seven

Subject
Communications Packet

Action Requested
Please Review

Deadline
NA

Contact
Jennifer Walter, Supervising Attorney
Center for Families, Children & the Courts
415-865-7687 phone
415-8657217 fax
jennifer.walter@jud.ca.gov

We are pleased to provide you as continuing and new members of the California Tribal Court–State Court Forum (forum) with this communications packet. We have developed a proposed communication plan to help promote our collaborative work and keep our respective governmental entities and justice partners apprised. Please find attached the following materials: (1) communication plan; (2) forum outline describing the forum's background, the first two years, and long-term structural reforms: policies, partnerships, and education; (3) forum PowerPoint presentation; (4) forum talking points; and (5) forum press talking points.

We hope you will find the enclosed materials helpful.

Tribal Court-State Court Forum

Communication Plan

- Forum meeting notices, agendas, minutes are publicly posted here.

- Forum's electronic newsletters are posted here and are distributed to all interested persons. Contact Carolynn Bernabe at 415-865-7556 or carolynn.bernabe@jud.ca.gov to be added to the forum's public e-distribution list.

- Forum members agree to serve as liaisons, regularly communicating and coordinating the work of the forum, to advance policies, promote collaboration and educate state and tribal justice system partners:

  1. Forum members, who are members of other Judicial Council (council) advisory committees, will serve as liaisons between the forum and their advisory committees;
  2. Forum members, who are tribal court judges, will serve as liaisons between the forum and the tribe or tribes served by their courts;
  3. Forum members, who serve on the California State Federal Judicial Council (CSFJC), will serve as liaisons between the forum and the CSFJC;
  4. The forum member, who is an appellate justice, will serve as a liaison between the forum and appellate justices statewide;
  5. The Director of Native American Affairs will serve as a liaison between the forum and the Chiefs of Tribal Public Safety in California, federal law enforcement agencies, the California Attorney General's Office, and the California Sheriff's Association; and
  6. The Tribal Advisor to the Governor will serve as a liaison between the forum and the Governor, California executive agencies, and tribal governments.

- Forum members agree to keep tribal chairs of federally and nonfederally recognized tribes in California informed in writing and through presentations.

- Forum cochairs will notify federally recognized tribes in California of any vacancies on the forum and the appointment process.

- Judicial Council (council) staff will notify the state judicial branch when there are state court vacancies as part of the regular advisory committee nomination process.

- When forum recommendations impact other tribal, county, or state agencies, the forum cochairs will enlist the support of forum members and council staff, as appropriate, to contact these justice partners.

- When forum activities warrant media attention, the cochairs will work with the council's office of communication and tribal governments to coordinate press releases to media outlets.

Updated 06/2015

Tribal Court-State Court Forum (forum)
Outline

Forum Background

1. Initiated - letter from Judge Richard Blake, on behalf of the Northern California Tribal Courts Coalition, to California's Chief Justice
2. Authority - tribal/state entity recognized by the California Rules of Court
3. Tribal/State Programs - grant funded staffing to support forum projects
4. Strategic Approach
    - Composition
    - Common ground
    - Quickly achievable solutions: sharing resources, prioritizing case types (child welfare and domestic violence), implementing policies with respect to priority case types,
    - Commitment to achieve structural reforms: policies, partnerships, and education
5. Composition
    - equal tribal and state court judicial membership
    - cochaired by a tribal court judge and state court judge
    - tribal judges are appointed by tribal leadership
    - state court judges are appointed by the California Chief Justice
    - ex officio members: California DOJ and Tribal Advisor to Governor
6. Common Ground- develop initial trust and identify areas of common concern
    - Scope of work
    - Values and principles
    - Regular meetings
    - Electronic Newsletter (also known as Forum E-Updates)

Forum- First Two Years: Focusing on Quickly Achievable Solutions

1. Sharing Resources
    - Education— learning about California's tribal communities and tribal justice systems, extending invitations to each other to go to conferences sponsored by tribal and state courts and cohosting cross-court cultural exchanges on tribal lands;
    - Technical assistance— sharing expertise: court forms, information on courtroom security, human resources, and other court operations; assistance with grants
    - Technology— using technology so that tribal and state court judges can view each other's protective orders
2. Prioritizing Case Types— child welfare and domestic violence (statewide needs assessment)
3. Implementing Policies
    - Improving compliance with the Indian Child Welfare Act
    - Improving recognition and enforcement of Tribal Protective Orders

Forum- Long-Term: Achieving Structural Reforms: Policies, Partnerships, Education

1. Policies
   - Inter-jurisdictional/recognition and enforcement issues re full faith and credit[1]
     - i. Adult Guardianships and Conservatorships
     - ii. Child Support
     - iii. Child Welfare
       1. Access to Records (AB 1618)
       2. Appeals
       3. Psychotropic Medication
       4. Tribal Customary Adoption
     - iv. Delinquency
     - v. Domestic Violence
   - Recognition and enforcement issues relating to comity
   - Technological initiatives
     - i. Consult with the California Attorney General's Office regarding access to California Law Enforcement Telecommunications System (CLETS) by tribal courts.
     - ii. Access by tribal courts and state courts to the California Courts Protective Order Registry to view each other's protective orders.
     - iii. Electronic notice to tribes in Indian Child Welfare Act cases.
     - iv. Continue Domestic Assistance Self Help (DASH) Tribal/State Program
2. Partnerships
   - **S**tate/**T**ribal **E**ducation, **P**artnerships, and **S**ervices to Justice- Child Welfare
   - **S**tate/**T**ribal **E**ducation, **P**artnerships, and **S**ervices to Justice- Domestic Violence
   - Cross-Court Cultural Exchanges on tribal lands
   - Innovation Knowledge Center - publicizing tribal court/state court partnerships
   - Tribal/State Partnerships- MOUs, Protocols, Agreements
   - Toolkit for Tribal Court and State Court Administrators
3. Education
   - Federal Indian law toolkit for judges
   - Educational resources on jurisdiction in Indian country
   - Incorporating federal Indian law into state judicial branch education
   - Documentary on tribal justice in California (see link to view trailer: https://vimeo.com/84392263; password justice15)

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[1] While tribes are recognized as sovereign, they are not "states" for the purposes of the full faith and credit requirements of Article IV of the U.S. Constitution. There is general consensus (but no Supreme Court authority on point) that tribes are not encompassed by the federal full faith and credit statute (28 U.S.C. §1738). There are, however, a number of relevant federal and state provisions that mandate full faith and credit: (1) Indian Child Welfare Act (25 U.S.C. § 1911 (d)); (2) Violence Against Women Act (18 U.S.C. § 2265); (3) Child Support Enforcement Act (28 U.S.C. §1738 B); and (4) Uniform Child Custody Jurisdiction and Enforcement Act (Family Code §3404). Where there is no specific statutory mandate for full faith and credit, the general rule is that tribal court orders are entitled to comity. The forum's legal strategy is address to enforcement problems with orders that should be given full faith and credit through partnerships and education, and recommend policies, typically legislative, to address issues of comity.

Tribal Court-State Court Forum

Presentation Location

Date

Agenda

- California's Tribal Communities
- California's Tribal Courts
- California's Tribal Court-State Court Forum
- Policies
- Partnerships
- Education
- Inter-Court Cooperation
- Challenges
- Conclusion

California's Tribal Communities

- 110 federally recognized tribes
- 81 groups petitioning for federal recognition
- 725,000 California citizens identify as American Indian or Alaska Native (AI/AN)
- Represents 14% of all AI/AN population in the U.S., more than in any other State
- Tribes as small as 5 members and as large as 6,000 members

California's Tribal Courts

- California has 23 tribal courts
- More than doubled since 2003
- Courts serve 40 Tribes
- Exercise various types of jurisdictions
- Over a range of case types (administrative, civil, family, juvenile, probate, and criminal jurisdiction)
- California Tribal Courts Directory at http://www.courts.ca.gov/14400.htm
- Google Map of Tribal Courts at http://g.co/maps/cvdq8

Tribal Court-State Court Forum

- Background
- Strategic Approach
  - Composition
  - Common Ground
  - Problem-Solving
- Making Top Priority: Child Welfare and Domestic Violence
- Implementing Policies, Partnerships, Education

Policies, Partnerships, and Education

- Forging Tribal/State Judicial Relationships
- Finding Local Solutions
- Implementing Solutions Statewide: Government-to-Government
- Sharing Educational and Other Resources to Support Tribal Justice Development

Policies: Inter-Jurisdictional

- Recognition and Enforcement Issues:
  - Full Faith and Credit
  - Comity
- Technological Initiatives

Accomplishments- Child Welfare

- Delinquency and Indian Child Welfare Act

www.courts.ca.gov/documents/jc-20130426-itemG.pdf

- Psychotropic Medication and Tribal Notice

www.courts.ca.gov/documents/PsychotropicMedsProposal.pdf

- Tribal Access to Confidential Juvenile Court Files

leginfo.ca.gov/pub/13-14/bill/asm/ab_1601-1650/ab_1618_bill_20140206_introduced.pdf

- Tribal Access to Juvenile Appellate Records

www.courts.ca.gov/documents/jc-20120228-itemA3.pdf

- Tribal Customary Adoption

www.courts.ca.gov/documents/lr-Tribal-Customary-Adoption-Report_123112.pdf

- ICWA Clearinghouse of Resources

www.courts.ca.gov/3067.htm

Accomplishments- Domestic Violence

- Electronic filing of tribal protective orders in state court

  http://www.courts.ca.gov/documents/SPR11-53.pdf
- Viewing each other's orders in the California Courts Protective Order Registry

  http://www.courts.ca.gov/partners/ccpor.htm
- Informational brochures

  http://www.courts.ca.gov/documents/Tribal-RecognEnf_Brochure.pdf

  http://www.courts.ca.gov/documents/Tribal-CrossoverIWCA.pdf

Partnerships

- **S**tate/**T**ribal **E**ducation, **P**artnerships, and **S**ervices to Justice- Child Welfare
- **S**tate/**T**ribal **E**ducation, **P**artnerships, and **S**ervices to Justice- Domestic Violence
- Promoting State/Tribal Partnerships
  - Publicizing innovative tribal court/state court partnerships

  Innovation Knowledge Center-
  - Serving as a clearinghouse for MOUs, Protocols, Agreements

  Tribal/State Partnerships-
  - Encouraging Tribal Court and State Court Administrators to Learn About Each Other's Courts (Toolkit)
  - Fostering and Convening Cross-Court Cultural Exchanges

Hoopa Exchange Slide Show

http://youtu.be/dvsWoXrg6lA

Education

- Federal Indian Law- Online Toolkit for Judges

http://www.courts.ca.gov/27002.htm

- Educational Resources on Jurisdiction

http://www.courts.ca.gov/8710.htm

- Incorporating Federal Indian Law into State Judicial Branch Education
- Documentary on Tribal Justice in California

See link to view trailer: https://vimeo.com/84392263;

password justice15

Inter-Court Cooperation

- Pre-Filing/DA Referral: Diversion for Juvenile Offenders in Tribal Court
- Post-Filing/Pre-adjudication/DA Referral: Diversion for Adult Offenders in Tribal Court
- Post-Plea Deferred Entry of Judgment/ Disposition in State Court for Adult and Juvenile Offenders with Concurrent Case and Court-Connected Services in Tribal Court
- Joint-Jurisdictional Court

Inter-Court Cooperation: Tribal Justice Development Supports Justice for All

- Forms- Assistance with tribal court forms
- Publications- Making available to tribal courts all Judicial Council publications
- Education- Making available to tribal courts all Judicial Council educational resources
- Resources- Access to grants, tribal support letters, technical assistance with security, HR, & other court administration questions

Challenges

- Funding
- Enforcement Issues
- Moving Beyond Local Solutions

  Based on Trust and Individual Relationships to Sustainable Solutions That Work Regardless of the Individuals
- Seeking Your Partnership

Conclusion- Questions

- Contact Information

  Hon. Richard Blake, hoopajudge2006@aol.com

  Hon. Dennis Perluss, dennis.perluss@jud.ca.gov

  Jenny Walter, forum counsel, jennifer.walter@jud.ca.gov

- Resources in California

  http://www.courts.ca.gov/14851.htm

Talking Points

- Working jointly to solve problems faced by tribal and state justice systems
    - Addressing inter-jurisdictional challenges together
    - Examples are listed in forum outline
- State and tribal justice systems have a great deal of experience to share
    - Much to learn from one another
    - More in common than different/Identify areas of commonality
    - Role and goals are the same; the methods, however may be different
- Sharing to reduce the burden on each
    - Sharing and allocating jurisdiction
    - Sharing court-connected resources
    - Sharing educational resources
- Seeking to meet the expectations of those who come before the courts with restricted budgets
    - Tribal courts properly reflect the values and concerns of their local community members and can best serve their communities
    - Tribal courts contend with a shortage of funds[1]
    - Tribes, like their state and local counterparts, deserve the benefit of stable funding to build robust tribal justice systems
- Forging partnerships to advance policies
    - Recommending solutions through legislation, rules, intergovernmental agreements, and other initiatives
    - Implementing structural reforms: solutions are memorialized and become part of everyday justice system operations, and not dependent on the interpersonal relationships of the forum members

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[1] The U.S. Department of the Interior through the Bureau of Indian Affairs provides limited funding for tribal court systems but the funding level is far too low. The BIA has historically denied any tribal law enforcement and tribal court funding to tribes in Public Law 280 jurisdictions— where congressionally authorized concurrent state jurisdiction has been established. Funding for tribal justice systems has been consistently decreasing in recent years. See reduced funding levels in the Consolidated Tribal Assistance Solicitation (CTAS) grant program with the closest direct connection to AI/AN children exposed to violence——in a four-year period, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Tribal Youth Program (TYP) funding went from $25 million in FY 2010 to $5 million in FY 2014. (See page 8 of Attorney General's Advisory Committee on American Indian and Alaska Native Children Exposed to Violence: Ending Violence So Children Can Thrive (November 2014) http://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2014/11/18/finalaianreport.pdf and the Indian Law and Order Commission, *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States* (November 2013): vi, available at: http://www.aisc.ucla. edu/iloc/report/index.html (citing estimates calculated from data on the webpage "Demographic and Geographic Sketches of Alaska Natives,"Alaska Natives Commission, accessed September 6, 2013, http://www.alaskool.org/resources/anc/anc07.htm).)

Forum Press Talking Points

General

- Acknowledge Chief's leadership, tribal and state court judicial leadership, AOC staff support to the courts
- Judges grapple with local issues
- Statewide solutions that are responsive to local court concerns for the benefit of American Indian/Alaskan Native citizens

Domestic Violence

- These solution save lives, use existing efficiencies, and create new efficiencies
    - Arrived at because informed by American Indian/Alaskan Native voices (statewide needs assessment conducted as part of the Native American Communities Justice Project)
    - Tribal court and state court judges comes together to grapple with the issues relating to recognition and enforcement of each other's protective orders
    - They acknowledge that they cannot address these issues alone
- These solutions save lives because
    - Native American victims get the protective and restraining orders they need
    - And their orders are enforced
- What efficiencies? Solutions make use of:
    - Existing technology (CCPOR)
    - Tested local solutions (tribal/state protocols)
    - Consistent, efficient statewide procedure (new rule)
- What new efficiencies?
    - Law enforcement can verify and enforce orders
    - Prevents relitigation
    - Avoids conflicting and redundant orders
    - Law and enforcement and courts can view orders, regardless of whether they are issued by a tribal court or a state court

Session 5: Ending Violence So Children Can Thrive (Final Report issued by the U.S. Attorney General's Task Force on American Indian/Alaska Native Children Exposed to Violence) – Federal Government Focus

To view final report:
http://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2015/03/23/ending_violence_so_children_can_thrive.pdf

Attorney General's Advisory Committee
on American Indian/Alaska Native Children Exposed to Violence:

Ending Violence so Children Can Thrive

NOVEMBER 2014

DEFENDING
CHILDHOOD
PROTECT HEAL THRIVE

Executive Summary

Day in and day out, despite the tremendous efforts of tribal[1] governments and community members, many of them hindered by insufficient funding, American Indian and Alaska Native (AI/AN) children suffer exposure to violence at rates higher than any other race in the United States. The immediate and long term effects of this exposure to violence includes increased rates of altered neurological development, poor physical and mental health, poor school performance, substance abuse, and overrepresentation in the juvenile justice system. This chronic exposure to violence often leads to toxic stress reactions and severe trauma; which is compounded by historical trauma. Sadly, AI/AN children experience posttraumatic stress disorder at the same rate as veterans returning from Iraq and Afghanistan and triple the rate of the general population.[2] With the convergence of exceptionally high crime rates, jurisdictional limitations, vastly under-resourced programs, and poverty, service providers and policy makers should assume that *all* AI/AN children have been exposed to violence.

Through hearings and Listening Sessions over the course of 2013–14, the Attorney General's Advisory Committee on American Indian and Alaska Native Children Exposed to Violence[3] examined the current epidemic of violence and evaluated suggestions for preventing violence and alleviating its impact on AI/AN children. This report presents the Advisory Committee's policy recommendations that are intended to serve as a blueprint for preventing AI/AN children's exposure to violence and for mitigating the negative effects experienced by AI/AN children exposed to violence across the United States and throughout Indian country. The primary focus of the report is the thirty-one wide-ranging findings and recommendations that emerged from hearings and Listening Sessions. The Advisory Committee also examines the reports of the Attorney General's National Task Force on Children Exposed to Violence in 2012[4] and the Indian Law and Order Commission (ILOC) in 2013,[5] and incorporates some of the recommendations from these important reports that most strongly impact AI/AN children exposed to violence.

This report contains five chapters: (1) "Building a Strong Foundation"; (2) "Promoting Well-Being for American Indian and Alaska Native Children in the Home"; (3) "Promoting Well-Being for American Indian and Alaska Native Children in the Community"; (4) "Creating a Juvenile Justice System that Focuses on Prevention, Treatment, and Healing"; and (5) "Empowering Alaska Tribes,[6]

Removing Barriers, and Providing Resources." Each chapter contains a discussion of the topics, providing background information, data, examples of problems as well as promising practices, and the Advisory Committee's recommendations.

This Advisory Committee was charged with making recommendations to the Attorney General of the United States. Many of the recommendations in this report are addressed to Congress and executive branch agencies outside the Department of Justice because solutions to the dire situation faced by AI/AN children must be comprehensive and will require efforts beyond the Department of Justice. Therefore, the Committee recommends that the Attorney General work with the legislative and executive branches of government to implement the recommendations. A summary of each chapter is presented below.

Chapter 1—Building a Strong Foundation

We must transform the broken systems that re-traumatize children into systems where American Indian and Alaska Native (AI/AN) tribes are empowered with authority and resources to prevent exposure to violence and to respond to and promote healing of their children who have been exposed. Current barriers that prevent tribes from leading in protecting and healing their children must be eliminated before real change can begin.

1.1 Leaders at the highest levels of the executive and legislative branches of the federal government should coordinate and implement the recommendations in this report consistent with three core principles–Empowering Tribes, Removing Barriers, and Providing Resources–identified by the Advisory Committee.

There is a vital connection between tribal sovereignty and protecting AI/AN children. The Advisory Committee is convinced that state and federal governments must recognize and respect the primacy of tribal governments in responding to AI/AN children. Jurisdictional restrictions on tribes must be eliminated to allow tribes to exercise their inherent sovereign authority to prevent AI/AN children's exposure to violence. Resource limitations must be adequately addressed. The barriers that currently limit tribes' response to exposure to violence must be removed. Tribes should be supported in this effort with the assistance, collaboration, and

resources needed to build their capacity to fully implement and sustain tribal-controlled, trauma-informed prevention and treatment models and systems. These barriers must be removed in order to empower individual tribal communities to prevent their children from being exposed to violence along with sufficient tools to respond and promote healing in their children who have been exposed.

- **1.2 The White House should establish—no later than May 2015—a permanent fully staffed Native American Affairs Office within the White House Domestic Policy Council. This new Native American Affairs Office should include a senior position specializing in AI/AN children exposed to violence. This office should be responsible for coordination across the executive branch of all services provided for the benefit and protection of AI/AN children and the office lead should report directly to the Director of the Domestic Policy Council as a Special Assistant to the President. The Native American Affairs Office should have overall executive branch responsibility for coordinating and implementing the recommendations in this report including conducting annual tribal consultations.**

The Advisory Committee believes that a permanent fully staffed Native American Affairs Office, including a senior position specializing in AI/AN children exposed to violence, is required in order to comply with the federal government's trust responsibility and to effectively address the current inability of the federal government to serve the needs of AI/AN children exposed to violence. The new White House Native American Affairs Office should provide the essential executive branch coordination and collaboration required to effectively implement the recommendations in this report. The current "stovepipe organizational structure" of the executive branch restricts the flow of information and cross-organizational communication, making essential collaboration extremely difficult.

The White House Native American Affairs Office should conduct annual consultations with tribal governments, including discussion of:

1. Administering tribal funds and programs;
2. Enhancing the safety of AI/AN children exposed to violence in the home and in the community;

3. Enhancing child protection services through trauma-informed practice;
4. Enhancing research and evaluation to address behavioral health needs and explore tribal cultural interventions and best practices;
5. Enhancing substance abuse services for caregivers and youth that addresses exposure to violence; and
6. Evaluating the implementation status of the recommendations in this report.

1.3 Congress should restore the inherent authority of American Indian and Alaska Native (AI/AN) tribes to assert full criminal jurisdiction over all persons who commit crimes against AI/AN children in Indian country

In May 2013, Congress passed the Violence against Women Reauthorization Act (VAWA).[7] Among its provisions, Congress amended the Indian Civil Rights Act (ICRA) to authorize "special domestic violence criminal jurisdiction" to tribal courts over non-Indian offenders who (1) commit domestic violence, (2) commit dating violence, or (3) violate a protection order. It is troubling that tribes have no criminal jurisdiction over non-Indians who commit heinous crimes of sexual and physical abuse of AI/AN children in Indian country. Congress has restored criminal jurisdiction over non-Indians who commit domestic violence, commit dating violence, and violate protection orders. Congress should now similarly restore the inherent authority of AI/AN tribes to assert full criminal jurisdiction over all persons who commit crimes against AI/AN children in Indian country including both child sexual abuse and child physical abuse.

1.4 Congress and the executive branch shall direct sufficient funds to AI/AN tribes to bring funding for tribal criminal and civil justice systems and tribal child protection systems into parity with the rest of the United States and shall remove the barriers that currently impede the ability of AI/AN Nations to effectively address violence in their communities. *The Advisory Committee believes that treaties, existing law and trust responsibilities are not discretionary and demand this action.*

The Advisory Committee believes that this investment is necessary to create an environment in which AI/AN children, today and for generations to come, may thrive. This investment is not only the right thing to do, but is part of the legal obligations of this nation to those communities. In order to more effectively address the needs of AI/AN children exposed to violence, substantial changes must be made in the methods by which AI/AN tribes are able to access federal funding. Substantially increased levels of federal funding will be required.

Funding for child maltreatment prevention and child protection efforts is especially limited in Indian country. Meanwhile, states receive proportionately more funding for prevention and child protection while tribes receive little to no federal support for these activities. Tribes are not even eligible for the two major programs that fund these state programs—Title XX of the Social Services Block Grant and the Child Abuse Prevention and Treatment Act.

The U.S. Department of the Interior (DOI) through the Bureau of Indian Affairs (BIA) provides limited funding for tribal court systems but the funding level is far too low. The BIA has historically denied any tribal law enforcement and tribal court funding to tribes in jurisdictions—such as Public Law 280 (PL-280) jurisdictions[8]—where congressionally authorized concurrent state jurisdiction has been established. Furthermore, efforts to fund tribal justice systems such as the Indian Tribal Justice Act of 1993 (which authorized an additional $50 million per year in tribal court base funding) have repeatedly *authorized* increased tribal court funding, but the long-promised funding has never materialized in the form of actual *appropriations.*

Since the late 1990s, the U.S. Department of Justice (DOJ) has also become a significant federal source of tribal justice funding. Tribes have utilized DOJ grant funding to enhance various and diverse aspects of their tribal justice systems, from tribal codes to Juvenile Healing to Wellness Courts (tribal drug courts) to unique tribal youth programs. While these grants have offered immense support, they are far from the consistent, tribally driven approach that is needed in Indian country. The Advisory Committee heard repeated frustration from hearing witnesses concerning the competitive funding approach that DOJ utilizes.

It is important to note that DOJ funding for tribal justice systems has been consistently decreasing in recent years. It is particularly

troubling that the Consolidated Tribal Assistance Solicitation (CTAS) grant program with the closest direct connection to AI/AN children exposed to violence—the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Tribal Youth Program (TYP)—has suffered the greatest decrease in funding levels. In a four-year period, OJJDP TYP funding has plummeted from $25 million in FY 2010 down to only $5 million in FY 2014. Tribes, like their state and local counterparts, deserve the benefit of reliability in their quest to build robust tribal justice systems that can adequately serve their youth. Base funding from resources pooled across various federal agencies would offer tribes the reliability and flexibility that is needed.

AI/AN children are generally served best when tribes have the opportunity to take ownership of the programs and resources that they provide. PL-93-638 contracts, self-governance compacts, and PL-102-477 funding agreements are examples of successful federal programs that afford tribes the option to take over the management of federal funds for an array of programs. However, currently none of these programs applies to the DOJ.

1.4.A Congress and the executive branch shall provide recurring mandatory, not discretionary, base funding for all tribal programs that impact AI/AN children exposed to violence, including tribal criminal and civil justice systems and tribal child protection systems, and make it available on equal terms to all federally recognized tribes, whether their lands are under federal jurisdiction or congressionally authorized state jurisdiction.

The United States' trust responsibility to AI/AN tribes requires the provision of basic governmental services in Indian country. Funding to fulfill this obligation, however, is currently provided in the *discretionary* portion of the federal budget despite the fact that the treaties that made promises to Indian tribes did not promise "*discretionary*" support and the trust responsibility is not *discretionary.* Because the spending is discretionary and not mandatory as it should be, public policies like sequestration reduce or eliminate programs that clearly should not be cut.

1.4.B Congress shall appropriate, not simply authorize, sufficient substantially increased funding to provide reliable tribal base funding for all tribal programs that impact

AI/AN children exposed to violence. This includes tribal criminal and civil justice systems and tribal child protection systems. At a minimum, and as a helpful starting point, Congress shall enact the relevant funding level requests in the National Congress of American Indians (NCAI) Indian Country Budget Request for FY 2015.

Substantially increased levels of federal funding will be required to more effectively address the needs of AI/AN children exposed to violence. For the past ten years, NCAI has published an annual Indian Country Budget Request Report that reflects collaboration with tribal leaders, Native organizations, and tribal budget consultation bodies. That budget request should serve as a helpful starting point for the initial minimum levels of increased funding that will be needed. The annual NCAI budget reports also provide further insightful detail concerning a wide range of federal programs that will be required to implement these recommendations.

1.4.C Congress shall authorize all federal agencies, beginning with the Department of Justice (DOJ), to enter into 638 self-determination and self-governance compacts with tribes to ensure that all tribal system funding, including both justice and child welfare, is subject to tribal management. Further, the Department of Health and Human Services (HHS) should fully utilize its current 638 self-determination and self-governance authority to the greatest extent feasible for flexible funding programs in the Department of Health and Human Services (HHS) beyond the Indian Health Service (IHS) and seek additional legislative authority where needed.

Expanding the option for self-governance would translate to greater flexibility for tribes to provide critical social services within agencies such as the Administration on Aging, Administration on Children and Families, Substance Abuse and Mental Health Services Administration, and the Health Resources and Services Administration. HHS must work closely with tribes to strengthen current self-governance programs and advance initiatives that will streamline and improve HHS program delivery in Indian country.

1.4.D Congress shall end all grant-based and competitive Indian country criminal justice funding in the Department of Justice (DOJ) and instead establish a permanent, recurring base funding system for tribal law enforcement and justice services.

As soon as possible, Congress should end all grant-based and competitive Indian country criminal justice funding in the DOJ and instead pool these monies to establish a permanent, recurring base funding system for tribal law enforcement and justice services. Federal base funding for tribal justice systems should be made available on equal terms to all federally recognized tribes, whether their lands are under federal jurisdiction or congressionally authorized state jurisdiction.

1.4.E Congress shall establish a much larger commitment than currently exists to fund tribal programs through the Department of Justice's Office of Justice Programs (OJP) and the Victims of Crime Act (VOCA) funding. As an initial step towards the much larger commitment needed, Congress shall establish a minimum 10 percent tribal set-aside, as per the Violence Against Women Act (VAWA) tribal set-aside, from funding for all discretionary OJP and VOCA funding making clear that the tribal set-aside is the minimum tribal funding and not in any way a cap on tribal funding. President Obama's annual budget request to Congress has included a 7 percent tribal set-aside for the last few years. This is a very positive step and Congress should authorize this request immediately. However, the tribal set-aside should be increased to 10 percent in subsequent appropriations bills. Until Congress acts, the Department of Justice shall establish this minimum 10 percent tribal set-aside administratively.

After determining that AI/AN women face the highest level of violence in the nation—along with the highest rate of unmet needs—Congress set aside a percentage of VAWA funding for tribal governments. Since the 2005 VAWA Reauthorization, the tribal

set-aside has been 10 percent. The Advisory Committee finds that the 10 percent VAWA tribal set-aside is a highly relevant precedent that should be applied to all discretionary OJP programs that impact AI/AN children exposed to violence. The same rationale applies to the VOCA funding, which has served as a major funding source for states to provide services to victims of crime since its establishment in 1984. However, it should be noted that this is a minimum initial amount with the expectation that substantially increased levels of funding will be forthcoming.

1.4.F The Department of Justice (DOJ) and Department of the Interior (DOI) should, within one year, conduct tribal consultations to determine the feasibility of implementing Indian Law and Order Commission (ILOC) Recommendation 3.8 to consolidate all DOI tribal criminal justice programs and all DOJ Indian country programs and services into a single "Indian country component" in the DOJ and report back to the President and AI/AN Nations on how tribes want to move forward on it.

While the Advisory Committee is in general agreement with the ILOC's Recommendation 3.8 to consolidate all DOI tribal criminal justice programs and all DOJ Indian country programs and services into a single DOJ "Indian country component," the Advisory Committee recommends that tribal consultation be conducted prior to making such a significant and far-reaching move.

1.5 The legislative branch of the federal government along with the executive branch, under the direction and oversight of the White House Native American Affairs Office, should provide adequate funding for and assistance with Indian country research and data collection.

Research and data collection is a critical component of developing effective responses to AI/AN children exposed to violence. Tribal governments, like every government, need the ability to track and access data involving their citizens across service areas and to accept the responsibility of gathering data. Tribal governments currently do not have adequate access to accurate, comprehensive data regarding key areas affecting AI/AN children exposed to violence. Even when data is gathered, it is often not shared with

tribes. In order to remedy this situation, federal leadership is required and data should be co-owned with tribes.

Tribal Nations also need access to research initiatives that will help create and develop effective prevention and intervention strategies for children exposed to violence. Currently, many tribal communities are developing and implementing culturally based prevention and intervention programs. However, most do not have the resources necessary to evaluate the effectiveness of these programs.

1.6 The legislative and executive branches of the federal government should encourage tribal-state collaborations to meet the needs of AI/AN children exposed to violence.

The criminal justice, juvenile justice, and child welfare systems are too often ineffective because tribes and states do not always act collaboratively. The federal government should use its power and funds to encourage tribal-state collaborations.

1.7 The federal government should provide training for AI/AN Nations and for the federal agencies serving AI/AN communities on the needs of AI/AN children exposed to violence. Federal employees assigned to work on issues pertaining to AI/AN communities should be required to obtain training on tribal sovereignty, working with tribal governments, and the impact of historical trauma and colonization on tribal Nations within the first sixty days of their job assignment.

The federal trust responsibility should include ensuring that all service providers attending to the needs of AI/AN children receive appropriate training and technical assistance. Properly credentialed professionals who lack the cultural knowledge to identify and understand tribal familial needs face challenges in providing effective services. Further, AI/AN communities struggle to ensure access to a qualified AI/AN workforce in the trauma treatment area.

Chapter 2—Promoting Well-Being for American Indian and Alaska Native Children in the Home

Every single day, a majority of American Indian and Alaska Native (AI/AN) children are exposed to violence within the walls of their own homes. This exposure not only contradicts traditional understandings that children are to be protected and viewed as sacred, but it leaves hundreds of children traumatized and struggling to cope over the course of their lifetime. Despite leadership from tribal governments, parents and families, domestic violence in the homes of AI/AN children and physical abuse, sexual abuse, and neglect of children is more common than in the general population. Unfortunately, the response of child-serving systems often re-traumatizes the child.

2.1 The legislative and executive branches of the federal government should ensure Indian Child Welfare Act (ICWA) compliance and encourage tribal-state ICWA collaborations.

2.1.A Within two years of the publication of this report, the Administration for Children and Families (ACF) in the Department of Health and Human Services (HHS), the Bureau of Indian Affairs (BIA) in the Department of the Interior (DOI), and tribes should develop a modernized unified data-collection system designed to collect Adoption and Foster Care Analysis and Reporting System (AFCARS) (ICWA and tribal dependency) data on all AI/AN children who are placed into foster care by their agency and share that data quarterly with tribes to allow tribes and the BIA to make informed decisions regarding AI/AN children.

2.1.B The Secretaries of the Departments of the Interior (DOI) and Health and Human Services (HHS) should compel BIA and ACF to work together collaboratively to collect data regarding compliance with ICWA in state court systems. The ACF and BIA should work collaboratively to ensure state court compliance with ICWA.

2.1.C The BIA should issue regulations (not simply update guidelines) and create an oversight board to review ICWA implementation and designate consequences of

noncompliance and/or incentives for compliance with ICWA to ensure the effective implementation of ICWA.

2.1.D The Department of Justice (DOJ) should create a position of Indian Child Welfare Specialist to provide advice to the Attorney General and DOJ staff on matters relative to AI/AN child welfare cases, to provide case support in cases before federal, tribal, and state courts, and to coordinate ICWA training for federal, tribal, and state judges; prosecutors; and other court personnel.

If AI/AN children today are to be provided with a reliable safety net, the letter and the spirit of ICWA must be enforced. ICWA provides critical legal protections for AI/AN children when intervention and treatment is deemed necessary by state child protection agencies. The most significant provisions seek to keep AI/AN children safely in their homes and provide AI/AN children with certain civil protections as members of their respective tribes.

The lack of accurate, relevant data on tribal children and families often results in AI/AN children being left out of discussions about policy development, resource allocation, and decision making at the federal level. Or, because of the lack of such data regarding AI/AN children, policy makers delay or decline to make decisions and resource allocations because they cannot "justify" the services. By increasing tribal capacity (through tribal child protection agencies in BIA and IHS) in the area of data collection, tribal engagement and federal responsiveness to AI/AN children's needs can be increased.

ICWA noncompliance is at least in part a result of minimal oversight of ICWA implementation and no enforcement mechanism. ICWA was enacted without providing sanctions for noncompliance, incentives for effective compliance, a data-collection requirement, and a mandate for an oversight committee or authority to monitor compliance. ICWA is the only federal child welfare law that does not include legislatively mandated oversight or periodic review.[9] These deficits in ICWA should be corrected.

The DOJ existing structure does not include a position that allows for investigation and research on Indian child welfare cases. The current environment is litigious and recent Indian child welfare cases have risen to the state and federal Supreme Courts. In addition to monitoring state compliance with ICWA included in

other recommendations in this chapter, a position within the DOJ dedicated to supporting challenges to ICWA will improve child welfare outcomes and play a direct role in reducing trauma and violence experienced by AI/AN children in the child welfare system. Requirements for the position should include ICWA and family law experience. The position should be filled immediately.

2.2 The Bureau of Indian Affairs (BIA) in the Department of the Interior (DOI), the Administration for Children and Families (ACF) in the Department of Health and Human Services (HHS), and tribes, within one year of the publication of this report, should develop and submit a written plan to the White House Domestic Policy Council, to work collaboratively and efficiently to provide trauma-informed, culturally appropriate tribal child welfare services in Indian country.

When federal agencies fail to work together with tribes to confront problems in Indian country, the result is ineffective and inefficient systems. Child welfare services in Indian country are a good example of this inefficiency. Cooperation and collaboration among agencies that focus on tribal families and children must be thoughtfully planned and consistently delivered.

2.3 The Administration for Children and Families (ACF) in the Department of Health and Human Services (HHS), Bureau of Indian Affairs (BIA) in the Department of the Interior (DOI), and tribes should collectively identify child welfare best practices and produce an annual report on child welfare best practices in AI/AN communities that is easily accessible to tribal communities.

Tribal child protection and prevention teams need AI/AN-specific research about the intersection of domestic violence, trauma exposure, and child maltreatment in order to create and promote effective prevention strategies, interventions, treatment, and policy change. Tribal communities have traditional methods of practice-based evidence to deal with trauma and healing. These practices have been used for centuries, but are not acknowledged as "evidence-based" treatments. Although promising practices exist throughout tribal communities, we do not have enough information about the effectiveness of such programs and methods of implementation, which makes success hard to replicate.

2.4 The Indian Health Service (IHS) in the Department of Health and Human Services (HHS), state public health services, and other state and federal agencies that provide pre- or postnatal services should provide culturally appropriate education and skills training for parents, foster parents, and caregivers of AI/AN children. Agencies should work with tribes to culturally adapt proven therapeutic models for their unique tribal communities (e.g., adaptation of home visitation service to include local cultural beliefs and values).

Due to the prevalence of violence in AI/AN homes and communities and the influence of historical trauma, many AI/AN parents, foster parents, and prospective parents may need help developing traditional parenting skills. Caregivers may have experienced trauma as children or may continue to be victims of violence in their homes. Assistance for families experiencing violence or at risk for violence is most accessible when it is brought directly into the home.

2.5 The Bureau of Indian Affairs (BIA) in the Department of the Interior (DOI), tribal social service agencies, and state social service agencies should have policies that permit removal of children from victims of domestic violence for "failure to protect" only as a last resort as long as the child is safe.

Children are often removed from both parents when domestic violence occurs, even when one parent was also a victim of violence. Children who witness domestic violence have a greater need for stability and security; however when the child is removed from the nonoffending parent, it can produce the opposite effect. To ensure stability and permanency for children in a home with domestic violence, children should remain with the non-offending parent (caregiver) whenever possible, as long as the child is safe.

2.6 The Secretary of Health and Human Services (HHS) should increase and support access to culturally appropriate behavioral health and substance abuse prevention and treatment services in all AI/AN communities, especially the use of traditional healers and helpers identified by tribal communities.

Substance abuse related to child abuse and neglect is more likely to be reported for AI/AN families. Treatment programs that work with AI/AN populations should incorporate AI/AN tribal customs and spiritual ceremonies, be trauma-informed, and be holistic. AI/AN people in recovery may have experienced multiple traumas in their lifetimes, suffer from historical and intergenerational trauma, and abuse alcohol and drugs as a way of coping with those traumas. Without treatment to heal from the underlying traumas, alcohol and drug abuse treatment may be ineffective.

Chapter 3—Promoting Well-Being for American Indian and Alaska Native Children in the Community

Violence in American Indian and Alaska Native (AI/AN) communities occurs at very high rates compared with non-AI/AN communities—higher for AI/AN people than for all other races. AI/AN children are exposed to many types of community-based violence, including simple assaults, violent threats, sexual assault, and homicide. Additionally, suicide, gang violence, sex and drug trafficking, and bullying are especially problematic for AI/AN youth. Coupling that rate of exposure with the high rate of homelessness makes AI/AN youth especially vulnerable to community violence. The recommendations in this chapter speak to increasing capacity and infrastructure in AI/AN communities to allow those communities to confront the impact of current and past violence and to prevent future violence.

3.1 The White House Native American Affairs Office (see Recommendation 1.2) and executive branch agencies that are responsible for addressing the needs of AI/AN children, in consultation with tribes, should develop a strategy to braid (integrate) flexible funding to allow tribes to create comprehensive violence prevention, intervention, and treatment programs to serve the distinct needs of AI/AN children and families.

3.1.A The White House Native American Affairs Office, the U.S. Attorney General, the Secretaries of the Departments of the Interior (DOI) and Health and Human Services (HHS), and the heads of other agencies that provide funds that serve AI/AN children should annually consult with tribal governments to solicit recommendations on

the mechanisms that would provide flexible funds for the assessment of local needs, and for the development and adaptation of promising practices that allow for the integration of the unique cultures and healing traditions of the local tribal community.

3.1.B The White House Native American Affairs Office and the U.S. Attorney General should work with the organizations that specialize in treatment and services for traumatized children, for example, National Child Traumatic Stress Network, to ensure that services for AI/AN children exposed to violence are trauma-informed.

3.1.C The White House Native American Affairs Office should coordinate the development and implementation of federal policy that mandates exposure to violence trauma screening and suicide screening be a part of services offered to AI/AN children during medical, juvenile justice, and/or social service intakes.

Although children exposed to violence in AI/AN communities are similar to all children exposed to violence, solutions to the exposure to traumatic events may vary greatly among the 566 distinct federally recognized tribes across the United States. Federal, tribal, and state agencies and organizations must collaborate to ensure that tribal communities are allowed the flexibility to implement solutions that work and are culturally and locally relevant to meet the challenges, the circumstances, and the unique characteristics of their children and communities.

Policies must be developed and implemented to ensure that screening for exposure to violence takes place in numerous settings and issues of confidentiality are resolved. Confidentiality issues will arise as children are screened by various child-serving organizations in the communities that serve them. The need for confidentiality must be balanced with the need for service providers to have information that will permit them to more effectively serve the child. The Advisory Committee urges federal, tribal, and state programs that collect these data to seek creative ways to monitor and use information for the benefit of the child rather than use confidentiality as an excuse to inappropriately refuse to share information.

- **3.2 The Department of Justice's National Institute of Justice (NIJ) and other Justice Department agencies with statutory research funding should set aside 10 percent of their annual research budgets for partnerships between tribes and research entities to develop, adapt, and validate trauma screens for use among AI/AN children and youth living in rural, tribal, and urban communities. Trauma screens should be tested and validated for use in schools, juvenile justice (law enforcement and courts), mental health, primary care, Defending Childhood Tribal Grantee programs, and social service agencies and should include measures of trauma history, trauma symptoms, recognizing trauma triggers, recognizing trauma reactions, and developing positive coping skills for both the child and the caregivers.**

Early identification of exposure to violence, timely intervention and treatment, and especially prevention can protect a child from being trapped in a cycle of repeated exposure to violence.[10] Identification of children who have been traumatized by exposure to violence is the first step toward healing and recovery. Children must be screened in schools, clinics, social service agencies, juvenile justice facilities, and wherever children are found. An AI/AN child's response to a trauma may be intensified because of the legacy of historical trauma. Tribal communities need assistance from research partnerships to develop, validate, and use instruments to screen for trauma symptoms and design an effective path forward for children.

- **3.3 The White House Native American Affairs Office and responsible federal agencies should provide AI/AN youth-serving organizations such as schools, Head Starts, daycares, foster care programs, and so forth with the resources needed to create and sustain safe places where AI/AN children exposed to violence can obtain services. Every youth-serving organization in tribal and urban Native communities should receive mandated trauma-informed training and have trauma-informed staff and consultants providing school-based trauma-informed treatment in bullying, suicide, and gang prevention/intervention.**

Tribal child-serving systems and school staff are often unaware of the impact trauma has on the psychological and emotional health of

their students. Schools that are trauma-informed can establish safe and nurturing environments where children can learn.

- **3.4 The Secretary of Housing and Urban Development (HUD) should designate and prioritize Native American Housing Assistance and Self-Determination Act (NAHSDA) funding for construction of facilities to serve AI/AN children exposed to violence and structures for positive youth activities. This will help tribal communities create positive environments such as shelters, housing, cultural facilities, recreational facilities, sport centers, and theaters through the Indian Community Development Block Grant Program and the Housing Assistance Program.**

The Advisory Committee repeatedly heard testimony about the need for safe houses for youth in tribal communities—safe settings for youth escaping violence and places where a youth's basic needs for safety, nutrition, mental health treatment, and education can be assessed and met. Safe houses may provide for their cultural and spiritual needs as well. Providing a safe place where violence-exposed youth can focus on healing is the first step toward helping a young person recover from trauma.

- **3.5 The White House Native American Affairs Office should work with the Congress and executive branch agencies in consultation with tribes to develop, promote, and fund youth-based afterschool programs for AI/AN youth. The programs must be culturally based and trauma-informed, must partner with parents/caregivers, and, when necessary, provide referrals to trauma-informed behavioral health providers. Where appropriate, local capacity should also be expanded through partnerships with America's volunteer organizations, for example, AmeriCorps.**

Community-based and afterschool programs for youth that teach culture, prevention, and life skills will help AI/AN youth develop healthy lifestyles and values and strengthen their resiliency.

- **3.6 The White House Native American Affairs Office and the Secretary of Health and Human Services (HHS) should develop and implement a plan to expand access to Indian Health Service (IHS), tribal, and urban Indian centers to provide behavioral health**

services to AI/AN children in schools. This should include the deployment of behavioral health services providers to serve students in the school setting.

Federal, tribal, state, and for-profit agencies that provide behavioral health services must cooperate to develop and deliver school-based services for AI/AN students. Federal agencies should work with public schools and Bureau of Indian Education (BIE)-funded schools to ensure that services are offered, preferably in the schools, to students attending BIE-funded schools. School-based services increase the availability and utilization of services and will increase safety in schools.

Chapter 4—Creating a Juvenile Justice System that Focuses on Prevention, Treatment, and Healing

Children entering the juvenile justice system are exposed to violence at staggeringly high rates. Many American Indian and Alaska Native (AI/AN) people believe that the Western criminal/juvenile justice system is inappropriate for children, particularly AI/AN children, as it is contrary to AI/AN values in raising children. The Advisory Committee concludes that the standard way juvenile justice has been administered by state jurisdictions is a failure and it re-traumatizes AI/AN children.

The Advisory Committee supports substantial reform of the juvenile justice systems impacting AI/AN youth. A reformed juvenile justice system should be tribally operated or strongly influenced by tribes within the local region.

■ **4.1 Congress should authorize additional and adequate funding for tribal juvenile justice programs, a grossly underfunded area, in the form of block grants and self-governance compacts that would support the restructuring and maintenance of tribal juvenile justice systems.**

4.1.A Congress should create an adequate tribal set-aside that allows access to all expanded federal funding that supports juvenile justice at an amount equal to the need in tribal communities. As an initial step towards the much larger commitment needed, Congress should establish

a minimum 10 percent tribal set-aside, as per the Violence Against Women Act (VAWA) tribal set-aside, from funding for all Office of Juvenile Justice and Delinquency Prevention (OJJDP) funding making clear that the tribal set-aside is the minimum tribal funding and not in any way a cap on tribal funding. President Obama's annual budget request to Congress has included a 7 percent tribal set-aside for the last few years. This is a very positive step and Congress should authorize this request immediately. However, the tribal set-aside should be increased to 10 percent in subsequent appropriations bills. Until Congress acts, the Department of Justice should establish this minimum 10 percent tribal set-aside administratively.

4.1.B Federal funding for state juvenile justice programs should require that states engage in and support meaningful and consensual consultation with tribes on the design, content, and operation of juvenile justice programs to ensure that programming is imbued with cultural integrity to meet the needs of tribal youth.

4.1.C Congress should direct the Department of Justice (DOJ) and the Department of the Interior (DOI) to determine which agency should provide funding for both the construction and operation of jails and juvenile detention facilities in AI/AN communities, require consultation with tribes concerning the selection process, ensure the trust responsibilities for these facilities and services, and appropriate the necessary funds.

The funding tribes receive for juvenile justice programming must be adequate and stable. Currently, tribes need to rely on inadequate base funding from the BIA, thus forcing them to compete for grant funds to support the most basic components of a juvenile justice system. It is unacceptable for federal agencies to provide grant funding for a tribal program and limit the funding to three years, requiring tribes to re-compete or lose funding at the end of the grant period. Flexibility and stability in funding is important to allow local communities to utilize the funding in creative, impactful ways.

Programming offered in state juvenile justice systems is not meeting the needs of AI/AN youth and in some cases is harming these youth. Even those states with significant AI/AN populations fail to meaningfully consult with tribes about their juvenile justice systems to ensure that their programming is thoughtful and culturally based. One way to ensure that states with significant AI/AN populations involve the tribes in important decisions regarding AI/AN children is to tie federal funding to meaningful consultation with tribes.

Currently the DOJ and DOI have divided responsibilities to construct, operate, staff, and maintain jails and juvenile detention centers. This has resulted in dozens of facilities being constructed that are vacant or seriously underutilized because operating funds have not been provided. The split responsibility that exists now is not workable.

4.2 Federal, state, and private funding and technical assistance should be provided to tribes to develop or revise trauma-informed, culturally specific tribal codes to improve tribal juvenile justice systems.

Developing a tribal juvenile justice system requires developing tribal codes that fit the culture and community. Technical assistance should be provided to develop culturally appropriate, trauma-informed juvenile justice codes and systems.

4.3 Federal, tribal, and state justice systems should provide publicly funded legal representation to AI/AN children in the juvenile justice systems to protect their rights and minimize the harm that the juvenile justice system may cause them. The use of technology such as videoconferencing could make such representation available even in remote areas.

AI/AN youth need to be provided with counsel due to the impact of immaturity, the effects of exposure to violence and trauma, and caregivers who are no more likely to understand the system, rights, and process than the youth. Given the overrepresentation of AI/AN youth in state and federal justice systems and in secure confinement, it is critical that culturally competent, well-trained defense counsel be afforded to the youth at public expense in all federal, tribal, and state juvenile proceedings.

4.4 Federal, tribal, and state justice systems should only use detention of AI/AN youth when the youth is a danger to themselves or the community. It should be close to the child's community and provide trauma-informed, culturally appropriate, and individually tailored services, including reentry services. Alternatives to detention such as "safe houses" should be significantly developed in AI/AN urban and rural communities.

The use of juvenile detention is not effective as a deterrent to delinquent behavior, risky behavior, or truancy and should only be used when there is clear evidence that the youth is a danger to themselves or the community.

4.5 Federal, tribal, and state justice systems and service providers should make culturally appropriate trauma-informed screening, assessment, and care the standard in juvenile justice systems. The Indian Health Service (IHS) in the Department of Health and Human Services (HHS) and tribal and urban Indian behavioral health service providers must receive periodic training in culturally adapted trauma-informed interventions and cultural competency to provide appropriate services to AI/AN children and their families.

Behavioral health services for AI/AN youth may be handled by different agencies with different priorities. Youth in the juvenile justice system are typically not a priority to those community-based agencies. Culturally appropriate, trauma-informed screening and care must become the standard in all juvenile justice systems that impact AI/AN youth if the system is to treat children as sacred and promote wellness and resilience.

4.6 Congress should amend the Indian Child Welfare Act (ICWA) to provide that when a state court initiates any delinquency proceeding involving an Indian child for acts that took place on the reservation, all of the notice, intervention, and transfer provisions of ICWA will apply. For all other Indian children involved in state delinquency proceedings, ICWA should be amended to require notice to the tribe and a right to intervene. As a first step, the Department of Justice (DOJ) should establish

a demonstration pilot project that would provide funding for three states to provide ICWA-type notification to tribes within their state whenever the state court initiates a delinquency proceeding against a child from that tribe which includes a plan to evaluate the results with an eye toward scaling it up for all AI/AN communities.

States have jurisdiction over AI/AN children when a violation occurs outside of Indian country, or within Indian country in PL-280 states or states that have a settlement act or other similar federal legislation. An overarching concern voiced at hearings conducted by the Advisory Committee was that states are not required to notify the tribe or involve the tribe in a juvenile delinquency proceeding. That concern is exacerbated because states generally do not provide the cultural support necessary for Native youth's rehabilitation and reentry into the tribal community.

- **4.7 Congress should amend the Federal Education Rights and Privacy Act (FERPA) to allow tribes to access their members' school attendance, performance, and disciplinary records.**

FERPA[11] generally allows federal, state, and local education agencies the ability to access student records and other personally identifiable information kept by state public schools without the advance consent of the parents; it does not afford the same access to tribes. Tribes need this access in order to be informed enough to intervene early and respond to the red flags raised by truancy and disciplinary problems in schools as it pertains to AI/AN children exposed to violence.

Chapter 5—Empowering Alaska Tribes, Removing Barriers, and Providing Resources

Problems with children exposed to violence in American Indian and Alaska Native (AI/AN) communities are severe across the United States—but they are systemically worse in Alaska. Issues related to Alaska Native children exposed to violence are different for a variety of reasons including regional vastness and geographical isolation, extreme weather, exorbitant transportation costs, lack of economic opportunity and access to resources, a lack of respect for Alaska tribal sovereignty, and a lack of understanding and

respect for Alaska Native history and culture, all of which have contributed to high levels of recurring violence. Alaska tribes are best positioned to effectively address these problems so long as the current barriers are removed and Alaska tribes are empowered to protect Alaska Native children.

5.1 The federal government should promptly implement all five recommendations in Chapter 2 (Reforming Justice for Alaska Natives: The Time Is Now) of the Indian Law and Order Commission's 2013 Final Report, *A Roadmap for Making Native America Safer*, and assess the cost of implementation. This will remove the barriers that currently inhibit the ability of Alaska Native tribes to exercise criminal jurisdiction and utilize criminal remedies when confronting the highest rates of violent crime in the country.

5.1.A *(Indian Law and Order Commission Recommendation 2.1)*: Congress should overturn the U.S. Supreme Court's decision in *Alaska v. Native Village of Venetie Tribal Government*, by amending the Alaska Native Claims Settlement Act (ANCSA) to provide that former reservation lands acquired in fee by Alaska Native villages and other lands transferred in fee to Native villages pursuant to ANCSA are Indian country.

5.1.B *(Indian Law and Order Commission Recommendation 2.2)*: Congress and the President should amend the definitions of Indian country to clarify (or affirm) that Native allotments and Native-owned town sites in Alaska are Indian country.

5.1.C *(Indian Law and Order Commission Recommendation 2.3)*: Congress should amend the Alaska Native Claims Settlement Act to allow a transfer of lands from Regional Corporations to Tribal governments; to allow transferred lands to be put into trust and included within the definition of Indian country in the federal criminal code; to allow Alaska Native tribes to put tribally owned fee simple land similarly into trust; and to channel more resources directly to Alaska Native tribal

governments for the provision of governmental services in those communities.

5.1.D ***(Indian Law and Order Commission Recommendation 2.4)*****: Congress should repeal Section 910 of Title IX of the Violence Against Women Reauthorization Act of 2013 (VAWA Amendments), and thereby permit Alaska Native communities and their courts to address domestic violence and sexual assault committed by tribal members and non-Natives, just as in the lower 48.**

5.1.E ***(Indian Law and Order Commission Recommendation 2.5)*****: Congress should affirm the inherent criminal jurisdiction of Alaska Native tribal governments over their members within the external boundaries of their villages.**

The Advisory Committee agrees with each of the five Alaska-specific Indian Law and Order Commission (ILOC) recommendations and the Commission's rationale for each recommendation. Until and unless these barriers are removed, the state of Alaska will continue to assert that Alaska tribes do not have any criminal jurisdiction and thereby continue to contend that Alaska tribes are only empowered to utilize civil courts and civil remedies when confronting the highest rates of violent crime in the country. The Advisory Committee recommends that these five ILOC recommendations be enacted as soon as possible in order to ensure that Alaska tribes are also empowered to exercise criminal jurisdiction and criminal remedies when confronting such incredibly high rates of violent crime.

■ **5.2 The Department of Justice (DOJ) and the Department of the Interior (DOI) should provide recurring base funding for Alaska tribes to develop and sustain both civil and criminal tribal court systems, assist in the provision of law enforcement and related services, and assist with intergovernmental agreements.**

5.2.A As a first step, the DOJ and the DOI should—within one year—conduct a current inventory and a needs/cost assessment of law enforcement, court, and related services for every Alaska tribe.

5.2.B The DOJ and the DOI should provide the funding necessary to address the unmet need identified, and ensure that each Alaska tribe has the annual base funding level necessary to provide and sustain an adequate level of law enforcement, tribal court, and related funding and services.

5.2.C Congress should enact legislation along the lines of the current bipartisan bill sponsored by both Alaska senators (S. 1474 to be titled Alaska Safe Families and Villages Act of 2014) that supports the development, enhancement, and sustainability of Alaska tribal courts including full faith and credit for Alaska tribal court acts and decrees and the establishment of specific Alaska tribal court base funding streams and grants to Alaska Native tribes carrying out intergovernmental agreements with the state of Alaska.

5.2.D The federal government should work together with Alaska tribes and the state of Alaska to improve coordination and collaboration on a broad range of public safety measures that cause Alaska Native children to be exposed to high rates of violence.

The development, enhancement, and sustainment of Alaska tribal courts, and truly cooperative relationships between the state of Alaska and Alaska tribes, are required to reduce violent crime and protect Alaska Native children from exposure to violence. Village-based tribal courts are the culturally appropriate provider. Alaska tribal courts must be developed, enhanced, and sustained in order to effectively address issues concerning Alaska Native children exposed to violence.

5.3 The state of Alaska should prioritize law enforcement responses and related resources for Alaska tribes and should recognize and collaborate with Alaska tribal courts.

5.3.A The state of Alaska should prioritize the state law enforcement response and resources for Alaska tribes. At a minimum, there must be at least one law enforcement official onsite in each village.

5.3.B The state of Alaska should prioritize the provision of needed village-based services including village-based women's shelters (which allow children to stay with their mothers), child advocacy centers, and alcohol and drug treatment services.

5.3.C The state of Alaska should recognize and collaborate with Alaska tribal courts including following existing federal laws designed to protect Alaska Native children and families such as VAWA protection order authority, which requires states to recognize and enforce tribal protection orders that have been issued by tribal courts–including Alaska Native tribal courts–without first requiring a state court certification of the tribal protection order.

5.3.D The state of Alaska should enter into self-governance intergovernmental agreements with Alaska tribes in order to provide more local tools and options to combat village public safety issues and address issues concerning Alaska Native children exposed to violence.

The state of Alaska must increase the level of protection in Alaska tribes. Village-based services are needed in law enforcement and victim protection. Approximately 370 State Troopers have primary responsibility for law enforcement in rural Alaska but have a full-time presence in less than half of the remote Alaska tribes. Seventy-five villages lack any law enforcement at all.[12]

■ 5.4 The Administration for Child and Families (ACF) in the Department of Health and Human Services (HHS) and the State of Alaska Office of Children's Services (OCS) should jointly respond to the extreme disproportionality of Alaska Native children in foster care by establishing a time-limited, outcome-focused task force to develop real-time, Native-inclusive strategies to reduce disproportionality.

Issues of foster care disproportionality are huge problems for many tribes. Inadequate numbers of Native foster families to assure compliance with ICWA impacts most state child welfare agencies as well. But this problem takes on added dimensions and particular significance in Alaska—not only due to the high level of removals

of Alaska Native children and the fact that it has been increasing at an alarming rate—but also due to many other factors including the remoteness of Alaska tribes, Alaska's vast size, the exorbitant cost of transportation, the financial limitations of subsistence economy, the lack of village-based foster care options, the lack of village-based services and resources, the lack of tribal courts, and the historic refusal of the state of Alaska to collaborate with Alaska tribes and, until recently, to recognize that Alaska tribes even exist.

5.5 The Department of the Interior (DOI) and the State of Alaska should empower Alaska tribes to manage their own subsistence hunting and fishing rights, remove the current barriers, and provide Alaska tribes with the resources needed to effectively manage their own subsistence hunting and fishing.

Regulations that limit the ability of Alaska Natives to conduct traditional subsistence hunting and fishing are directly connected to violence in Alaska tribes and the exposure of Alaska Native children to that violence. Violence is essentially nonexistent during the times in which the communities are engaging in traditional subsistence hunting and fishing activities, and violence spikes during times when Alaska Natives are unable to provide for their families. Beyond providing basic food, subsistence fishing and hunting has been essential to Alaska Native families' way of life for generations. Like language and cultural traditions, it has been passed down from one generation to the next and is an important means of reinforcing tribal values and traditions and binding families together in common spirit and activity. Interfering with these traditions erodes culture, family, a sense of purpose and ability to provide for one's own, and a sense of pride.

Notes

1. For purposes of this report, we use the term "tribe" to refer to federally recognized tribes from the Secretary of Interior's list. 79 Fed. Reg. 4,748 (Jan. 29, 2014), available at: http://www.gpo.gov/fdsys/pkg/FR-2014-01-29/pdf/2014-01683.pdf.
2. Indian Law and Order Commission, *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States* (November 2013): 154, available at: http://www.aisc.ucla.edu/iloc/report/index.html.
3. The Advisory Committee is the anchor of the AI/AN Task Force established in 2013 by the Attorney General. The Advisory Committee consists of nonfederal experts in the area of AI/AN children exposed to violence.
4. Listenbee, Robert L., Jr., et al., *Report of the Attorney General's National Task Force on Children Exposed to Violence*, Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, December 2012.
5. Indian Law and Order Commission, *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States* (November 2013), available at: http://www.aisc.ucla.edu/iloc/report/index.html.
6. The Native peoples of Alaska are commonly referred to as "Alaska Natives," and "Alaska Native Villages." For the purposes of this report, we will use the term "Alaska Tribe" to refer to federally recognized tribes in the State of Alaska. 79 Fed. Reg. 4,748 (Jan. 29, 2014), available at: http://www.gpo.gov/fdsys/pkg/FR-2014-01-29/pdf/2014-01683.pdf.
7. The Violence Against Women Reauthorization Act of 2013, PL-113-4, 127 Stat. 54 (March 7, 2013).
8. See Chapter 11 (Funding) of *Final Report—Law Enforcement and Criminal Justice Under Public Law* 280, available at: http://www.tribal-institute.org/download/pl280_study.pdf.
9. Written Testimony of Sarah Hicks Kastelic (Alutiiq), Hearing of the Task Force on American Indian/Alaska Native Children Exposed to Violence, Anchorage, AK, June 11, 2014 at 23, available at: http://www.justice.gov/defendingchildhood/4th-hearing/hearing4-briefing-binder.pdf.
10. Listenbee, Robert L., Jr., et al., *Report of the Attorney General's National Task Force on Children Exposed to Violence*, Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (December 2012): 66.
11. 20 U.S.C. 1232(g).
12. S. Rep. No. 113-260, at 2 (2014), *to accompany* S. 1474, 113th Cong. 2d Sess. (2014).

U.S. Department of Justice

Environment and Natural Resources Division

THE INDIAN CHILD WELFARE ACT

About the Indian Child Welfare Act

In 1978, Congress enacted the Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901 *et seq.*, to "protect the best interests of Indian children and promote the stability and security of Indian tribes and families." Congress enacted ICWA in response to concerns over the consequences to Indian children, Indian families, and Indian tribes of abusive child-welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes. ICWA is based on the government-to-government relationship between the United States and Indian tribes, and on the unique political status of Indian tribes and their members.

ICWA applies to child-custody proceedings involving an "Indian child," defined as a child who is either (a) a member of a federally recognized Indian tribe or (b) eligible for membership in an Indian tribe and the biological child of a member of a tribe. ICWA applies to foster-care placements, termination of parental rights, preadoptive placements, and adoptive placements, but does not apply to divorce proceedings or custody disputes between parents.

ICWA recognizes that tribes have exclusive jurisdiction over child-custody proceedings involving Indian children domiciled within their tribe's reservation and concurrent jurisdiction over proceedings involving Indian children domiciled off-reservation. ICWA also provides important procedural and substantive standards to be followed in state-administered proceedings involving Indian children.

About the Department of Justice's ICWA Initiative

In December 2014, the Attorney General announced that the Department of Justice would focus additional resources on promoting compliance with ICWA. The Environment and Natural Resources Division (ENRD) is leading this initiative, with support from the Office of Tribal Justice, the Civil Rights Division, the Office of Justice Programs, and other DOJ components.

The Department's ICWA initiative has three primary components:

(1) Participating as *amicus curiae* in state-court and federal-court litigation regarding interpretation of ICWA;

(2) Partnering with the Department of the Interior and the Department of Health and Human Services to make sure that all the tools available to the federal government are used to promote compliance with ICWA; and

(3) Engaging in other targeted actions to increase awareness of ICWA's requirements and promote compliance with the statute, including training and outreach.

The Department is particularly interested in hearing about state-court and federal-court cases where the interpretation of a provision of ICWA is disputed and is central to the case.

For More Information

The Environment and Natural Resources Division
http://www.justice.gov/enrd/

The Civil Rights Division
http://www.justice.gov/crt/

Attorney General Holder's Remarks at the White House Tribal Nations Conference
December 3, 2014
http://www.justice.gov/opa/speech/attorney-general-eric-holder-delivers-remarks-during-white-house-tribal-nations

Text of the Indian Child Welfare Act
http://www.nicwa.org/Indian_Child_Welfare_Act/ICWA.pdf

BIA Guidelines for State Courts and Agencies in Indian Child Custody Proceedings
February 25, 2015
http://www.bia.gov/cs/groups/public/documents/text/idc1-029637.pdf

Proposed Regulations for State Courts and Agencies in Indian Child Custody Proceedings
March 20, 2015
http://www.bia.gov/cs/groups/public/documents/text/idc1-029629.pdf

Bureau of Indian Affairs ICWA Page
http://www.bia.gov/WhoWeAre/BIA/OIS/HumanServices/IndianChildWelfareAct/index.htm

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A Research and Practice Brief:

Measuring Compliance with the Indian Child Welfare Act[1]

MARCH 2015

INDIAN CHILD WELFARE ACT MEASURING COMPLIANCE

casey family programs

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Note: America's indigenous people refer to themselves in many different ways. We use the term American Indian to refer to American Indians and Alaska Natives. The Indian Child Welfare Act uses the term Indian to refer to American Indians and Alaska Natives. Thus, this document uses both terms interchangeably.

Introduction

Enacted in 1978, the Indian Child Welfare Act (ICWA) is an important and comprehensive piece of federal legislation, designed to protect Indian children, families, and tribes from child displacement. ICWA establishes minimum federal standards for the removal and displacement of Indian children from their homes or tribes and requires that, when removal is unavoidable, Indian children be placed in foster or adoptive homes that reflect the unique values of Indian culture (25 U.S.C § 1901(2), (3), (4)).

History of Abusive Indian Child Welfare Practices

The need for legislation to protect Indian children, families, and tribes evolved from a number of federal and state actions and policies in the 19th century that forced the displacement of Indian children away from their homes, tribes, and culture. Despite the strenuous objections of their parents, hundreds of Indian children were forced to enroll in militaristic boarding schools, designed to promote mainstream assimilation and acculturation. In these boarding schools, children were stripped of their Indian culture and tribal associations and were often subjected to deprivation and abuse.[2]

> ...approximately 25 percent to 35 percent of all Indian children were separated from their families, tribes, and culture and were placed in non-Indian foster homes, adoptive homes, or institutions.

In the mid-1930s, with the passage of the Indian Reorganization Act and subsequent closing of Indian boarding schools, the Bureau of Indian Affairs (BIA) became concerned that Indian children would be returned to impoverished communities of origin if alternative homes were not found. The BIA hired social workers to place Indian children in non-Indian homes, and in 1957, it contracted with the Child Welfare League of America to establish the Indian Adoption Project, which advanced the mission of interstate placement of Indian children into non-Indian homes.[3,4]

Although the Indian Adoption Project ended in 1967, it was succeeded by the Adoption Resource Exchange of North America, which continued to promote the adoption of Indian children into non-Indian families until the enactment of ICWA in 1978.[5] During this time, approximately 25 percent to 35 percent of all Indian children were separated from their families, tribes, and culture and were placed in non-Indian foster homes, adoptive homes, or institutions.[6,7,8] In 1974, the Senate Select Committee on Indian Affairs heard testimony documenting the long-term detrimental impact of these policies and practices on Indian children's and families' well-being.[9,10,11]

The Indian Child Welfare Act of 1978 (25 U.S.C. 1901(2)(3)(4))

Based upon compelling testimony, Congress advanced stringent federal and state guidelines to increase protections for Indian children, parents, and tribes from unnecessary removal. ICWA outlines federal procedures that direct state courts as to when they must defer to Indian tribal authority or allow for Indian tribal participation in court proceedings.[12,13,14] ICWA affirms tribal jurisdiction in relevant matters involving all Indian children and establishes minimum safeguards to prevent unnecessary disruption of Indian families and promote reunification of Indian families and tribes.[15,16,17]

State courts and agencies must actively identify Indian children in order to apply ICWA protections. Best practice guidelines advise that judges ask about Indian heritage—out loud and on the record—at every hearing if heritage has not been previously established.[18] ICWA defines an Indian child as a minor who "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 U.S.C § 1903 (4)). At the time of this publication, new BIA proposed Regulations for State Courts and Agencies in Indian Child Custody Proceedings elaborate on these requirements.

Minimum ICWA requirements include:

- affirmed status of tribal interests on par with parental rights (e.g., states must notify the tribe if an Indian child is taken into foster care, even if the child lives off the reservation, and the tribe maintains the right to intervene and request that the case be transferred to tribal court)[19]
- increased standards of active efforts by social service agencies to keep the Indian family intact
- qualified expert witness testimony before making out-of-home placements or terminating parental rights
- preferred child placement into homes and families that preserve tribal heritage or with extended family members.[20,21]

For more details on each of these key provisions, visit the National Indian Child Welfare Association website (www.nicwa.org) and BIA proposed Regulations for State Courts and Agencies in Indian Child Custody Proceedings (www.federalregister.gov/articles/2015/03/20/2015-06371/regulations-for-state-courts-and-agencies-in-indian-child-custody-proceedings).

State Compliance with ICWA

At present, no federal agency is tasked with ensuring state compliance with the protections mandated by ICWA. Without federal oversight, state legislatures, public child welfare authorities and courts are left to interpret ICWA provisions and definitions of "active efforts."[22, 23] Despite overall decreases in rates of out-of-home placements, Indian children remain disproportionately represented in the foster care system, at more than twice the rate of the general population,[24] though this varies among states.[25]

Available research, though limited, indicates inconsistent and varying degrees of state compliance with ICWA requirements and sanctions. Some variance is likely due to lack of enforcement, differences in definitions and methods used to measure compliance, and lack of information and understanding. For instance, in Utah and Oklahoma, active efforts require more than reasonable efforts, whereas in California and Maryland, active and reasonable efforts are equated.[26] Therefore, any attempt to measure compliance with the active efforts provision of ICWA must account for state-specific interpretation.

Barriers to Compliance

In 1994, the Office of the Inspector General of the federal Department of Health and Human Services conducted a study responding to concerns raised by federal, state, and tribal child welfare administrators and experts about serious gaps in the provision of child welfare services to protect Indian children, including the lack of federal oversight for enforcement of the law.[27] Other commonly cited barriers to ICWA compliance include a lack of knowledge about ICWA requirements, challenges in identifying children who may be eligible for ICWA protections, and lack of education and training for social workers, attorneys, and judges.[28,29,30,31] Further, the intensity and speed with which some state courts focus on the perceived best interests of the child may cause them to overlook potential tribal interests.[32,33]

Measuring ICWA Compliance

Abdication of federal oversight has left ICWA stakeholders concerned about the implementation of and adherence to ICWA sanctions; the need for measuring compliance with the law is high. Although cross-jurisdictional and collaborative efforts are emerging, compliance measurement remains characterized by relatively small, idiosyncratic efforts. Empirical study results are scattered, inconsistent, and highly specific to the state or jurisdiction being examined.

Although what we know about compliance is limited, a summary of findings of compliance studies and other reports on compliance efforts are highlighted, by topical area, in Table 1. Aside from the Government Accountability Office (GAO) report, all studies were conducted within a single state and with a relatively small number of cases. Given the small scale of these efforts, the temporal nature of the data, the limited scope of the studies, and the variation in hearing types, these findings can hardly be generalized as a summary of overall nationwide ICWA compliance.

> Available research, though limited, indicates inconsistent and varying degrees of state compliance with ICWA requirements and sanctions.

While limited in scope, several compliance measurement approaches are used in the field, including observational methods, judicial case record review, focus groups, structured interviews, and surveys. Selection of a measurement methodology and tool is driven by the intended purpose or research question. For example, is the compliance study aimed at gathering information on strengths and weaknesses in implementing the law, monitoring progress toward implementation, or documenting an intervention designed to improve compliance? Table 2 outlines current methods and tools for gathering compliance information, from quantitative, court-focused measures to perception-oriented methods involving key participants.

Table 1: Current Compliance Findings

Area of Compliance	Study Findings*
Identifying American Indian children	• One study by the Government Accountability Office in 2003 found that only five states could identify ICWA-eligible children in their State Automated Child Welfare Information System.[34] • In one study that reviewed case records, 15% of the records found no documentation regarding how the court or child protection agency determined the child was American Indian.[35]
Active efforts	• Two studies found a large majority of ICWA cases included judicial assessment that active efforts were taken to prevent child removal or termination of parental rights in ICWA cases.[36,37] • One study found case record documentation of active efforts undertaken, in addition to the judicial assessment, in 66% of cases examined.[38] • One study using case record review methods found that cases documenting active efforts on the record varied by type of hearing, from 21% for disposition hearings to 67% for pretrial or adjudication hearings.[39] • One observational study found verbal findings of active efforts were more likely to occur at adjudication review and permanency hearings but were highly unlikely at the initial hearing.[40]
Qualified expert witnesses (QEW)	• One study of judicial case records found that a qualified expert witness was used in 71% of cases involving foster care placement.[41] • One observational study found that testimony from qualified expert witnesses was present in 38% of adjudication hearings but in none of the three other types of hearings sampled.[42]
Placement preferences	• One study found that 83% of out-of-home placements of the American Indian children in the study followed ICWA placement guidelines.[43] • A forthcoming brief documents the placement patterns of American Indian children in a nationally representative sample; this study finds that Indian children are more likely than children of other races to receive services at home 18 months after an investigation.[44]

*Note: Unless otherwise mentioned, study findings are from a single state or jurisdiction, and are not representative of ICWA compliance nationally or in other jurisdictions.

Table 2: Current Approaches to Measurement of ICWA Compliance[45]

	Method	Tools	Strengths	Weaknesses
Court-focused methods	Observation (in-person or via audio or video recording)	Structured forms with checklists and limited text fields, e.g. QUICWA Performance Checklist	• Specific information: information easily obtained by a trained observer • Data collection: tools focus on consistency of data collection and reliability of results; both quantitative and qualitative data may be collected • Research presence: the process of being observed can result in behavior changes • Utility: sample compliance within a case or follow a case over time	• Variance: consistency and depth of information varies by jurisdiction and court • Observer training: technical language of cases and speed and complexity of court proceedings can impede observation and require extensive training • Missing data: nonverbal cues or silent presence of key players may be missed • Resource intensive: training and observation can be expensive and time consuming • Complex tools: complexity of observation forms may interfere with observer accuracy

	Method	Tools	Strengths	Weaknesses
Court-focused methods (cont.)	**Judicial case record review**	**Structured case record review form**	• Amount of data: large amounts of court physical and digital data are available, providing a cumulative snapshot of key indicators of ICWA compliance at any selected time • Relative objectivity: impartial coders • Clarity: easy to follow variance in compliance rates over time • Pacing: data may be collected at a coder's own pace • Depth: judicial case records may present more detail (e.g., on active efforts) than court proceedings	• Courtroom behaviors: case review does not allow researcher to see what is happening in the courtroom (extent of tribal presence or involvement may not be included) • Variance: consistency and depth of information varies by jurisdiction, court and clerk • Missing information: court transcripts are typically not included • Multiple sources: information moves through multiple filters, including child welfare staff, judges, court clerks, etc.; knowledge of local jurisdictional practice is essential to the design of research questions and case record review forms
Perception-based methods	**Focus groups** **Structured interviews** **Surveys**	**Paper or web surveys** **Structured interview guides**	• Ease of data collection: surveys allow researchers to collect large amounts of data relatively easily and inexpensively • Qualitative data: provides additional context and information, including perceptions of multiple stakeholders, practitioners and constituents	• Subjective data: participants may experience response bias or express only "socially desirable" opinion • Representation: smaller samples from some qualitative data collection efforts may not be fully representative of all stakeholders and participants

Recommendations to Support Best Practices for ICWA Compliance and Measurement

Three recommendations to support improved monitoring of compliance with ICWA mandates are:

I. Allocate funds and resources for effective child welfare services to support active efforts and placement preferences.

II. Develop training mechanisms and opportunities to include initial and continuing education for Child Protective Services (CPS) and judicial staff; incorporate ICWA history, importance, and compliance measurement into existing training programs.

III. Develop a standardized national compliance measure for certain provisions of ICWA and differentiate standards that can be measured across sites from jurisdiction-specific measurements.

Recommendation I

ICWA's active efforts provisions promote efforts to preserve and reunify families beyond the normal scope of child welfare work and, therefore, logically require additional financial and human resources. Child welfare funding, however, is not appropriated relative to the disproportionate representation of Indian children in care or at risk of going into care present in some jurisdictions. Augmenting the cultural competence of the workforce and increasing collaboration among state, county, and tribal welfare agencies may enhance efficiency and help meet increased demands for ICWA regulations.[46] Organizations such as the National Council of Juvenile and Family Court Judges, National Indian Child Welfare Association, and National American Indian Court Judges Association are dedicating resources to improve state collaborations and ICWA-related practices.

Recommendation II

Variance in extant evidence of state compliance with ICWA emphasizes the importance of training all professionals involved with child welfare on the federal law.[47] Social workers, attorneys, and judges have existing training mechanisms that can be adapted or expanded to improve the understanding of and adherence to ICWA sanctions. ICWA training could be integrated more fully into existing initial or continuing education funded by Title IV-E and other sources. ICWA educational efforts should be open to guardians ad litem and court-appointed special advocates. Collaborative data collection efforts between practitioners and researchers should be employed and included in the training. Results from these efforts should be shared widely and used to engage all professional and community stakeholders around the mandates and goals of ICWA.

Recommendation III

Consistent use of measurement tools is needed to evaluate compliance with ICWA and to improve enforcement. Development of standardized measures across jurisdictions for certain provisions of ICWA would allow for a national comparison of compliance and would facilitate linkage with child outcomes associated with compliance. The National Council of Juvenile and Family Court Judges' ICWA toolkit is a great reference source in this regard.[48]

Adding ICWA performance measures to the Statewide Automated Child Welfare Information System (SACWIS) and the Tribal Automated Child Welfare Information System (TACWIS) or to the federal Administration for Children and Families (ACF) Child and Family Services Reviews would enable cost-effective monitoring and reporting of ICWA provisions. Courts should be required to report on a limited set of compliance measures or assessments in all judicial records. Granting official oversight to the ACF, the BIA, or both, as recommended by the Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence (2014), would advance compliance standards and data.[49]

Development of standardized measures across jurisdictions for certain provisions of ICWA would allow for a national comparison of compliance and would facilitate linkage with child outcomes associated with compliance.

Conclusion

American Indian children are disproportionately represented in foster care. ICWA attempts to address and reverse decades of policies of acculturation and assimilation stemming from the forced removal and adoption of Indian children. ICWA demands additional responsibilities for the public child welfare system and special oversight by the courts when Indian children are involved in the court system in order to promote the well-being of Indian children and their families. To date, implementation of ICWA is inconsistent and compliance measurement relatively scarce. Whether at the local or national level, compliance data are necessary to ensure fulfillment of ICWA requirements and sanctions and to investigate whether or not ICWA desired outcomes are being achieved.

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INDIAN CHILD WELFARE ACT
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Minnesota Materials

Governor's Task Force on the Protection of Children

Final Report and Recommendations

March 2015

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PREAMBLE

Minnesota's child protection system has moved from one end of a spectrum to another since 1999. Prior to 2000, it was very focused on forensic investigations, working in concert with law enforcement and often at odds with communities and families. There was not enough client engagement and too few efforts to strengthen families. Fast forward to our system today when family engagement is our primary focus, paramount in all we do. At times this focus is at odds with protecting children.

As we noted in our initial recommendations, Minnesota needs to stop and readjust the pendulum. The question is how to do so. Very quickly, the debate then turns to whether to continue with a two track system (where family investigation is focused on forensic techniques to "get the facts" and family assessment where the focus is on family engagement) or to move to one unified child protection system with maltreatment determinations made in every case.

This debate misses a critical point. When responding to an accepted ("screened in") child maltreatment report there must be a continuum of child protection responses designed to meet the safety needs of children. This continuum of responses must enable child protection workers to consistently use their statutory protective role and their role as a "helper" to protect children and engage families. Put another way, child protection workers should not only wear one hat, either a protective hat or a helper hat. The best workers wear both – or at least keep both ready to don—throughout any child protection response, regardless of the label. How we ensure that this best practice is *the* practice throughout Minnesota is critical to protecting our children. This commitment is consistent with the Task Force's initial recommendations which noted that "we need to recognize there is a continuum of approaches and services that are necessary and appropriate. To best protect children, we need all available tools and the discretion to use them."

In addition, we need to readjust how we measure outcomes. We need to move beyond the debate about how many reports are "screened in", what services are provided, and what "track" is assigned to asking whether the intervention provided by the system made a difference in the child's life. In short, are the child and family better off because our child protection system stepped into the family's life? To assess this, we need to periodically evaluate the child's well-being and use the individual data both to change course, where necessary, and to inform system-level planning for the future.

These outcomes need to be as public as possible. While child-specific information should make sure we are addressing the individual needs of the child, at the system level we should be able to learn what types of interventions are working for different populations, keeping in mind the large

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disparities we have in our current system. These outcomes should also be tied, ultimately, to accountability for state and county governments through a robust Human Services Performance Management System.

In summary, our goal is a child protection system that is child-focused. Where the safety and the best interests of the child is paramount, but where we never lose sight of the fact that parent support is often the most effective way to provide for the child's wellbeing. That we need a system that responds differently to different needs and not be wed to singular or dual tracks. We need a system that provides referrals for clinical assessments for those children who have trauma or mental health needs identified during screenings. At the same time, the system must have its "eyes wide open" to signs of maltreatment and neglect. And we need a system that provides for periodic evaluations and monitoring so that (both on a child level and a system level) we know whether we are making progress.

This child protection system cannot be created overnight. It must evolve. And it cannot evolve without additional resources, training, and workforce adjustments. This evolution cannot occur in a vacuum. It must include a multi-prong strategic effort to establish better connections with racial, ethnic and tribal communities to implement a culturally responsive service array. There must be ongoing dialogue between DHS, counties, field experts, key stakeholders and legislators so that child protection reform can be an ongoing process. As a result, the Task Force recommendations below set out short and mid-term steps, as well as lay the ground work for longer term system redesign.

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SCREENING

The screening function for reports of child maltreatment is one that requires the practitioner to have high level knowledge and skill competencies. The screening decision is a very important child safety decision and we have to get it right every time. Additionally, statute and practice guidance must provide clear criteria and instruction to ensure more consistency uniformity and accurate decision making by local county and tribal child welfare agencies throughout the state.

The screening of alleged child maltreatment reports involves the crucial task of systematically gathering and critically thinking through the facts of a report. There is recognition that this fact-gathering cannot and should not occur in isolation. Decisions made that involve the best practice thinking and judgment of a variety of professionals and cross-disciplines serves to improve the overall quality and consistency of decision making. It also increases transparency and accountability to the citizens of Minnesota.

There is a need for new protocols and guidance to help provide front-line workers with better supports to guide their decision making in the short and mid-term. In the longer term, the state

should consider a centralized child abuse and neglect reporting system similar to those recently adopted in the state of Colorado and in Minnesota's Adult Protection System.

The following recommendations are made regarding the screening process:

1. Revise the Public Policy statement which begins Minnesota's Reporting of Maltreatment of Minors Act to include child safety as the paramount consideration for decision making.

2. The legislature should repeal of the statutory provision barring consideration of screened out reports. The use of prior screened out reports when considering a new referral should be permitted and encouraged. The screening guidelines should be updated to reflect this change. It is recognized that prior history is an essential element in screening and assessing maltreatment reports. Records of screened out reports should be maintained for five years to make this change in practice effective.

3. Make intake/screening decisions, whether a report is screened in or out, in consultation with a Multi-Disciplinary Team (MDT) or a minimum with a supervisor.

4. Review, revise, and establish clear Child Protection Intake, Screening, and Track Assignment Guidelines

    a. Review and revise the Guidelines on an annual basis. The Guidelines should also include best practices for the treatment of reports from intake through track assignment. This process should include input from a cross-section of professionals involved with children and families, including law enforcement, mental health professionals and physicians. The screening review committee must seek significant input from counties, tribes, and county attorneys. The reviewing committee, should at minimum, refer the guidelines to the Minnesota County Attorney's Association for review and comment as county attorneys are responsible for providing legal advice to social services during the screening and assessment process. Collaboration up front will help reduce conflicting interpretation.

    b. Require counties and tribes to use the Minnesota Guidelines for receiving and screening reports of children maltreatment as a baseline. The guidelines should not be modified without written authority from DHS.

    c. Rewrite the Guidelines to supplement references to Minnesota code with plain and understandable language.

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5. DHS should provide additional guidance on screening as set forth below:

   a. Establish a required information standard for reports received at child protection services intake. This standard would specifically describe information that must be gathered, if obtainable, and documented in all cases. However, the inability of the reporter to provide this minimal information should not be decisive to whether a report is screened in. This information should minimally include:

      - Description of allegations
      - Child's injury conditions as a result of the alleged maltreatment
      - Information that the child may be of American Indian heritage
      - Description of the child's current location, functioning, special needs, and vulnerability
      - Description of threats to child safety
      - Name, age, gender, race, ethnicity of all members of the household and their relationships to each other, address, phone numbers, places of employment, child's school, daycare, or child care
      - Presence of domestic violence
      - How the family may respond to intervention
      - Reporter's name, if given, relationship to the family, and source of information
      - Consideration of the safety of all children in the household and all children of the alleged offender, whether the offender's children reside in the household or elsewhere.

   b. Ensure county and tribal agencies are recording reports received, reports screened in, and reports screened out. This will permit future evaluation and use of prior screened out reports. It will also permit a true measure of the number of reports screened by county and tribal agencies. The documentation should also identify referrals to early intervention services and or pertinent community services and resources.

   c. Consider additional nonexclusive examples in the guidelines of what may be considered when making screening decisions, even when the report is made by someone other than a police officer or health care provider, including but not limited to:
      - Reports of driving under the influence with children present
      - Medical neglect reports
      - Mental and emotional harm reports.

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d. Provide additional guidance on criteria for screening in a report of child maltreatment to include:

- A description of behavior or an action that a reasonable person would conclude may have resulted in maltreatment of a child
- Injuries to or a condition of the child that a reasonable person would construe to be a result of maltreatment
- Guidance on screening cases involving parental drug/alcohol use and factors for consideration including the age of the child, the type of drug involved, drug use in the home regardless of whether the children are present, prior services to the parent for chemical use concerns.
- Educational neglect and truancy. The Guidelines must be amended to reflect that school absences are often the symptom or indicator of another problem such as mental health issues involving the child or within the family, chemical use of the child or within the family, physical or sexual abuse, and/or other expressions of neglect
- Guidance as to limiting pathway response assignment to Differential Response where similar issues/concerns and/or the same family unit as received a previous child protection services response.

6. Require the professional receiving and documenting the report of child maltreatment to be a child welfare professional with a minimum of a bachelor’s level degree and someone who has completed training specific to child maltreatment intake provided by DHS. If a county lacks capacity and need based on minimum volume of maltreatment reports, the county could consider establishing multi-county collaborative models for screening and accepting reports of child maltreatment.

   The professional receiving and documenting the report should not be the only professional making the final screening or pathway decision on that report. In the absence of a team-based screening, the screening decisions must be confirmed by the Social Work Supervisor or the Social Work Supervisor’s designee. Input from other professionals such as; law enforcement, mental health professionals, and physicians can strengthen decisions and should be encouraged. DHS should work with counties to form models to implement a multi-disciplinary approach to screening. Screeners and/or supervisors should consult with the County Attorney’s Office when there is ambiguity regarding whether a case should be screened in or out, and on all agency policies implementing screening decisions.

7. Screen new reports in as duplicate reports when they include the same allegations that are currently receiving a child protection response. When a new report is received that contains different allegations than what are currently being responded to, the new report will be screened and assigned based on the new allegations.

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8. Require local county and tribal child welfare agencies to take a report even if that county/tribal agency is not responsible for the screening of a particular report because of jurisdictional issues. This ensures the information is received and does not require additional action by the reporter. The receiving county/tribal agency must then immediately refer the report to the jurisdictionally appropriate county/tribal agency of screening responsibility. The SSIS system should be modified to create a drop down selection for "transfer" to reflect the protocol for the processing of these referrals.

9. DHS should make Information Technology (IT) changes necessary to ensure accessibility across the state system to maltreatment reports, including narrative justification for screening decisions and other pertinent records across counties. These changes must allow screeners to gather information about prior or current social service involvement when evaluating a new report. It should include information about specific services offered/completed/refused/failed, as well as prior court involvement. The planning process to include tribal social service reports should begin as well.

10. DHS should coordinate with the State Court Administrator to require reporting of Orders for Protection (OFP) and Harassment Restraining Orders (HRO) where a child was present, or dismissals of the same.

11. DHS should further develop practice models to not close cases where an OFP or HRO has been filed due to the high number of dismissals of these actions shortly after filed and reunification of the victim and perpetrator.

12. Complete, at intake, a search of a family's pertinent Child Protective Services (CPS) and Child Welfare records as well as CPS records of any person named by report as a suspected offender. This should include, at minimum, a complete records review of the electronic Minnesota Public Access Court Records system. DHS should work with the Judicial Branch to ensure access to all relevant court records, not just those publically accessible, when it would be helpful to enhance child protection. Additionally, data practices must be amended to allow the agency access to Statewide Supervision System by the individual assigned to complete the child protection Traditional and/or Differential Response. DHS should work with the Department of Corrections to ensure access to all statewide supervision records for purposes of completing a child protection services response.

13. Send all reports of maltreatment to law enforcement, regardless of whether the report is screened in or screened out.

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14. Amend the mandated reporter statute and screening guidelines to allow screeners to seek collateral information from mandated reporters when making a screening decision.

15. Clarify statutory provisions addressing the release of data to mandated reporters to state that child protection agencies must provide relevant private data of a child affected by the data to mandated reporters who made the report, except in limited cases where it is not in the best interest of the child. Further, county agencies should be encouraged to provide such communication to other mandated reporters who did not make the original report when that mandated reporter has an ongoing responsibility for the health, education, or welfare of a child and the information is pertinent to the mandated reporter's caring for a child.

16. **Amend Substantial Child Endangerment to include:**

    a. **Domestic violence where a child is present in the same room at the time of the alleged violence.**

    b. **Injury to the face, head, neck, or torso of a child under the age of six.**

    c. Neglect that substantially endangers the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, which is due to parental neglect.

    d. Withholding a medically indicated treatment from a child with a life threatening condition unless exempted in Minnesota Statute 260C.007 subd. 6 (5).

    e. Abandonment of the child which is defined as occurring when a parent has no contact with their child on a regular basis and has not demonstrated consistent interest in the child's well-being.

    f. Behavior that constitutes "a pattern of past child abuse", as referenced in Minn. Stat. § 609.223, subd. 2, which is defined as an act committed against a minor victim that constitutes a violation of the following laws of this state or any similar laws of the United States or any other state: section 609.221 (Assault 1); 609.222 (Assault 2); 609.223 (Assault 3); 609.224 (Assault 5); 609.2242 (Domestic Assault); 609.342 (Criminal Sexual Conduct 1); 609.343 (Criminal Sexual Conduct 2); 609.344 (Criminal Sexual Conduct 3); 609.345 (Criminal Sexual Conduct 4); 609.377 (Malicious Punishment); 609.378 (Neglect or Endangerment of a Child); or 609.713 (Terroristic Threats). Within the Guidelines, the references to criminal statutes must be included in plain language along with the statutory reference.

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17. Amend the definition of medical neglect in Minnesota Statute 626.556, subd. 2(f) (7) to state that medical neglect does not need a diagnosis from a physician to be screened in. The current definition is a cross-reference to the definition in Chapter 260C which is for cases in court and is too restrictive for the reporting and screening in statute.

18. Amend the statutory definition of "physical abuse" set forth in Minn. Stat. 626.556, subd. 2 (g), to delete the language "that are done in anger or without regard to the safety of the child." Instead, the statute should simply state that "Actions which are not reasonable and moderate include, but are not limited to, any of the following:" (*1-10 which includes throwing, kicking, burning, cutting, etc.)*

19. Amend the definition of "Threatened injury" under Minnesota Statutes 626.556, subd. 2 (n) to include:

    a. Child who was exposed prenatally to chemical or alcohol use. This is measured by a child who tests positive for any chemical, including alcohol, that is not prescribed to the mother or any mother who tests positive any time during the pregnancy or delivery for a chemical, including alcohol, not prescribed to her;

    b. Domestic violence where a child is present in the home at the time of the alleged abuse;

    c. Exposing a child to someone whose parental rights were terminated or who parental rights were transferred to another following the filing of an involuntary petition of termination of parental rights or an involuntary transfer of legal and physical custody to another, regardless of whether the termination or custody transfer was deemed voluntary or involuntary.

20. Require efforts to notify the other parent of a Traditional (TR) or Differential Response (DR):

    a. If the DR or TR will not be compromised, the other parent should be notified at the same point as the custodial parent of the report and DR or TR.

    b. If the DR or TR will be compromised, the other parent should be notified as soon as possible once the threat of the interference with the DR or TR is removed.

    c. Notification should not occur in the even an OFP or HRO is in the place unless the agency determines that the notification is in the best interests of the child.

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d. The other parent should be provided with notification of the TR or DR outcome including the services that are offered to the custodial parent and child.

e. To obtain contact information for the other parent, the agency may utilize the information available through the child support enforcement unit to the extent not inconsistent with federal law.

f. In no case shall the inability to locate or notify the other parent impair the agency's ability to respond to the maltreatment report.

21. Amend the statutory definition of "Investigation" under 626.556 subd. 2 (b) and subd. 10 (a) (1) to clarify that investigation must be used, at a minimum, for all cases that involve substantial child endangerment or high risk allegations of harm, neglect, or injury to the child. Currently the statue is being misinterpreted to limit investigation to only cases involving substantial child endangerment.

22. Change the statutory definition of reports to: "Report" means information given to the responsible agency or law enforcement which describes alleged child maltreatment and which includes enough information to identify the child victim and the child's caretaker or the alleged offender.

Longer Term Reforms:

23. DHS should work with counties, tribes and other stakeholders and experts to examine the possible development of a statewide child abuse and neglect reporting system creating one number with a system to route calls to the appropriate local child welfare agency. Local county and tribal child welfare agencies would be permitted to maintain practices for accepting reports of suspected maltreatment and the decision making authority on how to handle the reports would remain with counties. The statewide system should be able to route calls 24 hours per day, seven days per week, necessitating counties to have designees in place to accept calls outside of normal business hours. In designing this new system, the following items should be considered:

    a. Creation of a steering committee composed of state, county, and community stakeholders as well as individuals with telephone experience.

    b. Review of New York's and Colorado's statewide systems and outcomes to see if they have created greater quality in intake and screening leading to increased child safety.

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c. Promotion of one 24/7 statewide child abuse reporting hotline with calls routed to the appropriate county or tribe.

d. Exploration of a "cloud" system for interactive voice response, call data, call recording, and consideration for data practices implications.

e. Accommodations for callers who do not speak English and accessibility for people who are deaf or have hearing impairments.

f. A public awareness campaign to promote the statewide hotline and reporting of suspected child maltreatment.

g. Central record-keeping and tracking of both "reports" and "inquiries".

h. Process by which counties can opt to have DHS or another county to receive reports and inquiries on their behalf.

i. Standardized training and certification for all staff prior to taking reports and inquiries.

j. Consistency in information gathering.

k. Adequate staffing and resources for counties and the state to implement the hotline, especially with anticipated increased reports with the visibility of a single state-wide number.

l. Continuous quality improvement: listening to audio taped calls and providing training, feedback, coaching to workers and supervisors.

m. System-side data collection.

n. State hotline administration/unit, help desk functions and escape features from automated system to talk to a live person.

24. DHS should, as part of redesign review, engage an independent reviewer with expertise in child protection services to review Minnesota's child maltreatment screening statutes, guidelines, and practice and make recommendations on needed changes to complete the shift to a system focused on the best interest of the child. The review should address and provide recommendations on the following:

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- Appropriateness of the rate of screened out reports and screened in reports and the resulting impact on child safety
- Are the parameters reflected within the scope of Minnesota's child maltreatment screening statutes appropriately designed to ensure child safety
- Are the parameters reflected within the scope of Minnesota's screening guidelines appropriately designed to ensure child safety
- Is Minnesota's practice for receiving and screening reports of child maltreatment sufficiently assessing and responsive to child safety?
- Are there recommended strategies or system modifications that could better ensure uniformity in practice across the state.

25. Revise the guidelines to provide explicit guidance on reports related to older children. Presently, too many older children do not receive adequate protection or services. Often their avoidance response to abuse/neglect makes them particularly vulnerable: running away, joining a gang, using drugs and entering endangering relationships. More thorough assessment must be done and alternative living arrangements with statutory authorization should occur.

26. Review and change the focus of Chapter 260C of runaway/truancy CHIPS from punishing/addressing only the juvenile's problems to a whole family assessment to look to the reason for the behavior. Too often the running and truancy is the reaction to an underlying family problem that is not limited to the child's behavior or issues.

27. Complete, by the Revisor of Statutes, an organizational revision of Minnesota Statute 626.556 to alphabetize definitions, create internal consistency, eliminate redundant language, reorganize the statute into new statutes (i.e. separating institutional investigations from non-institutional investigations), and correct internal references and references to other statutes.

THE FUTURE OF OUR TWO-TRACK CHILD PROTECTION SYSTEM

Today, once a maltreatment report is screened into our child protection system, that screener[1] makes a decision whether to place the case on the "family investigation" track or the "family assessment" track. Currently, Minnesota Statute 626.556 directs this decision in cases of Substantial Child Endangerment to the Family Investigation track and there is no agency discretion. As noted in the Task Force's preliminary recommendations, family assessment has been the "preferred response" to child protection reports and more than 70 percent of all screened in reports are assigned to family assessment. The reported benefits of Family

[1] In some counties, the track assignment is made in a team environment which may include supervisors, investigators, and others.

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Assessments are a less adversarial process (leads parents to more readily engage in safety and case planning) by reducing resistance through a strength-based approach. However, as noted in the Task Force's preliminary report, "it is clear that Minnesota's use of family assessment is beyond that of other states and beyond what the statute allows".

In its final recommendations, the Task Force recommends short term changes to Family Assessment, including steps on how that "track" decisions are made as well as narrowing the types of cases in the Family Assessment Track. In the longer term, the Task Force questions whether a two track system is appropriate and recommends, as part of its overall redesign, that DHS consider moving toward one child protection system, with fact finding for all "screened in" cases, but several potential "branches" of that system available depending upon the best interests of the child.

Our recommendations for short term improvements are made with the idea that they could be building blocks for long term reform as well. Fundamental to our recommendations are the belief that:

- All children, regards less of track, should receive a comprehensive assessment which provides the foundation for assisting children, youth and families with what they need
- That progress should be monitored to see if the child (and the family, where appropriate) is getting better because of child protection intervention
- Child Protection workers (in both tracks) should review progress with both forensic and family engagement tools close at hand.

If these fundamental building blocks are in place, a continuum of safety-focused child protective responses can and should protect children and meet the unique service needs of families. It is best to proceed methodically and with care and make thoughtful short term changes to the current model, while examining long term redesign options.

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Therefore, the following recommendations are made which relate to Family Assessment:

28. Rename Family Assessment to Differential Response (DR) and Family Investigation to Traditional Response (TR). This renaming would be consistent with national practice and help avoid confusion when interpreting federal laws and regulations.

29. Differential Response and Traditional Response are both involuntary child protection responses to reports of alleged child maltreatment. It is critical that either response provide a critical and methodical assessment of child safety while identifying key family strengths

that can be built upon to mitigate safety and risk concerns. The goals of any child protection response should be to:

- Make child safety paramount in a decision making
- Assess and ensure the safety of any child involved
- Conduct thorough fact finding to determine if a child has been harmed and/or if services are needed
- Engage children and families as an approach to reduce resistance and gain information on family dynamics
- Identify family strengths to mitigate risk factors and ensure child safety
- Be culturally affirming
- Coordinate and monitor services to families
- Address effects of maltreatment through trauma-informed interventions
- Promote child well-being and permanency
- Increase positive outcomes (i.e., reduced re-reports, avoid subsequent harm).

30. Make child safety the focus of any assessment or investigation. The statute should no longer identify family assessment as the preferred method.

31. Interview children first and prior to contact with parent/legal guardian whenever possible.

    In addition, DHS should research and implement training on best practices in regards to child interviewing protocols. These protocols would be developed in consultation with content experts, cultural advisors, counties and other key stakeholders. Specific practice guidance should be provided regarding audio recording of interviews, locations of child interviews, and interview techniques that are culturally responsive and trauma-informed. Child safety must be the primary guide as to when and how to structure interviews.

32. Ensure fact-finding occurs in all child protection response. DHS should develop protocols to support thorough fact-finding. At minimum, information to be gathered should include gathering details from a variety of sources including the alleged victim(s), sibling(s), parent(s), and other relevant collateral contacts regarding:

    - Who, what, when, where, and how regarding the reported allegation
    - Patterns of behavior that present risk to a child (i.e., recentness, frequency, duration, severity)
    - Harm (current and historical) and its respective impact it has on said child
    - Protective Parental Capacities (e.g., Knowledge of parenting and child development; nurturing and attachment; parental resilience; social and emotional competence; concrete supports in times of need; and social connections)
    - Child vulnerability factors (e.g., age, disability, etc.)

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- Family and/or child(ren) strengths that promote resiliency
- Context and times within the family when the child is safe as a starting point for additional safety planning or services.

DHS should develop a required case summary form for traditional response and differential response cases in the Social Service Information System (SSIS) where results of fact-finding must be documented. This would include details surrounding the reported allegations and include a statement about whether or not the reported maltreatment incident occurred and identify the victim(s) and offender(s).

Data from this case summary form will be gathered and tracked to identify county, tribal, and state trends.

33. DHS to encourage and support the use of Multi-Disciplinary Team (MDT) decision making by developing the infrastructure to support the development of MDTs across the state. The MDT infrastructure would address:

    - Philosophy behind MDTs
    - MDT specific training
    - An evaluation component
    - Ongoing training for MDTs.

    Any and all statutes, policies, and/or practice guidance that discourage use of MDTs should be discontinued.

34. Adopt stronger and more robust intake and screening tools for data gathering prior to pathway assignment to strengthen the quality of the information available.

35. DHS should, as an interim measure, retain dual pathways for responding to reports of alleged child maltreatment. The dual pathways should include Traditional Response (Family Investigation) and Differential Response (Family Assessment). Explicit criteria for immediate assignment of High Risk and Low risk allegations of child maltreatment must be defined:

    - High Risk (all Substantial Child Endangerment and can include other risk factors) – Traditional Response
    - Low Risk (Reports of alleged child maltreatment that are clearly low risk. These are reports that exclude all Substantial Child Endangerment and Moderate and High Risk. Additional criteria is necessary to ensure the proper parameters that clearly define a maltreatment report as low risk)- Differential Response

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- All other cases, which include those with moderate risk and those which are difficult to assign without additional information (excludes all Substantial Child Endangerment). These maltreatment referrals require fact-finding before track assignment can be made. DHS is to provide guidance on necessary fact finding inclusive of collateral contacts and face-to-face interviews with child subjects and parents or caregivers.

36. DHS must develop, in consultation with counties, tribes, stakeholders and subject matter experts, a required information standard for making pathway response determination. This standard should reflect what is required and be implemented with a practice understanding that more information is better. Fact finding must occur until such time the pathway assignment required information standard is met. Fact finding efforts may include collateral contacts and "in-person" interviews with the child subject and the family.

37. DHS shall, in consultation with counties, tribes, subject matter experts, and stakeholders, define clear and consistent pathway assignment criteria to either pathway including a definition for cases appropriate for differential response. Cases that clearly should follow pathway assignment into Traditional Response will be assigned within 24 hours, consistent with the substantial child endangerment statute. DHS should develop guidance regarding the timing for those cases that require initial fact finding.

    Criteria should also be provided for when path switching is or is not allowed and identify specific documentation requirements to support the decision. It is important to note that pathway determination should not extend any existing timeframes for the initial face-to-face contact with the alleged child victim. These criteria should be developed on or before December 31, 2015. In addition to existing statutes that define specific child protection responses for defined actions (i.e., Substantial Child Endangerment), other criteria for pathway assignment to be considered should minimally include:

    - Necessary fact-finding before a track decision is made for those alleged maltreatment referrals believed to present moderate risk
    - Multiple differential response cases within a certain time period
    - The age of the child and other children in the home. This age should be based on clearly defined objectives which could include the risk for fatal, or near fatal injury, brain development, social isolation, or the child's ability to protect him/herself
    - Other vulnerabilities (child is developmentally delayed, pre-verbal, etc.)
    - The presence of unrelated adults in the household.

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38. DHS will monitor and evaluate initial pathway assignment and path changes using the established criteria and provide feedback to counties and tribes regarding the quality of decision making. A culture of continuous quality improvement should be supported and promoted. Results of pathway assignment should also be used for training and accountability.

39. DHS should immediately review, update, and validate all decision making tools with priority given to the safety assessment. In general, any tools used by DHS and counties are to have a clear purpose, to facilitate decision making at critical points in the child protection response, and that such tools are updated, and valid. In addition, that any tools adopted are culturally responsive and appropriate for families from different racial, ethnic, and socio-economic backgrounds. Overall, regarding all tools, DHS should clearly define:

    - What decision-making tools are to be used at key decision making points along the child protection continuum
    - The purpose for each decision making tool, and
    - How the specific tools are to guide decision making.

40. Identify a validated safety assessment tool that better reflects dangerousness and child vulnerability factors. A safety assessment should address any factors proven to predict safety concerns. Some potential factors could include:

    - Recentness of abuse/neglect
    - Frequency
    - Severity
    - Child characteristics.

41. DHS should review research on protective factors and predictive analytics for how it can reduce or eliminate risk factors, and implement this information in trainings and practice. This would include use of screening and assessment instruments that have been validated. This should be done through a long-term contract arrangement to improve child safety outcomes over time.

42. Require in statute a mandatory consultation with the county or tribal attorney to determine the appropriateness of filing a Child in Need of Protection or Services (CHIPS) petition in the event that a family does not engage in necessary services and child safety and/or risk issues have not been mitigated prior to closure of a child protection case, regardless of track.

43. Include in statute the requirement for a minimum of monthly face-to-face contact with children for cases in which a family is receiving protective services while the child(ren)

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remains in the home.

44. Traditional response cases should result in the following determinations: maltreatment determined (yes or no) and are child protective services needed, (yes or no). For Differential Response cases the determination would include whether or not child protective services are needed. Documentation for DR cases will include a case summary form which will include a statement that will identify if the child experienced maltreatment. This data should be entered into SSIS so that they can be reviewed in future cases and so that summary data on a county-wide basis can be collected. The Department should provide guidance on criteria and best practice for making the determinations and require supervisory review and approval.

45. Complete trauma pre-screenings on any child during a child protection response. DHS should pilot a trauma pre-screen tool in 2015 and expand statewide in 2016. Implementation of trauma pre-screening should be consistent with research on best practices.

Longer Term Reforms:

46. DHS should, as part of a redesign review, engage an outside expert to work with the agency, counties, tribes and stakeholders to advise, develop and implement Minnesota's child protect response continuum. This evaluation should consider when and how pathway decisions should be made and whether Minnesota should move to a single child protection response, albeit one with different branches and approaches depending upon how to best meet the interests of child safety and welfare. Part of this review should consider the impact of any changes which result from the work of the Task Force.

47. DHS shall convene a workgroup for further analysis and definition of threats to child safety and risk of maltreatment as the foundation for development of a comprehensive long term child protective services response continuum. This continuum must be designed for appropriate response alignment based on child safety and risk and may include multiple pathways, depending upon the best interests of the child. This response continuum design should be completed by January 1, 2017. The workgroup shall minimally include the representation from the following agencies/disciplines:

    - Minnesota DHS
    - Administrative and frontline County/Tribal Child Welfare Agency staff
    - Law Enforcement
    - County Attorney
    - Court
    - Defense Attorney
    - Guardian Ad Litem

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- Pediatrician
- Child Development
- Parent(s)
- Child Welfare Focused Academic Institution
- Child Safety/Risk Subject Matter Experts.

48. Coordinate services and financing across the system in the fields of mental health, chemical dependency, housing and other related areas within the State of Minnesota-Department of Human Services for children and families who need child protection case management services so as to prioritize services for interventions that would increase safety and reduce risk of future harm. This would promote more holistic and effective responses for children and families who have experienced trauma, abuse, neglect and/or other egregious harm to reduce recidivism into the child protection system

49. Make referrals for clinical, mental health and functional assessments on children, along with their families, who receive child protective case management services, who have trauma or mental health needs identified during screening. These assessments should be conducted by experts in the field. For example, if significant trauma to a child has occurred, a clinical trauma assessment with a qualified mental health professional should be required.

    For this recommendation to be effectively implemented, resources must be allocated to counties and community providers to improve the social and emotional well-being of children to heal from trauma, as well as reducing physical harm.

50. DHS should adopt a plan to monitor the provision of services and outcomes to assure that children and families receive appropriate, effective, and needed services. This plan should include a periodic functional assessment of a child's well-being while in the child protection system and evaluate whether such services actually improved and benefitted children and their families.

51. **While the Governor's Executive Order directs the Task Force to focus on the pre-court side of child protection, we cannot close our eyes to the needs of children who are removed from their homes and placed in care. We also note the diminishing number of qualified foster care providers in Minnesota. As a result, we recommend that planning begin to address the needs of the foster care system and the children it serves. DHS should:**

    - **Develop a comprehensive foster care policy to ensure child safety in licensing, placement, care/treatment, visitation, discharge/reunification planning, and guidance for post reunification services**

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- **Address guidance for foster care child specific recruitment and family finding strategies/tools in an effort to place children with family members/relatives when that can be done safely**
- **Promote a best practice protocol for removing a child from their home and placing a child in care in a manner that proactively attends to and reduces the child's stress, pain, and trauma of separation from persons, places, and things that are important to them**
- **Develop a training curriculum for foster care providers, child protection case workers and law enforcement on established guidance, removal/placement practice protocols designed to ensure a primary focus on child safety, and strategies to minimize the traumatic effects of separation and placement.**

RACIAL, EQUITY and DISPARITY REDUCTION

The most recent *Minnesota's Child Welfare Report 2013* highlights the continued concern for disproportional over-representation of children by race and ethnicity. When compared to Caucasian children, all children of color and American Indian children, with the exception of Asian/Pacific Islander children, experience a higher rate of involvement in child protection services, out-of-home placements, and adoption.

However, to effectively address disproportionality there must be an understanding not only about populations that are overrepresented but also populations that are underrepresented. Underrepresented communities often lack access to the continuum of child welfare services and may be under identified due to bias or lack of knowledge.

To safely reduce racial disproportionality requires a multi-prong, strategic effort which must reach far beyond the human services systems. In order to further this work, however, we need to establish better connections with racial, ethnic, and tribal communities, to fund and examine research into promising practices to reduce disparities and to change public systems to implement a culturally responsive service array within the child welfare system.

Racial disparities in the child welfare system must be viewed as a call to action to all of us, regardless of race, to come together, to better understand the cause of the disparities, and to work together to identify institutional resources and practices that can be adopted that will genuinely improve the lives of children and their families.

Culture is not simply determined by ethnicity and a particular set of beliefs, norms and values, but also involves the historical circumstances leading to a group's economic, social and political status in the social and economic structure. As people develop different responses to their life circumstances, the child welfare system must realize that eliminating bias and discrimination and improving cultural responsiveness and inclusion is critical in the provision of ethical and

effective services to children, youth, and families.

Varying approaches are needed in the service delivery systems to address cultural differences among consumers and to identify ways to transform public services to be more effective in protecting children. Practitioners must provide culturally responsive services. In addition, collaborative work across systems must be done in order to achieve the goal of sustained safety and stability for children and their families through a rehabilitative process.

To reduce the disparities in our child protection system, the Task Force recommends:

52. **DHS should model and provide leadership to reduce disparities by making progress with key staff and leaders within DHS to become more racially conscious and culturally competent in the delivery of child welfare services. DHS must be seen as an effective leader in this effort to ensure that policies and practices are assessed to enable decision making and oversight that does not perpetuate more racial, ethnic, and socioeconomic disparities.**

53. **Support the development of "cultural navigator" and parent mentor positions to act as liaisons with racial and ethnic communities, using a community health worker model. Ideally, this person would be from the same culture as the family being engaged and graduate from a rigorous training program with a certification, to ensure an understanding of the child welfare system. The role of this position would be to:**

    - **Help parents and the child welfare/child protection worker communicate more effectively.**
    - **Help parents understand, navigate and ultimately meet the requirements of the child protection and court system.**
    - **Facilitate connecting families with culturally relevant services.**

54. **DHS should identify and link previous and current disparities work to future intervention strategies aimed at racial equity and disparity reduction.**

55. **Develop a certification program that would prepare students and current workers and supervisors to work in specific cultures through field placements/internships.**

56. **Promote and improve the representation of racial and ethnic communities' among child protection and child welfare ranks using recommendation #55.**

57. **Develop culturally supportive services that assist children in transitioning home following an out of home placement as a means to prevent foster care re-entry. With additional funding, request for proposals (RFP's) could be submitted in support of this service.**

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58. **DHS should include representation from the African American community and tribal representation in the development of policy guidance, and best practice strategies and protocols.**

59. **DHS should to provide clear policy and practice guidance about the need to:**

    - **Include a tribal representative as part of a multi-disciplinary team whenever a case of a tribal child is reviewed.**

60. **Expand Initiative Tribes. This will:**

    - **Support tribes in their ability to provide the types of child welfare services they know to be culturally meaningful and effective with their children and families.**
    - **Improve county and tribal government relationships and establish methods to measure success in this area.**
    - **Improve child safety, permanency, and well-being outcomes for American Indian children served by these programs.** [2]
    - **Recognize and support the sovereignty of Tribal Governments.**

61. **The state should directly fund more front-end services including prevention and early intervention that have the capacity to promote safety, reduce risk, and promote healing from abuse and neglect. This may include the direct funding of services for families involved in the child protection system and allow DHS to work creatively with providers to support the service array. This allows for more proactive service delivery by providing services to families before concerns reach higher risk warranting involuntary services and to also reduce re-occurrence into the child protection system. This should include programs such as the Parent Support Outreach Program (PSOP) that can work across many different racial, ethnic, and cultural communities.**

62. **Increase monitoring and evaluation:**

    - **Monitor and report disparities, as well as outcomes for African American and American Indian children and families, using the Social Services information System and review indicators**
    - **Identify areas of underrepresentation and pilot methods to promote access for those populations who are not yet visible to the system**

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[2] The American Indian Child Welfare Initiative is a collaboration between tribal, county and state governments with the shared goal of improving the child welfare outcomes for American Indian children, and reducing the disproportionate number of American Indian children in the state's child welfare system. Data reveals promising results. Tribal programs exceed statewide performance on federal child welfare outcomes measures in areas such as relative care and placement stability. Programs participate in the Minnesota Children and Family Service Reviews, federal Title IV-E audits and fiscal audits conducted by the department.

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- **Work with the Human Services Performance Council to further develop new data reporting, gathering, and analysis methods, instruments and procedures to track county performance measures and accountability as it relates to demographic indicators for children. This information should be used to increase action steps to improve child welfare**
- **Dedicate a section of future annual child welfare report to racial equity in which specific measures are followed through a lens of race and ethnicity**
- **Use information and apply the outcomes to increase action steps to improve child welfare**
- **Develop and use an external advisory committee including stakeholders and service recipients to assist in monitoring and evaluating outcomes.**

Longer Term Reforms:

63. **Research, identify, develop curriculum and train on culturally affirming approaches and practices that work with African American and American Indian families, the two populations overrepresented in the child protection system. Also, trainings should include cultural and racial self-awareness, professional ethics, the difference between equal access and equity, and culturally appropriate ways to delivery services and work with families. Training should be provided to child welfare professionals and supervisors as well as other system stakeholders.**

64. **Identify services that can be replicated and scaled up and fund them with dollars to operate. These services should be evaluated and research used to build promising practices in order to provide a research base for interventions that are responsive to racial and cultural communities.**

TRAINING

The quality of training for child protection workers, supervisors and managers is a critical factor in supporting a high performing child protection system. The Department is statutorily required to develop and provide competency-based training to child protection staff, including foundation training for local child protection workers within the first six months of employment. DHS must support on-going development of the child protection workforce by developing and providing training that is accessible, research-based, and builds competencies critical for child protection staff at all levels to perform effectively.

As the Task Force considered recommendations to enhance the training provided to child protection staff, they heard from county and tribal staff, educators and trainers, and representatives from community agencies and organizations. In addition to learning what is currently available and required, Task Force members learned of challenges and opportunities related to developing a competent child protection workforce.

Recommendations must support and enhance the initial training and ongoing development of

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child protection staff. Cultural awareness must be embedded into all child welfare training. Cultural responsiveness is not an event whereby one can attend a single training and become competent. Cultural awareness comes from a thoughtful examination of one's own culture and beliefs, and how those attitudes and beliefs impact others.

In addition to the recommendations, the Task Force encourages the DHS to collaborate with local social services agencies and other community agencies and organizations to ensure the training provided to Minnesota child protection staff is relevant and grounded in current research and best practice.

To improve the capacity of the workforce, the following training recommendations are made:

65. **Enhance the Minnesota Child Welfare training system by:**

  A. **DHS develop a Workforce Training and Oversight Advisory group (comprised of state, county, tribal, communities of color and academic representatives) to advise DHS Child Welfare Training System to:**

    1) **Develop, review and/or revise competencies for MN child protection workers and supervisors,**
    2) **Identify workforce training needs and gaps, and**
    3) **Consider development of a tiered child protection pre-service training program which would include:**

      a) **Online orientation training that child protection workers would be required to complete prior to case assignment.**
      b) **Tier I: Deliver basic theoretical and philosophical foundations upon which to build child protection specific knowledge and skills. This would be required for all newly hired workers without social work degrees.**
      c) **Tier II: Deliver child protection specific knowledge and skills. This would be required for workers who complete Tier I and those hired with social work degrees.**

    4) **Implement a Child Protection Training Academy that will include scenario-based training for child protection staff, supervisors, and managers. This training would replace the current Child Welfare Foundation Training currently required for new child protection**

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workers. The Department is encouraged to explore various modalities for delivering training, including online or Web-based training, to make training more accessible.

The Academy should address the following topic areas:

a) **Intake**
b) **Screening**
c) **Differential Response**
d) **Traditional Response**
e) **Trauma-informed Care**
f) **Culture and biases**
g) **Injury Identification**
h) **SSIS Case Documentation**
i) **Minnesota Rules and Statutes.**

B. DHS should develop a certification process that includes completion of the training(s), structured on-the-job training activities, successful demonstration of applicable competencies and verification from the staff/supervisor's employment agency of completion of prescribed training and activities.

C. Require all new child protection workers, supervisors and managers with child protection supervisory responsibilities to complete the training(s) and certification(s) specific to their job duties and responsibilities prior to or within 180 days of employment and as a condition of employment.

66. **Establish requirements for competency-based initial training and continuing education for new and existing child protection supervisors.**

67. **DHS should continue to support the IV-E educational programs available through Minnesota colleges and universities.**

68. **Expand the existing student loan forgiveness program in Minnesota to include Social Work graduates who are employed as child protection/child welfare social workers. The program will reduce debt encumbered while earning a social work degree in exchange for a social worker taking a child protection position for a minimum of two years post-graduation. A goal of the program should be that agencies are able to recruit and hire social workers with diverse backgrounds that match the population being served.**

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69. **Require local agencies, with the support of DHS, to develop and submit a comprehensive Secondary Traumatic Stress (STS) support plan which will support the workforce in the identification and treatment of STS.**

Longer Term Reforms:

70. **Require license mandated reporters to submit evidence of completion of mandated reporter training as a requirement for licensure/re-licensure, and develop a certificate of completion that can be printed upon completion of DHS online mandated reporter training.**

71. **DHS to develop a variety of web-based trainings for mandated reporters on multiple topic areas that expand beyond the specific responsibilities for reporting suspected child maltreatment, e.g. culture and bias.**

72. **Require child protection staff, supervisors and managers to participate annually in advanced training developed by DHS in collaboration with the Workforce Training and Oversight Advisory group as a condition of continued employment.**

73. **DHS should, in collaboration with the Workforce Training and Oversight Advisory group, Department of Public Safety, the Department of Health and the Minnesota County Attorney's Association, develop curriculum that fosters a multi-disciplinary approach to responding to reports of child maltreatment. This training should be offered, minimally, on an annual basis to county/tribal child protection staff, law enforcement, medical professionals and county attorneys. DHS is encouraged to use the formerly provided TEAM Conference as a model for development.**

74. **DHS should explore the fiscal implications of making Child Welfare Training System trainings available to stakeholders and/or community members.**

OVERSIGHT OF COUNTY PERFORMANCE

In a state-supervised, county-administered system such as Minnesota, the role of DHS is legislative and policy development, compliance with federal requirements and monitoring of local systems to ensure compliance with state and federal policies, rules and statutes. The Minnesota Child Welfare Practice Model identifies that Minnesota's child welfare system is committed to holding itself accountable to the highest standards of practice. This requires a robust continuous quality improvement system that utilizes both qualitative and quantitative data to support system improvements at all levels.

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The Task Force examined the adequacy of current DHS practices and processes in place for monitoring compliance and outcome achievement at the local and state level, and considered options for expanding and enhancing current processes.

The following oversight recommendations are made to improve outcomes:

75. **DHS should redesign the current child mortality review process to include two separate processes, one specifically for reviewing child fatalities and near fatalities due to maltreatment and/or suspected maltreatment; the other to review fatalities and near fatalities not due to maltreatment.**

    - **Public Health Review Model:**
        - **Purpose: Review child fatalities and near fatalities related to accidents, suicides, SIDS, natural causes, and other fatalities and near fatalities not related to maltreatment**
        - **Focus: Developing and issuing community-based prevention messages**
        - **Process: Utilize the process currently being used to review all child fatalities and near fatalities in Minnesota.**
    - **Child Protection Mortality Reviews:**
        - **Purpose: Review child fatalities and near fatalities due to child maltreatment, and those that occur in licensed facilities that are not due to natural causes**
        - **Focus: Critical examination of the elements of the case and the agency's involvement with the child and child's family. Review would also attend to the secondary-trauma involved with the worker, supervisor and agency.**
        - **Process: Develop a new process in which DHS mortality review staff lead and conduct the on-site local morality review, and utilizes child protection supervisors from other counties as peer reviewers in the process. The reviews would include developing a program improvement plan to address any practice issues identified through the review, and define technical assistance needs of the respective county.**

    The review process should expand the information currently provided to the public to include:

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a. The cause and circumstances regarding the child fatality or near fatality;

b. The age and gender of the child;

c. Information describing any previous reports of child abuse or neglect that are pertinent to the abuse or neglect that led to the child fatality or near fatality;

d. Information describing any previous investigations/assessments pertinent to the abuse or neglect that led to the child fatality or near fatality;

e. The result of any such investigations/assessments;

f. The services provided by the local child welfare agency and actions of the local child welfare agency on behalf of the child that are pertinent to the child abuse or neglect that led to the child fatality or near fatality;

The review should look at the entire system from the point of the mandated reporter making a report through the case court process.

76. **DHS should continue with Minnesota Child and Family Service Reviews (MnCFSRs) in counties and tribes, and increase the frequency of reviews in counties with small populations of children.**

77. **DHS should identify outcome measures for child safety and child well-being. This data should be used to determine the effectiveness of interventions and system improvements.**

78. **Address workload/caseload size issues:**

    a) **Short-term: Establish workload standards for child protection workers and supervisors as follows:**

    - **No more than 10 child protection case management cases per worker**
    - **Newly hired child protection workers will carry no more than three quarters of a caseload and will not carry high-risk cases until certification through the Child Protection Training Academy**
    - **Establish a supervisor-worker ration of 1:8.**

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b) **Long-term: DHS, in collaboration with the Workforce Training and Oversight Advisory Group, will:**

- **Review methodologies for establishing caseload/workload standards that considers weighting of cases based on factors such as type of case, case complexity, out-of-home placement, court involvement, etc. Following review, the Department to make a recommendation for implementing caseload/workload standards.**
- **Review and make recommendations for establishing an optimal supervisor to staff ratio.**

c) **Enhance the workload analytic tool to make it user-friendly for local agencies and provide training on the use of the tool.**

d) **Make enhancements to SSIS that allow for the gathering and review of caseload and workforce information that minimally allow for examination of caseload sizes, identification of education backgrounds of child protection staff and supervisors, and monitoring of completion of required training.**

79. **DHS should continue to conduct the statewide review of screened-out reports which started in the fall of 2014. DHS should have the authority to require a child protection response from the local agency based on the screening review. Summary results of reviews should be public information and produced on an annual basis by DHS. Legislative oversight following publication of these reports is encouraged.**

80. **Change and expand the role of the Minnesota Office of Ombudsperson for Families by:**

    a. **Renaming to "Minnesota Office of Ombudsperson for Children and Families";**

    b. **Expand scope to include all Minnesota children and families (257.0762, Subd. 1);**

    c. **Include a specific reference to M.S. 626.556, Reporting of Maltreatment of Minors Act, to the statutorily defined duties of the Ombudsperson office (257.0762, Subd. 1);**

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d. **Require courts and social services to distribute information regarding the Minnesota Office of Ombudsperson for Children and Families in the following situations:**

  - **In the early stages of a child protection investigation or assessment (social service), and**
  - **When a Child in Need of Protection or Services (CHIPS) petition is filed (courts).**

e. **Convene a committee/workgroup specifically for the purpose of exploring the expansion and placement of the Minnesota Office of Ombudsperson for Children and Families' role in oversight of child protection activities.**

TRANSPARENCY

Balancing Client Confidentiality and the Creation of Transparency in Child Protection

Much of the work of Minnesota's Child Welfare system is invisible to the public due in part to Minnesota data practices, federal funding requirements, and the ethical standards for privacy and confidentiality for Social Workers. This is true for both efforts that contribute toward positive client outcomes and those that insufficiently meet the needs of vulnerable children and families.

We need to strike a better balance.

At a minimum, the public requires Minnesota's Child Protection System to protect children. Beyond protection, the public expects children to exit the system in a better condition than which they entered. Attending to the developmental and well-being needs of children is paramount to better ensuring their long term safety and better preparing them for a more positive future.

Transparency mechanisms must be developed to allow the public to review and assess the work of Minnesota's Child Protection System and the impact it is having on children and families. While the protection of children is a multi-system community responsibility. Child Protection plays a central role in the coordination of partner system and fostering community cultures that better meet the needs of children. Transparency mechanisms must transcend from the Department of Human Services through all local child welfare agencies to engage partners, re-establish system credibility, and regain the public's trust in the system's ability to keep children safe.

To enhance the transparency and accountability of the child protection system, the Task Force makes the following recommendations:

81. Update the SSIS system so that data and reporting is accurate and trustworthy, and that the opportunities for effective case management and the efficient use of human resources are greatly improved.

82. DHS should develop/enhance the "Child Welfare Data Dashboard" to provide counties and the public with quarterly performance updates focused on key child safety, permanency and well-being measures. These measures should parallel the measures identified from the Human Services Performance Council. DHS should also publish quarterly scorecards for local county and tribal child welfare agencies by which the Department and the public can track progress and performance outcome improvements. The dashboard and scorecard should be designed in a manner that allows local child welfare agencies to drill down to client specific data.

83. DHS should restructure the statewide annual child welfare report to focus on meaningful outcome measurements that are directed to measure whether interventions are effective and whether the screening process at the front-end is effective. As part of the annual child welfare report, DHS shall include the Child and Family Service Reviews. The annual report is to be made public and should contain the following sections and information:

    a. "Transparency" section with county breakdown of the following performance measures. When issuing the Transparency section, DHS may aggregate the data from counties with populations less than 10,000. Individual county social service departments and county boards may obtain the numbers for their individual counties

        i. number of intake calls received
        ii. number of reports screened out
        iii. number of child protection responses conducted and type of response pathway
        iv. number of reports that resulted in a determination of substantiated child maltreatment
        v. number of reports that resulted in a determination that child protective services were needed
        vi. Percentage of children seen within required timelines for both response pathways
        vii. percentage of children who return home within 12 months of removal
        viii. percentage of children who experience repeat abuse/neglect

            - within 6 months of a maltreatment finding or Differential Response

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- within 12 months of a maltreatment finding or Differential Response

ix. percentage of children in the aggregate and by age who exit foster care and re-enter foster care within 12 months

x. child protection worker caseload numbers and turnover rates (including supervisor and line-staff numbers)

xi. number/percentage of cases that are reopened after being closed

xii. number of cases of sexual abuse that were assigned the differential response track with a breakdown per county and identification of the role of the alleged offender, e.g. parent, foster parent, daycare, etc…

xiii. number of cases of sexual abuse that switched tracks from Traditional Response to Differential Response with a breakdown per county and identification of the role of the alleged offender (e.g. parent, foster parent, daycare, etc.)

xiv. identify federal measures and standards that DHS is not meeting

xv. number of family investigation and differential response cases closing at "high risk" with no services or court involvement broken down per county.

b. Number of children and/families with three or more reports within the past five years that were screened out with the following details:

- Nature of allegations
- Age of the child subject
- Role of person making the report
- Screening decision and justification

84. DHS should, by January 2016, provide a report to the legislature that describes:

- Progress on implementation of Task Force recommendations
- The key drivers that result in children/families entering the system

  Plans for longer term child welfare reforms, including those recommended by the Task Force

85. DHS should develop a public website for the purpose of posting information on child fatalities that is classified as public by the Child Abuse, Prevention and Treatment Act (CAPTA).

ADEQUACY OF RESOURCES

Funding for child welfare services in Minnesota relies primarily on county local property tax dollars (54%) and federal dollars (27%). The aggregate state share of child welfare costs is 14 percent, one of the two lowest state shares in the country.

In reviewing Minnesota's trends, it the Task Force noted that there had been a significant

reduction of $41.8 million in annual funding from all sources of revenue when comparing 2013 to funding levels available to county agencies for child welfare activities back in 2002. Most counties experienced decreases. The current heavy reliance on local property tax revenues has likely contributed to the wide variation in levels of county activities and provision of services.

One charge to the Task Force was to assess the adequacy of resources for child protection and identify what would be needed to implement its recommendations. Subsequent to the Task Force's review of the current and past levels of financial resources available to support county implementation of child welfare services to children and families, the workgroup on resources analyzed the projected cost estimates to implement the preliminary recommendations and determined that current levels of funding are not adequate to address and improve the provision of child welfare services. Those cost estimates focused on: 1) county staffing to carry out the additional responsibilities outlined in the recommendations; 2) additional potential services necessary to support children and families as a result of changes in screening, assessment, etc.; and, 3) additional state oversight.

There is also recognition that the implementation of changes as recommended by the Task Force has potential fiscal implications on tribes, county attorneys, court, public defenders, law enforcement, possibly more out-of-home placements, additional needs around foster care licensing and for more cultural resources, and workforce pressure.

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The following recommendations are made to increase resources to the child welfare system as a means to support and promote positive outcomes for children and families:

86. Use of the following criteria by the legislature when considering additional resources:

- Target funds to children and families in the child protection system while supporting state-wide consistency in provision of services
- Make available a full array of intervention services to support the needs of children and their families
- Address gaps related to disparities and use information generated to create practice change, scale-up promising practices, and inform future investments
- Support a family strengths-based approach and access to other services; accelerating access to these other services for children in child protection.
- Direct funding and fiscal incentives toward outcomes at child level
- Support technology for better data reporting, sharing, transparency, and outcome monitoring
- Improve balance among federal, state and local shares

- Support innovation, particularly regarding addressing disparities and disproportionality in the child welfare system
- No supplantation of existing resources with the addition of new resources.
- Reward effective child protection practices and services.

87. Increase funding for county staffing to carry out additional case work responsibilities (e.g., county child protection workers, county child protection supervisors, and county child protection case aides.)

88. Provide additional funding for additional intervention services necessary to support children and families as a result of changes in screening, assessment, etc. that address needs of children and families earlier in the process of a child protection response to prevent recidivism into the child protection system.

89. Provide additional funding for accelerated access to services including but not limited to:

    - Child care,
    - Head Start/Early Head Start
    - Home visiting for children
    - Transitional housing and shelter, and
    - Psychiatric/mental health services.

    The goal is to remove children in the child protection system from waiting lists in these programs.

90. Allocate competitive grants to identify, develop, adapt and scale-up culturally affirming promising practices (e.g., mental health services, mentoring, etc.) or programs that address disparities and disproportionality in the child welfare system. Dollars should be allocated to evaluate results and apply learning to transform the child protection system to be more effective. Funding preference should be given to non-profit and grass-root community organizations that are led by or already serve communities of color, ethnic and tribal communities and low income communities.

91. Increase funding for State oversight, including monitoring, training, child fatality reviews, grant management, quality assurance, etc.

92. Increase funding for intake and screening tools to promote more robust data gathering during the intake and screening process.

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93. DHS should, absent sufficient funding, prioritize all recommendations to develop a multi-year implementation plan.

CONCLUSION

It is with concern for our children, and admiration for the child protection workers who make difficult decisions everyday (often without adequate resources) that our Task Force makes these recommendations. We believe they are foundational to achieve the vision of the Task Force:

Minnesota Children and Families: Safe, Supported and Strong. The vision of the Task Force is to put children first; to ensure they remain safe and protected, and they develop to their full potential. We envision a system committed to the strengthening of families and communities.

We also believe that this is just a foundation. Much work lies ahead. Transforming our system is a multi-year project and only with resources and continued focus will our children and families be safe, supported and strong.

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Appendix A

IMPLICATIONS FOR FINAL RECOMMENDATIONS

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Appendix B

TASK FORCE MEMBERS BIOGRAPHIES

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Comm. Lucinda E. Jesson – Co-chair

Lucinda Jesson has been the Commissioner of the Minnesota Department of Human Services, the state's largest agency, since 2011. Child protection is part of DHS' mission, in cooperation with Minnesota's Counties. Jesson was an associate professor of law at the Hamline University School of Law, where she founded and directed the Health Law Institute. She has served both as the chief deputy Hennepin County attorney, and as Minnesota deputy attorney general, and has extensive private sector experience as well.

Comm. Toni Carter – Co-chair

Toni Carter has been a Ramsey County Board member since 2005 and has just completed her term as President of the Association of Minnesota Counties (AMC). She is co-chair of the Minnesota Human Services Performance Council, and Chair of the Human Services and Education Steering Committee of the National Association of Counties. She has been a teacher, a School Board Chair, a systems engineer, an author, an actor and an arts consultant. She is the first African-American ever to serve on a county board in Minnesota.

Terese Amazi is the Mower County Sheriff. She has 28 years of Law Enforcement experience, including 26 years in Mower County. She worked in Child Protection as an investigator for seven years. She worked on meth lab legislation, making it a felony for any adult found with a child at meth lab. She also worked on recent legislation making it a felony to chain/confine a child causing demonstrable harm.

Wm. Blair Anderson is Chief of the St Cloud Police. He was the Chief Deputy of the Carver County Sheriff's Office, and served 15 years at the Dakota County Sheriff's Office, including tenure as Jail Commander at the Dakota County Jail. He has a Master's Degree in Public Safety Administration from St. Mary's U and serves as Adjunct Professor at St. Cloud State. He is an 8 year US Army veteran, including duty active duty service during Operation Desert Storm. He has served on many nonprofit and community service boards. He has two sons, aged 26 and 20.

Hon. Kathleen Blatz was the first woman Supreme Court Chief Justice in Minnesota history; she championed the issue of improving the court's handling of abused and neglected children. Earlier, she was the youngest woman ever elected to the Legislature; as chair of the House Crime & Family Law Committee, she led a reform of child protection statutes. She was a Psychiatric Social Worker, an Assistant County Attorney, and a District Court Judge. She has a BA from Notre Dame and an MA in Social Work and a JD from the U of M and is now in private practice.

Larene Broome is a Parent Coordinator with the William Mitchell Parent Mentor Program. She began as a parent wanting parents' voices heard; she is on the Parent Leadership for Child Safety and Permanency team (a partnership between Prevent Child Abuse MN and DHS Children's Trust Fund) and is a master trainer/curriculum writer. She co-chaired the African American Disparities Committee at DHS and is an IEP advocate at the MN Organization of Fetal Alcohol Syndrome. She is pursuing her degree at Metropolitan State U, focusing on Civic Leadership.

Judith Brumfield is the Scott Co. Health & Human Services Director. She worked in county social service for over 30 years, primarily direct service and supervision in child protection, children's mental health and juvenile probation. She chaired the group to implement the Child Welfare Training Program, chaired the Children's Committee for the MN Assn of County Social Service Administrators (MACSSA), and is now co-chair of the MACSSA legislative committee. She is a Licensed Independent Clinical Social Worker and has her MSW from the U of M.

Peggy Flanagan is Executive Director of the Children's Defense Fund-MN. She founded the Native American Leadership Program at Wellstone Action and is adjunct faculty at George Washington University. She is a member of the White Earth Band of Ojibwe and was named one of the top 100 influential people in Minnesota politics. She was the first Native American on the Minneapolis School Board and has served on many nonprofit boards. She has a BA in American Indian studies and child psychology from the U of M and lives with her husband and daughter.

Rich Gehrman is Executive Director of Safe Passage for Children of MN; he founded it to advocate for systemic improvements to MN's child protection and foster care system. He has worked with runaways and street youth; he was chief finance/admin officer for Westchester Co. (NY) Social Services, MD Dept of Human Resources, City of St Paul, and Catholic Charities (Archdiocese of Mpls-St Paul). His firm serves clients in state, county and nonprofit human services programs. He is a graduate of Williams College, Harvard Divinity School, and Harvard Business School.

Kraig Gratke has served as the Early Head Start Manager at Tri-County Community Action Program, Inc. since 1999, serving Crow Wing, Morrison and Todd Counties. Kraig serves some of the most high risk infants and toddlers referred from Child Protection in his three-county service area. Kraig is the President of the Minnesota Head Start Association. He has BA degrees in Applied Psychology and in Child and Family Studies, and an MA in Early Childhood Special Education. He has been a teacher and an early childhood education coordinator.

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MayKao Y. Hang is President and CEO of the Amherst H. Wilder Foundation, a non-profit health and human services organization. She was previously Division Director for Adult Services in Ramsey Co. and Director of Resident Services with St. Paul Public Housing. She is dedicated to achieving an equitable society where everyone can prosper. She has a BA in Psychology from Brown University, an MA in Social Policy and Distributive Justice from the Humphrey School of Public Affairs at the U of M, and is enrolled in the DPA program at Hamline University.

Stacey Hennen has been the Director of Grant County Social Services for six years; prior to that she was a child protection worker and a supervisor at a Rule 5 facility for adolescents. In 2015 she became President of the Minnesota Association of County Social Service Agencies (MACSSA), where she has already chaired and served on several committees related to child welfare and mental health. She has served on the Human Services Performance Council and was part of Minnesota's team to address the use of psychotropic medications in foster children.

Lisa Hollensteiner, M.D., has cared for patients in the Fairview Southdale Emergency Department for 26 years and in Family Practice at North Memorial for 3 years. She served on Fairview's Pediatric Committee, working to best provide services to children, and chaired the Service Excellence Committee for the Emergency Department. She volunteers with Boy Scouts and middle-school church ministry and is mother to 3 boys. Lisa attended Lawrence University, University of Exeter in England, and University of Pennsylvania Medical School.

Mark Hudson, M.D. is a Board Certified Child Abuse Pediatrician. He is the Medical Director of Midwest Children's Resource Center, a medically based Child Advocacy Center at Children's Hospitals and Clinics of MN, and is the Executive Director of the Midwest Regional Child Advocacy Center. He is a graduate of the University of Minnesota Medical School, completed his Pediatrics residency there, and now has an adjunct faculty appointment there as well. Following residency he completed two years of fellowship training in Child Abuse Pediatrics.

Kathy Johnson has worked for Kittson Co. Social Services 20 years, serving as director for 15. She has a BA in Social Work from Concordia College, Moorhead and attended the Family Studies Institute at North Dakota State University for graduate studies. She has been manager of the Ronald McDonald House in Fargo; an Intensive In-Home Therapist with Lutheran Social Services of Minnesota; and School Social Worker, Kittson Co. Schools. Kathy brings to the Task Force her experience of delivering social services to residents of a small, rural county.

Carri Jones was elected Tribal Chair of the Leech Lake Band of Ojibwe in 2012, becoming the first woman and youngest person to ever hold the position. She is an alumnus of Bemidji State University. Jones is currently completing the Healthcare Administrative Master's Program at the College of St. Scholastica. She established a successful 12 year career in Tribal Government Administration, Finance, and Indian Gaming. Jones has two children.

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Molly Kenney is Family Services Director at Greater Minneapolis Crisis Nursery. She holds an MSW from the College of St. Catherine/U of St. Thomas, a BA in Sociology from the U of M, and is currently in the U of M's Infant and Early Childhood Mental Health program. She directs Crisis Nursery's Family Advocates, 4th Day Home Visiting program, parent support groups and education classes, and its licensing standards under DHS. She is a state-licensed Clinical Social Worker with over 20 years' experience supporting high risk families and children in crisis.

Rep. Ron Kresha is a former coach, teacher, curriculum coordinator and technology specialist. In 2000, he co-founded Atomic Learning, which specialized in online professional development internationally. Ron has helped students be successful in high school and beyond; he has focused on helping early learners and ensuring students have a stable, loving learning environment. He was elected to the MN House in 2012, and became an Assistant Majority Leader in 2015. Ron and his wife have been married for 21 years and have one son and four daughters.

Rep. Joe Mullery was elected to the MN House in 1996, serving North Minneapolis. He has served as Chair of the House Early Childhood and Youth Development Policy Committee, as well as the House Public Safety and Civil Justice Committee. He has worked on many legislative issues, including juvenile justice, consumer protection, affordable housing, foreclosure prevention, tenants' rights, anti-crime laws, neighborhood livability, and jobs, wages, and economic development. His BA and JD degrees are from the University of Minnesota.

Robert O'Connor is Assoc. Prof. and Director of the Multicultural Title IV-E Child Welfare Program at Metro State, where he is a speaker and consultant on diversity in the workplace and child welfare issues. A former state ward turned state ward administrator, he served as a Program Consultant at DHS and the federal Children's Bureau's National Resource Center's Training and Technical Assistance Teams. Areas of interest include structural and interpersonal cultural bias training, transracial adoption, community engagement, and issues of social justice.

Todd Patzer is a Lac Qui Parle County Commissioner in his 3rd term on the County Board. He is on the Health and Human Services policy committee of the Association of Minnesota Counties (AMC), and also serves on the AMC State Board of Directors. Todd is on the Woodland Centers Board of Directors (a regional mental health center) as well as the Region 6W Community Corrections Executive Board. Todd and his wife Sarah also operate a family farm in western Minnesota and are raising two teenage sons.

Professor Jean K. Quam, Ph.D., is the Dean of the College of Education and Human Development (CEHD) at the University of Minnesota. For sixteen years, she served as the Director of the School of Social Work at the University and was a co-founder with Professor Esther Wattenberg of the Center for Advanced Studies in Child Welfare.

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Sen. Julie Rosen was elected to the MN Senate in 2002. She has served as Chair of the Energy, Utilities and Telecommunications Committee. Special legislative concerns include jobs, health care, agriculture/renewable energy, drug treatment, and child protection. She is the ranking minority member on the Health and Human Services Budget Division. She has a BS degree in Agronomy from Colorado State University. Counties in her district have included Blue Earth, Faribault, Jackson, Le Sueur, Martin, Waseca and Watonwan. She has three children.

Sen. Kathleen Sheran from Mankato was elected to the Minnesota Senate in 2006. She is the Chair of the Senate Health, Human Service, and Housing Committee, and serves on the HHS Finance Division, the Judiciary Committee, and the Higher Education Committee. Prior to her election, Senator Sheran taught nursing at Minnesota State University-Mankato, and has over 35 years of experience in public health, including practice as an advanced practice registered nurse (APRN) inn mental health.

Hon. Edward Toussaint, Jr. is a Distinguished Professor at William Mitchell College of Law. From 1995-2010, he was the Chief Judge of the MN Court of Appeals, where he authored over a thousand opinions. He worked as a public school teacher and a Claims Counsel, and has been a Workers' Compensation Judge and a District Court Judge. He was on the board of the African American Adoption Agency and co-chaired the MN Supreme Court Foster Care and Adoption Task Force. His BA is from Chicago State U and his JD is from DePaul U College of Law.

Michelle Zehnder Fischer is the Nicollet Co. Attorney and is on the Board of Directors for the Minnesota Co. Attorneys' Association; since 1996 she has handled all child protection cases in Nicollet Co. She is a member of the Nicollet County Children's Justice Initiative. She has written about child abuse investigation and prosecution for multiple legal publications. Her BA is from St. Cloud State University and her JD is from William Mitchell College of Law. She is married and has two children and is active in projects that benefit children in her community.

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ICWA COURT MONITOR REPORT

A collaboration between the Minneapolis American Indian Center (MAIC) and the Ain Dah Yung Center (ADYC)

If the Family Fails the System Failed: Reaction to the Attorney General Announcement

By: Kristen Talbert

> Ultimately, these children — and all those of future generations — represent the single greatest promise of our partnership, because they will reap the benefits of our ongoing work for change...We have laid an enduring foundation as we strive to empower vulnerable individuals, and give them the tools they need not to leave their communities, but to bolster them; not to abandon their ways of life, but to strengthen them.
>
> Attorney General Eric Holder

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December 3, 2014 at the White House Tribal Nations Conference in Washington, D.C Attorney General Eric Holder announced that the Department of Justice (DOJ) is launching a new initiative to promote compliance with the Indian Child Welfare Act (ICWA). He stated, "Through this new initiative the DOJ will be focusing on identifying state-court cases where the United Sates can file briefs opposing the unnecessary illegal removal of Indian children from their families and their tribal communities."

The DOJ will partner with the Departments of the Interior and Health and Human Services to ensure that the federal government has access to all its tools to promote compliance. He also reported that they will partner with tribes and organizations nationwide that focus on Indian child welfare, to explore and develop trainings for judges and reinforce the tribal authority around placement decisions affecting their children.

The DOJ is also interested in gathering information about where and how ICWA is being "systematically violated; and to take appropriate, targeted action to ensure that the next generation of great tribal leaders can grow up in homes that are not only safe and loving, but also suffused with the proud traditions of Indian cultures."

I interviewed Sheri Riemers, Residential Operations Director at the Ain Dah Yung Center on her reaction to this announcement. Sheri has over 14 years of experiences in Indian Child Welfare and previously was the Indian Child Welfare Act Program Director at the Minneapolis American Indian Center. She has also served on the ICWA Advisory Council.

Kristen: What about the children that never were ICWA cases but should have been? Is there a statute of limitations?

Sheri: I've never heard of a specific statute of limitations that addresses the Federal Indian Child Welfare Act. I did research whether they exist and was unable to locate any clear language on this, although there should be. There needs to be concise, mainstream language regarding statute of limitations when you are talking about children who have gone through the court system and were not recognized under the ICWA. My personal feeling is that if the children were not recognized under ICWA and should have been - that statute of limitations should remain open and reviewed. Particularly after the DOJ announcement. I agree with looking into these cases, absolutely they should.

Kristen: What tools do you think would help/work to enforce compliance? What could we do better to market or enforce use of these tools?

Sheri: I do know that there are a lot of programs doing detailed work around creating tools to identify non-compliance and tools to identify if compliance is working or not working and why.

All of this work on compliance and development of tools is helping to shed light on the issues of non-compliance, assisting in training jurisdictions, and becoming mechanisms to determine acceptable practices.

For example, in Hennepin County the judges were really skeptical about having an ICWA Court Monitor, however eventually the judges really looked to the court monitor for their expert knowledge about

Continued on page 8....

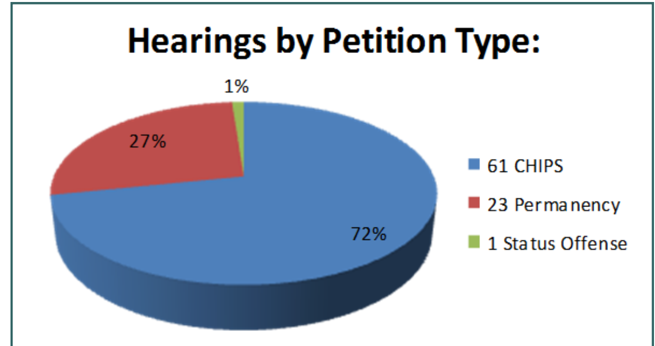
Hennepin County Petitions and Hearings

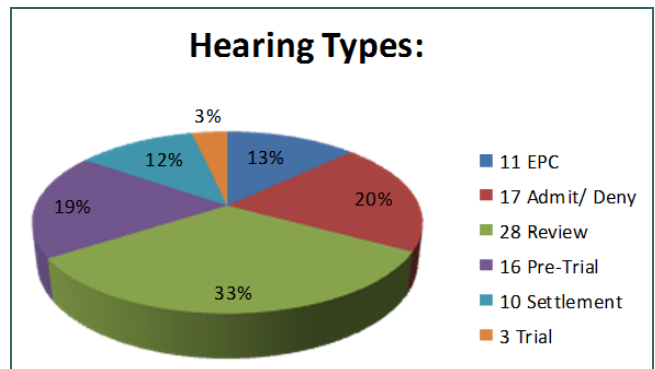
By: Mallory Moon

During the fourth quarter there were 116 scheduled hearings. Of those scheduled hearings 85 occurred and were monitored for compliance data.

Of the 85 hearings monitored this quarter 61 were CHIPS petitions, 23 were a result of a permanency petition being filed, and 1 was a status offense.

The hearing types were as follows: 11 Emergency Protective Care, 17 were Admit/ Deny, 28 were Review, 16 were Pre-Trials, there were 10 Settlements and 3 were Trial Hearings.





Ramsey County Petitions and Hearings

By: Kristen Talbert

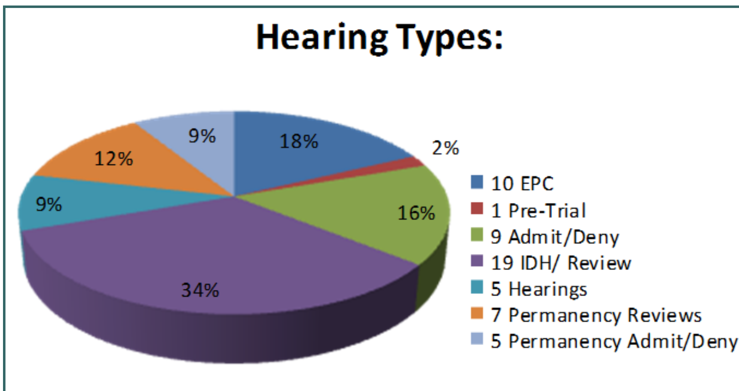
In the fourth quarter 58 cases were monitored for ICWA compliance.

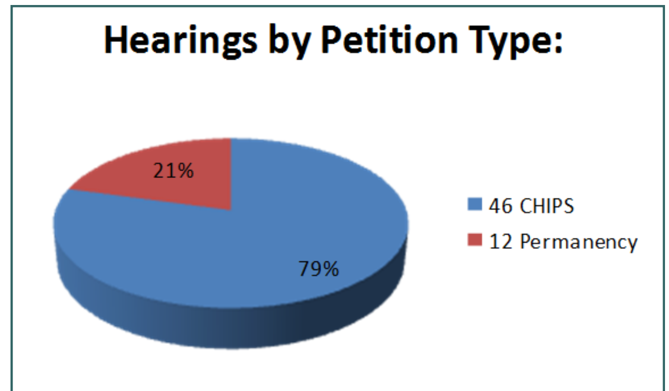
Of those 58 hearings, 46 were CHIPS petitions and 12 were a result of permanency petitions being filed.

The types of hearings are as follows: 10 Emergency Protective Care, 1 Pre-Trial, 9 Admit/Deny, 19 IDH/ Review, 5 Hearings, 7 Permanency Reviews, and 5 Permanency Admit/Deny.

Of the 58 hearings monitored 1 case was dismissed.

Lastly, 10 cases were found to have non-ICWA status, therefore monitoring was discontinued at that point.





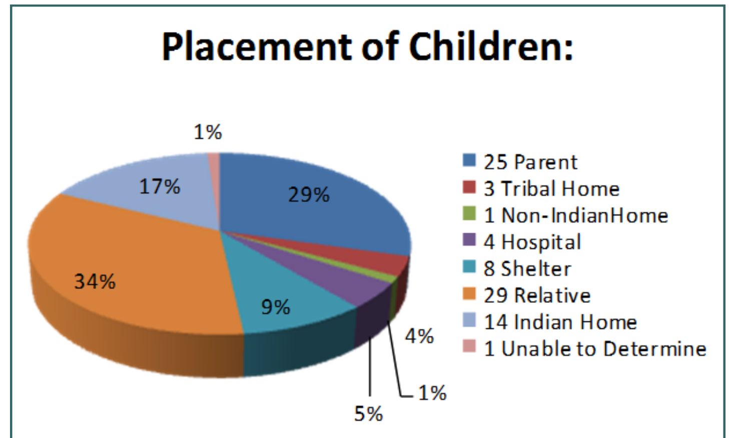
Children of Hennepin County

By: Mallory Moon

In Hennepin County this quarter, 85 hearings were monitored involving 183 children. Of those 85 hearings one child was selected per hearing and monitored for data collection.

An attorney was appointed and represented for 17 children, only once an attorney did not appear for the child.
Out of the 85 children, 25 remain with their parent and the remaining 60 children are in out-of-home placement.

Those placements are as follows: 3 children are in a tribal home, 1 child in a non-Indian home, 4 children are placed a treatment facility or hospital, 8 children are in shelter, 29 are in the care of their relatives, and 14 are in an Indian home, and 1 placement I was unable to determine.



Children of Ramsey County

By: Kristen Talbert

In Ramsey County this quarter, 58 hearings were monitored involving 87 children. The chart reflects the placements of all 87 children, however only one child per hearing (58) was selected for actual compliance monitoring.

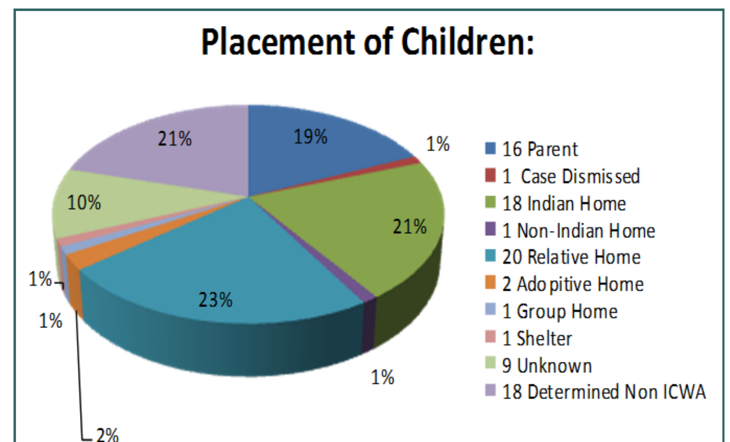
An attorney was appointed and represented 15 of the children. In many of these cases the appointed attorney also represented the siblings, however this data will not appear due to the QUICWA data collection guideline that only one child is selected per hearing.

Out of the 58 hearings monitored 16 children were with the parent under protective supervision and one case was dismissed involving one child.

Of the remaining 70 children, their placement status is as follows: 18 children are in an Indian home, 1 child is in a non-Indian home, 20 children are with relatives, and 2 children are in an adoptive home, 1 child is in a group home, and 1 child in placed in a shelter.

The chart also reflects that the location of 27 children as unknown to the Court Monitor. This number includes 18 children who were found to be non-ICWA.

The remaining 9 children with unknown status is the result of the Court Monitor not receiving the documentation to determine placement location.



Tribes Participation Monitored in Hennepin County

By: Mallory Moon

This chart represents the possible tribal affiliation at each hearing, the number of hearings per tribe and the number of times each tribe was present.

Data includes all the tribes affiliated with the selected child, per QUICWA data collection guidelines. Data includes Emergency Protective Hearings, where tribal affiliation may not yet be determined. Data does not include the hearings that did not occur.

* Indicates tribes working with the Minneapolis American Indian Center Liaisons.

TRIBE	NUMBER OF HEARINGS	TRIBE PRESENT/SENT POSITION	PARTICIPATION RATE
3 Affiliated Tribe*	1	1	100%
Bad River*	1	1	100%
Bois Forte Band	5	3	60%
Cheyenne River*	3	3	100%
Fond Du Lac	1	1	0%
Hannahville Indian Community*	1	1	100%
Lac Courte Oreilles Band *	1	1	100%
Leech Lake	24	23	96%
Mille Lacs Band	9	7	77%
Oglala (Pine Ridge)*	8	8	100%
Red Lake	5	3	60%
Rosebud*	3	3	100%
Sisseton-Wahpeton*	5	5	100%
Spirit Lake-Fort Totten*	2	2	100%
Standing Rock*	5	5	100%
White Earth	17	14	82%
Yankton *	2	2	100%

CONTACT INFORMATION FOR MAIC TRIBAL LIASONS:

Kelly Morgan: (612) 879-1725

Valerie Berrard: (612) 879-1724

Tribes Participation Monitored in Ramsey County

By: Kristen Talbert

This chart represents the possible tribal affiliation at each hearing, the number of hearings per tribe and the number of times each tribe was present.

The column labeled Non-ICWA represents cases that entered as ICWA, however were found to have Non-ICWA status during the monitoring process. As the ICWA Court Monitor I observed high numbers of cases being flagged as ICWA and proceed through the court system as ICWA, only to have them determined as ineligible months later. Having high numbers of cases misidentified as ICWA in the early stages of child welfare involvement results in a strain on already scarce ICWA resources.

In our work with Ramsey County we found that intake was doing a thorough job at identifying possible ICWA cases, however the follow up with the tribes was slow and at times inconsistent. Once the Ramsey County workers began utilizing the Tribal Liaisons at the Minneapolis American Indian Center more consistently we saw marked decrease in the amount cases being misidentified as ICWA.

We first reported this ICWA flagging issue in our quarter two newsletter. At that time 26% of the cases were found to have non– ICWA status during the monitoring process. During the fourth quarter only 17 % of the cases were found to be non– ICWA during the monitoring process, which is a 9% decrease in just 2 quarters.

* Indicates tribes working with the Minneapolis American Indian Center Liaisons.

TRIBE	NUMBER OF HEARINGS	TRIBE PRESENT	PARTICIPATION RATE	NON-ICWA/ STATUS PENDING
Bois Forte Band of Ojibwe	2	1	50%	-
Cherokee Nation	9	-	0%	4
Choctaw of Oklahoma	1	-	0%	1
Chugachmiut/Alaska	2	-	0%	-
Kiowa Tribe of Oklahoma	1	-	0%	-
Lac Courte Oreilles *	2	2	100%	-
Leech Lake Ojibwe	4	2	50%	-
Lower Brule	2	-	0%	-
Mescalero Apache	1	1	100%	-
Miami of Oklahoma	3	-	0%	-
Omaha of Nebraska	1	1	100%	-
Pine Ridge Sioux/Oglala *	1	1	100%	-
Red Lake Ojibwe	2	-	0%	-
Rosebud Sioux/Sicangu *	3	1	33%	-
Shakopee Mdewakanton	1	-	0%	-
Sisseton-Wahpeton Dakota *	5	3	60%	2
Spirit Lake Dakota *	1	-	0%	1
St. Croix Ojibwe *	3	-	0%	1
Turtle Mt. Ojibwe	3	1	33%	-
White Earth Ojibwe	9	9	100%	-
Yankton Sioux *	1	1	100%	-
Unknown	1	-	0%	1

Violations: Hennepin County

By: Mallory Moon

Hennepin County was in compliance with ICWA 89% this quarter. The 11% of non-compliance are listed below:

October 14, 2014:
Judge Lefler presiding: CHIPS: Pre-trial hearing where a settlement was reached. The Father did not receive notice to for the proceedings.

October 16, 2014:
Judge Bartolomei presiding: CHIPS: Emergency Protective Care hearing. Both parents were not served with the petition or given notice to the proceeding.

November 18, 2014:
Judge Bartolomei presiding CHIPS: Pre-trial hearing. County Attorney stated on the record no notice was given to the Father.

The following CHIPS hearings did not have Qualified Expert Witness Testimony supporting out-of-home-placement. Note, this is including the 90 day extension for emergency removals.

October 21, 2014:
Arraignment hearing with Judge Lefler presiding.

December 11, 2014:
Pre-trial hearing with Judge Lefler presiding.

December 11, 2014:
Dispositional Review hearing with Judge Lefler presiding.

December 17, 2014:
Dispositional Review hearing with Judge Klein presiding.

December 17, 2014:
Dispositional Review hearing with Judge Lefler presiding.

December 18, 2014:
Dispositional Review hearing with Judge Klein presiding.

Noted Concern:

December 9, 2014:
Judge Norris presiding. CHIPS: Dispositional Review Hearing. An attorney was appointed previously for the child and did not appear for

Rule 38.01, Subd. 2m

Timing of Filing and Service. The agency shall file the report with the court and serve it upon all parties at least five (5) business days prior to the hearing at which the report is to be considered.

Rule 32.02, Subd. 3

Service (a) **Generally.**

Unless the court orders service by publication pursuant to Rule 31.02, subdivision 3, the summons and petition shall be personally served upon the child's parents or legal guardian, and the summons shall be served personally or by U. S. mail upon all other parties and attorneys. Alleged parents and participants shall be served a notice of hearing pursuant to Rule 32.03. The court may authorize alternative personal service pursuant to Rule 31.02, subdivision 6.

Violations: Ramsey County

By: Kristen Talbert

Ramsey County was in compliance with ICWA 83% this quarter. The 17% of non-compliance are listed below:

October 21, 2014
CHIPS: IDH Hearing
Tribe was not notified of hearing. The tribe is a party, so this is a violation of Rule 32.02, subd. 3 The tribe's party status is under Rule of JPP 21.01, subd. 1 (c).

October 22, 2014
CHIPS: EPC
Mother not given notice of hearing. This is a violation of Rules of Juvenile Protection Procedure (JPP), Rule 32.02, Subd. 3

October 24, 2014
CHIPS: EPC
Mother not given notice of hearing. Rule 32.02, subd. 3.

October 28, 2014
CHIPS: EPC
Tribe was not notified of hearing. The tribe is a party, so this is also a violation of Rule 32.02, subd. 3. The tribe's party status is under Rule of JPP 21.01, subd. 1(c).

October 28, 2014
CHIPS: Hearing
Neither parent given notice of hearing (Rule 32.02, subd. 3), Fathers attorney had not received petition.

October 30, 2014
CHIPS: Admit/Deny Hearing Mother has not been served. Rule 32.02, subd. 3.

November 5, 2014
CHIPS: Admit/Deny HearingMother has not been served. Rule 32.02, subd. 3.

November 13, 2014
CHIPS Permanency: Admit/ Deny Hearing Mother was given different date for hearing, therefore did not show to court and did not receive notice. QEW needed for permanency petition.

November 18, 2014
CHIPS Permanency: Review Hearing. No social worker report filed. This is a violation of Rules of JPP, Rule 38.01, Subd. 2m

November 25, 2014
CHIPS: Review Hearing Social Worker expected parents to contact her. Not Active Efforts.

Noted Concern:

November 20, 2014
CHIPS Permanency: Admit/ Deny Hearing
Tribe could not appear by phone due to phone not working at Ramsey County Juvenile and Family Justice Center (JFJC)

December 16, 2014
CHIPS: IDH Hearing
Tribe was not called on in court. County is making the mother do U.A.'s during supervised visits. The tribe's party status is under Rule of JPP 21.01, subd. 1 (c).

Active Efforts: Case Law

"The term active efforts, by definition, implies heightened responsibility compared to passive efforts." In re A.N., 2005 MT 19, 23, 325 Mont. 379, 384, 106 P.3d 556, 560. An Alaska court cited an ICWA commentator who distinguished between active and passive efforts: "passive efforts entail merely drawing up a reunification plan and requiring the 'client' to use 'his or her own resources to . . . bring . . . it to fruition.'" A.M. v. State, 945 P.2d 296, 306 (Alaska 1997) (citing Craig J. Dorsay, *The Indian Child Welfare Act and Laws Affecting Indian Juveniles*, 157-58 (1984)). "Active efforts, on the other hand, include 'tak[ing] the client through the steps of the plan rather than requiring the plan to be performed on its own." Id.

MAIC/ Hennepin County: 2014 Year End Snapshot

By: Mallory Moon

Hennepin County ICWA Court Monitor monitored 385 hearings in 2014.

Highlights:

- Child's Tribe(s) were identified orally on the record 97% of all hearings.
- A GAL appeared in court for the best interest of the child 99% of all hearings.
- The Tribe did seek to present a recommendation regarding placement at 77 hearings, the Judge accepted those recommendations 92% of the time. (The Tribe presented a placement recommendation at 20% of all hearings monitored.)

Room for improvement:

- 62.5% of all hearing types when placement is NOT with a parent or relative, there was NO "discussion on the record as to why the child was not placed with a relative."
- There were 37 hearings where the placements were NOT in preference. 62% of those hearings the Judge did NOT, "find that there was good cause not to follow the placement preferences."

(Data Set: 01/01/2014 through 12/31/2014. Does not include hearings that did not occur.)

You're Invited to Mini M.U.I.D.

By: Mallory Moon

Do you work in Hennepin or Ramsey County? Are you committed to the preservation of Native American families? If so, you may be interested in Mini M.U.I.D.

Mini M.U.I.D., also know as the Family Preservation Subcommittee of the group Metropolitan Urban Indian Directors (M.U.I.D.) meets the 4th Thursday of every month from 12 pm to 1:30 pm at the Minneapolis American Indian Center.

In the past this group had worked on influencing public policy and bringing together local stakeholders to address issues concerning family preservation.

This group recently reconvened in spring of 2014. This past fall the group hosted a meet and greet for Hennepin and Ramsey County and local Native agencies. This provided an opportunity for everyone to gather, share resources and network.

We are excited about the all the new energy and possibilities for the work we can do reinforce family preservation. If you think you may be interested in participating contact the ICWA Program Director, Laura Newton, at the Minneapolis American Indian Center.

ADY Center/Ramsey County: 2014 Year End Snapshot

By: Kristen Talbert

Ramsey County ICWA Court Monitor monitored 201 hearings in 2014.

Highlights:

- Tribes sought to participate and judges allowed for participation 53 % of the time.
- The CASA/GAL appeared for the child 96% of the time.
- Misidentification of ICWA cases decreased from 26% to 17 % of the cases.

Room for Improvement:

- 96% of the time the judge did NOT make a finding orally on the record that ICWA does or does not apply.
- No time in 2014 did a judge make a finding on the record that mother and/or father received notices of the hearing.
- In 92.7 % of the hearings NO testimony was presented to support active efforts findings.

Data Set: 01/01/2014 through 12/31/2014.

Minneapolis American Indian Center's Mission Statement: Provide excellent services that help meet the needs of the American Indian community within a foundation of cultural values.

Minneapolis American Indian Center
1530 East Franklin Avenue
Minneapolis, MN 55404
612-879-1742
www.maicnet.org

Ain Dah Yung Center's Mission Statement: Provide a healing place in the community for American Indian youth and families to thrive in safety and wholeness.

Ain Dah Yung (Our Home) Center
1089 Portland Avenue
St. Paul, MN 55104
651-227-4184
www.adycenter.org

Continued from page 1....If the Family Fails the System Failed

ICWA and really wanted to become highly compliant with ICWA. Hennepin County started referencing this as the "Judges Report Card".

The courts are really the ones that have an important roll in ensuring compliance.

Kristen: What sort of training do you think State and County Judges could use to promote tribes authority in placement decisions? What sort of training or support could tribes use to help promote their authority?

Sheri: ICWA Program Directors often need to understand that they are working as a tribal government and therefore it's a government to government relationship.

Under the Indian Child Welfare Act, tribal ICWA workers need to carry forward as part of a government to government relationship and can advocate for themselves as such.

The Native American Training Institute in North Dakota, as well as NICWA have done some training for tribes on how to exercise their relationship with child protection agencies and the courts. It's really starting to pick up pace since recognizing and understanding that tribes lack resources, education training for their advocates, and high turn-over rates.

> **People need to let go of power and focus on the family. When a family fails - the system failed. Plain and simple.**
>
> **- Sheri Riemers**

Helping tribes with expert witness training is huge and could be combined into a two day training that is specific to tribal ICWA directors or programs in the urban area who work with tribes.

There are a handful of model tribal and urban Indian programs across the country that can be replicated and utilized to train and strengthen the response across American Indian Country, in both tribal and urban application of the Indian Child Welfare Act.

All these things can be trained so that the tribes can exercise their sovereignty to the fullest degree within the state court system and it's imperative that they do.

Kristen: How can we measure Active Efforts?

Sheri: By the parents' ability to successfully comply with their case plans.

If a family is not complying- often times it's because they don't know and haven't been given clear instructions on what needs to be done on their case plan. It's all about communication. Often times in urban areas- having collaborative case managers from the community working with the family and child protection, create success.

People need to let go of power and focus on the family. When a family fails- the system failed. Plain and simple.

http://www.justice.gov/opa/speech/attorney-general-eric-holder-delivers-remarks-during-white-house-tribal-nations

ICWA COURT MONITOR REPORT

A collaboration between the American Indian Center (MAIC) and the Ain Dah Yung Center (ADYC)

Cultural Misunderstandings or Non-Universal Values

By: Mallory Moon and Kristen Talbert

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Things you may experience when working with Native families.

Eye-Contact: A Native American person may have been taught to not make eye contact with a person as a sign of respect. If a Native American person is being forced to look someone in the eye, they may feel extremely uncomfortable and may not want to open up to that person.

Time: In Indian Country a person is defined on how they treat people and the relationships they maintain with people. This is why it is important for a Native American person to have real conversations with people, or follow the proper protocols if communicating with an elder. Usually this is not time oriented (If you are doing a home visit, for example, usually the Native American person will offer you something to eat and drink. It is considered rude if you don't accept because it leads them to believe they aren't worth your time.). Compared to contemporary times where a person is defined by their job title, which is very time oriented and based on how much work they can get done in a day.

Home: To a Native American person "home" is often defined as their indigenous homelands or their Tribal reservations, not an exact location or household.

ICWA Lawsuit in South Dakota

By: Mallory Moon

The American Civil Liberties Union (ACLU) filed a lawsuit in 2013 on behalf of two South Dakota Tribes (Oglala and Rosebud) and three Native American parents.

This class action lawsuit raises the issue of unlawful removal of Indian children without proper evidence or hearings violating ICWA Law.

The case is titled; *Oglala Sioux Tribe v. Van Hunnik.* (Van Hunnik is the Regional Manager for SD Social Services.)

According to the ACLU, "The lawsuit claims that Indian children are being removed from their homes in hearings that last no more than a few minutes, in which parents do not even receive a copy of the petition against them or have a chance to present evidence."

Chief Judge Jeffery L. Viken denied the motion to dismiss the case in January 2014, therefore the case will be moving forward.

"Federal Judge Rules Lawsuit over Treatment of SD Indian Parents and Tribes Can Move Forward." ACLU. 29 January, 2014. https://www.aclu.org/racial-justice/federal-judge-rules-lawsuit-over-treatment-south-dakota-indian-parents-and-tribes-can

Hennepin County Petitions and Hearings

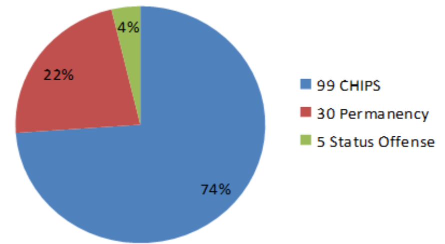
By: Mallory Moon

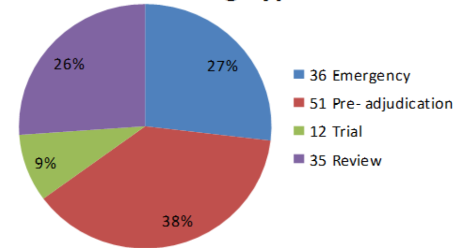
During this time period, 160 ICWA hearings were monitored. Of those 160 hearings, 134 actually occurred. Therefore, 134 hearings were monitored and compiled for data. Of those 134 hearings, 99 were a result of a CHIPS petition, 30 were a result of a permanency petition filed, and 5 were a result of a status offense.

The hearing types include; 36 Emergency Protective Care hearings, 51 were a pre-adjudication hearing, 12 were a trial and 35 were review hearings.

The reasons why the 26 hearings did not occur is as follows; 5 hearings because of a notice issue, 14 hearings a party was not present, 1 an attorney was not present and 5 hearings did not occur for other reasons.

There were 4 reunifications, 3 transfers to Tribal Court, 1 TLC, 1 TPR and 1 LTFC case closed.



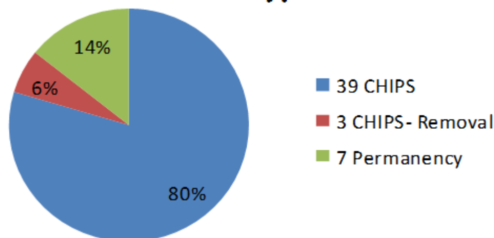


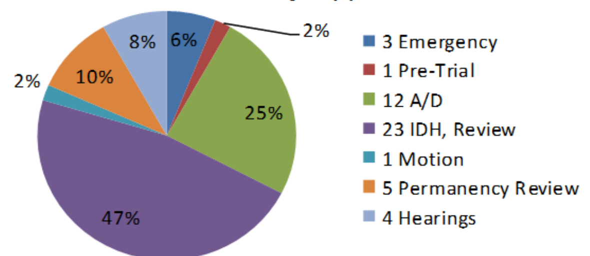
Ramsey County Petitions and Hearings

By: Kristen Talbert

There were 49 hearings monitored for compliance. Of those 49 hearings, 39 were a result of a CHIPS petition, 3 involved a CHIPS-removal petition, and 7 were a result of a permanency petition being filed.

The types of hearings are as follows: 3 Emergency Protective Care hearings, 1 Pre-Trial hearing, 12 Admit/ Deny , 23 IDH/ Review hearings, 1 motion, 5 permanency reviews, and 4 hearings. There were 2 reunifications , 1 case moved to tribal court, and 6 cases were found to have non ICWA status.

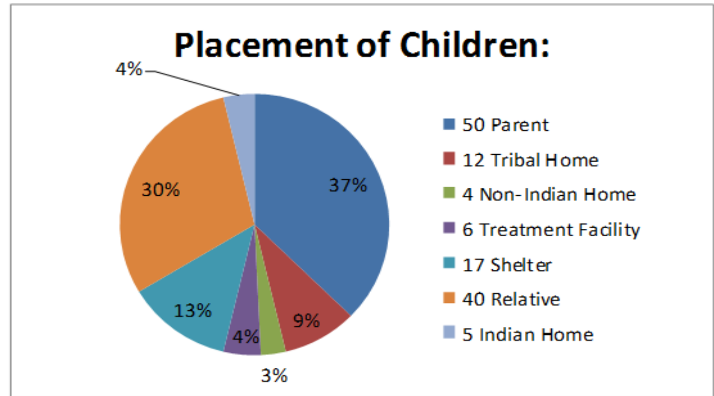




Children of Hennepin County

By: Mallory Moon

During this quarter, 134 hearings were monitored involving 257 children, 134 of those children were selected and monitored for data. Of those children, 24 were appointed and represented by an attorney and only once did an attorney not appear for the child (excused). Out of the 134 children monitored, 50 children remain with their parent under protective supervision. The remaining 84 children are in out-of-home placement: 12 children are placed in a Tribal Home, 4 are placed in a non-Indian home, 6 are either in a treatment facility or hospital, 17 children are placed in shelter, 40 children are with their relative, and 5 children are placed in an Indian home.



Children of Ramsey County

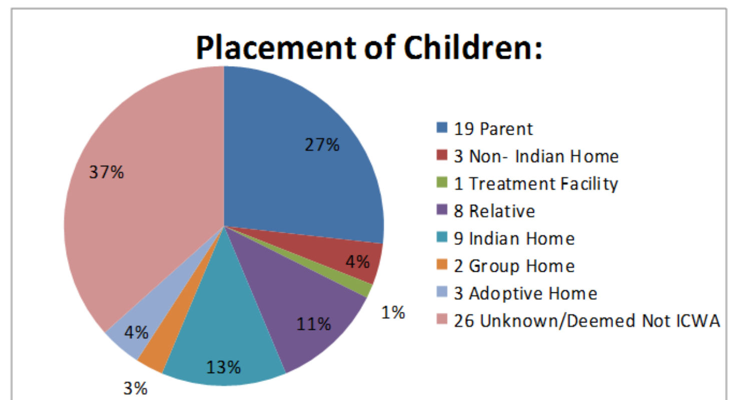
By: Kristen Talbert

In Ramsey County this quarter, 49 hearings were monitored involving 71 children. An attorney was appointed and represented 14 of the children.

Out of the 49 hearings monitored 19 children were with the parent under protective supervision. However protective supervision was removed on 3 of these children after case plan completion this quarter.

Of the remaining 52 children their placement status is as follows: 5 children are in non-Indian homes, 1 child is in a treatment facility, 8 children are with their relatives, 9 children are in an Indian home, 2 children are in a group home, 3 children are in adoptive homes.

The chart also reflects that the location of 26 children as unknown. This number includes 16 children who were found to be non-ICWA. The remaining 10 children with unknown status is the result of the Court Monitor not receiving the documentation to determine placement location.



Tribes Participation Monitored in Hennepin County

By: Mallory Moon

This charts represent the possible tribal affiliations at each hearing, the number of hearings per tribe and the number of times each tribe was present.

*Indicates tribes which are working with Minneapolis American Indian Center liaisons.

Important note: Data includes all the Tribes affiliated with the *selected child.* Data does not include the hearings that did not occur.

The following Nations did not receive notice for hearings: Bois Forte x2, Leech Lake x2, Red Lake, Mille Lacs Band and Hannahville Indian Community.

Tribe	Number of Hearings	Tribe Present or Sent Position	Participation Rate
Blackfeet Tribe*	2	2	100%
Bois Forte Band	5	0	0%
Cheyenne River*	4	4	100%
Chickasaw Nation OK*	1	1	100%
Crow Creek*	1	1	100%
Fond Du Lac	1	0	0%
Grand Portage			
Hannahville Indian Community, MI*	6	6	100%
Ho-Chunk Nation, WI	1	0	0%
Lipay Nation of Santa Ysabel, CL*	1	1	100%
Lac Courte Oreilles Band	1	1	100%
Leech Lake	43	43	100%
Mille Lacs Band	8	6	75%
Navajo Nation	2	0	0%
Oglala (Pine Ridge)*	7	6	85%
Oneida Tribe, WI	1	0	0%
Red Lake	10	3	30%
Rosebud*	9	8	88%
Sisseton-Wahpeton*	8	8	100%
Spirit Lake-Fort Totten*	5	5	100%
Standing Rock*	8	8	100%
White Earth	30	24	80%
Winnebago Tribe of NE*	1	1	100%

Tribal Participation Monitored in Ramsey County

By: Kristen Talbert

The table below represents the number of hearings and the tribes present at each hearing. Note the additional column, ICWA Pending/Non-ICWA. This column is to represent cases that entered as ICWA, however were found to have Non-ICWA status or remained ICWA Pending during the monitoring process. Ramsey County is flagging cases as ICWA at Intake as per policy, however the cases are staying in this pending status for extended periods of time. Some possible reasons for this is Ramsey County has not yet notified the tribe, the tribe has not responded, or there are multiple possible tribes. Ramsey County is working on their ICWA flagging issues.

TRIBE	NUMBER OF HEARINGS	TRIBE PRESENT	ICWA PENDING/ NON-ICWA
Blackfeet Nation	1	-	
Bois Forte Band of Ojibwe	2	-	
Cherokee Nation	4	-	1
Cheyenne River Sioux	2	-	
Kiowa Tribe of Oklahoma	2	2	
Lac Du Flambeau	1	-	
Leech Lake Ojibwe	4	3	
Mescalero Apache	1	1	
Mille Lacs Band of Ojibwe	2	-	
Turtle Mt. Ojibwe	2	-	2
Omaha of Nebraska	1	1	
Red Lake Ojibwe	6	-	5
Rosebud Sioux/Sicangu	2	2	
St. Croix Chippewa of WI	2	-	2
Santee Sioux	1	-	1
Sisseton-Wahpeton Dakota	3	-	1
Spirit Lake Dakota	1	-	
White Earth Ojibwe	12	11	1
Winnebago of Nebraska	1	1	
Yankton Sioux	1	-	
Unknown	1	-	1

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Violations: Hennepin County

By: Mallory Moon

Hennepin County was in compliance with ICWA 90% this quarter. (Please note; a larger number of hearings were monitored.) The 10% of non-compliance is listed below:

On April 2, 2014:
Judge Norris Presiding: Permanency: A/D hearing. The department after 90 days did not have a Qualified Expert Witness to support out-of-home placement.

On April 2, 2014:
Judge Norris Presiding: CHIPS: A/D hearing. The Mother was not served with the petition.

On April 9, 2014:
Judge Klein Presiding: Permanency: Pre-Trial hearing. The start time for this hearing was changed upon request of Father's attorney and no notice was given to the Father. Also, the Father's attorney did not appear for him.

On April 10, 2014:
Judge Lefler Presiding: Permanency: Disposition-Review hearing. The department after 90 days did not have a Qualified Expert Witness to support out-of-home placement.

On April 22, 2014:
Judge Klein Presiding: CHIPS: A/D hearing. Active efforts were not determined and out-of-home placement was ordered. The County Social Worker agreed to help the Mother obtain her MN ID, so the Father could establish paternity, so the Tribe could intervene. (ICWA through the Father.) At the time of removal these active efforts were not met and the Tribe therefore could not intervene, support or give recommendations for removal.

On April 28, 2014:
Judge Piper Presiding: CHIPS: Disposition-Review hearing. The department after 90 days did not have a Qualified Expert Witness to support out-of-home placement.

On April 28, 2014:
Judge Lefler Presiding: CHIPS: Trial hearing. The department after 90 days did not have a Qualified Expert Witness to support out-of-home placement.

On May 7, 2014:
Judge Klein Presiding: Permanency: Disposition-Review hearing. The department after 90 days did not have a Qualified Expert Witness to support out-of-home placement.

On May 21, 2014:
Judge Lefler Presiding: Permanency/TPR: EPC hearing. No notice was given to the Tribe.

On May 28, 2014:
Judge Klein Presiding: CHIPS: Disposition Review hearing. The department did not have a Qualified Expert Witness to support out-of-home placement.

On June 18, 2014:
Judge Klein Presiding: CHIPS: Pre-Trial hearing. The department did not have a Qualified Expert Witness to support out-of-home placement.

On June 18, 2014:
Judge Piper Presiding: CHIPS: Pre-Trial hearing. No notice was given to the Tribe.

On June 24, 2014:
Judge Klein Presiding: CHIPS: A/D hearing. No notice was given to both the Tribe's involved and both parents. The Judge did recognize this notice issue and continued the A/D for the parents.

Violations: Ramsey County

As reported in quarter one parents are still not receiving proper notice under ICWA (a notice of rights is to be served with the petition). ICWA Compliance Monitor met with Ramsey County to discuss system barriers contributing to this issue. Work to resolve proper notification is ongoing. Due Process/ICWA Issues include:

Clients are not being served petitions until the EPC hearing. If a client does not show up to the hearing, he/she does not get served. Judges have still found active efforts. This has been an issue in past reports and continues to be an issue.

Clients being served at the Admit/Deny hearing, resulting in untimely notice. Best practices would be to serve the clients 10 days prior to hearing.

Unsupervised student attorneys representing RCCHSD, in violation of General Student Practice Rule 1.04.

Reference the following figures to see statues that correlate with these violations.

Violations Correlated with the ICWA:

25 U.S. C. Section 1912(a) “Notice; time for commencement of proceedings; additional time for preparation. In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child’s tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention.”

25 U.S.C. Section 1911(c) states, “In any state proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child’s tribe shall have the right to intervene at any point in the proceeding.”

Violations Correlated with General Student Practice Rule:

The attorney who supervises a student shall:

(1) be a member of the bar of this court;
(2) assume personal professional responsibility for and supervision of the student's work;
(3) assist the student to the extent necessary;
(4) sign all pleadings;
(5) appear with the student in all trials;
(6) appear with the student at all other proceedings unless the attorney deems his or her personal appearance unnecessary to assure proper supervision. This authorization shall be made in writing and shall be available to the judge or other official conducting the proceedings upon request.

Minneapolis American Indian Center's Mission Statement: Provide excellent services that help meet the needs of the American Indian community within a foundation of cultural values.

Minneapolis American Indian Center
1530 East Franklin Avenue
Minneapolis, MN 55404
612-879-1742
www.maicnet.org

Ain Dah Yung Center's Mission Statement: Provide a healing place in the community for American Indian youth and families to thrive in safety and wholeness.

Ain Dah Yung (Our Home) Center
1089 Portland Avenue
St. Paul, MN 55104
651-227-4184
www.adycenter.org

Jacob Day: New QUICWA Administrator

By: Mallory Moon

Jacob Day, Wasa Gineu Inini (Far away eagle man) and Wasay Geishik (Moonlight through the Cedar), of the Marten clan is from Northern Minnesota.

He grew up in the Twin Cities area and has lived and worked across the state always helping those in need. He received his Bachelors of Science in Game Design and Development from Brown College in 2009 with a focus on Project Management. With a strong technical background, Jacob has always been an early adapter of new technologies and helps to develop and maintain them.

He has over a decade of management experience, managing over 150 employees in fast paced environments and record success in increasing productivity.

When Jacob is not at work he remains active in the Leech Lake tribal community with his family's sweat lodge and Big Drum. His wide array of hobbies extend from computers to golf and he always enjoys sitting around with others and talking the night away.

We at the Minneapolis American Indian Center are happy to welcome Jacob to our team and look forward to working with him!

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NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

ISSUE BULLETIN

Improving Compliance with the Indian Child Welfare Act:

A Guide for Juvenile and Family Courts

NCJFCJ
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WWW.NCJFCJ.ORG

Improving Compliance with the Indian Child Welfare Act: A Guide for Juvenile and Family Courts

Bulletin authored by Model Court Liaisons of the National Council of Juvenile and Family Court Judges:

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The National Council of Juvenile and Family Court Judges®, headquartered on the University of Nevada campus in Reno since 1969, provides cutting-edge training, wide-ranging technical assistance, and research to help the nation's juvenile and family courts, judges, and staff in their important work. Since its founding in 1937 by a group of judges dedicated to improving the effectiveness of the nation's juvenile courts, the National Council of Juvenile and Family Court Judges has pursued a mission to improve courts and system practice and to raise awareness of the core issues that touch the lives of many of our nation's children and families.

This Technical Assistance Bulletin is a publication of the National Council of Juvenile and Family Court Judges in collaboration with Casey Family Programs, whose mission is to provide, improve – and ultimately prevent the need for – foster care, and is a product of Cooperative Agreement number 2010-DD-BX-K026 through OJJDP. Points of view or opinions are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice or Casey Family Programs. Reproduction of this publication for non-commercial education and information purposes is encouraged, and must include the copyright notice and attribution to:

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Cover photo: Omashkoonce McCauley-Santos - Ojibwe and Omaha Grass Dancer - Age 5
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Background and Purpose

In 2007, the Lead Judges of the National Council of Juvenile and Family Court Judges' (NCJFCJ) Model Courts Project came to an historic decision to pursue a shared national goal to reduce the disproportionate representation and disparate treatment of children and families of color in dependency court systems. The Courts Catalyzing Change: Achieving Equity and Fairness in Foster Care initiative (CCC), jointly supported by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and Casey Family Programs, was developed to create and disseminate judicial tools, policy and practice guidelines, and action plans for courts to reduce disproportionality and disparities for children and families, locally, statewide, and nationally.[1] This initiative calls attention to the disparate outcomes experienced by children of color, including Native[2] children who enter care at a rate two times higher, and in some states at a rate of eleven times higher, than their representation in the general population.[3]

> The training on the history and spirit of ICWA, including listening to the stories of the adoptees was life changing! It was worth flying across the country just to hear.
> – Judge Jeri Beth Cohen, Florida Statewide Model Court

The QUICWA Compliance Collaborative of the Minneapolis American Indian Center (MAIC)[4] is a national consortium of Indian tribes, urban organizations, and advocacy groups whose members use ICWA performance measures to advocate for change in the behaviors, practices and policies of child welfare systems throughout the country. NCJFCJ joined the QUICWA Compliance Collaborative in 2010 and has formed an ongoing partnership with the MAIC to bring focus to the role judges have in achieving ICWA compliance.

NCJFCJ DEPENDENCY MODEL COURTS

Alabama-Coushatta Tribe of Texas
Austin, Texas
Baltimore, Maryland
Chicago, Illinois
Dallas, Georgia
Court
Gila River Indian Community
Hattiesburg, Mississippi
Honolulu, Hawai'i
Livingston County, Michigan
Las Vegas, Nevada
Los Angeles, California
Mississippi Band of Choctaw Indians
Newark, New Jersey
New Orleans, Louisiana
New York, New York
Portland, Oregon
Prince George's County, Maryland
Seattle, Washington
Milwaukee, Wisconsin
Yurok Tribe

Statewide Model Courts
Florida
Kentucky
New Hampshire
New York

Senior Model Courts
Charlotte, North Carolina
Cincinnati, Ohio
Des Moines, Iowa
Indianapolis, Indiana
Reno, Nevada
Salt Lake City, Utah
San Jose, California
Tucson, Arizona
Washington, D.C.

In December 2011 the Lead Judges of the NCJFCJ dependency Model Courts met to better understand the reasons the Indian Child Welfare Act (ICWA) was enacted and the experiences of Native children in state child welfare systems. The judges listened to powerful testimony from Native adoptees and a birth mother, each of whom experienced the loss of connection and culture through their experiences in state child welfare systems. They learned about the history of child welfare in Indian country and systematic

1 To learn more about the National Council of Juvenile and Family Court Judges, the Model Courts Project, and the CCC initiative visit www.NCJFCJ.org.
2 For purposes of this document "Native" refers to American Indian and Alaskan Native populations.
3 See Padilla, J. & Summers, A. (2011). Disproportionality rates for children of color in foster care. National Council of Juvenile and Family Court Judges.
4 More information is available from the Minneapolis American Indian Center at www.maicnet.org

state and federal practices to purposely break up tribal families.[5] These practices included removing thousands of Native children from their families and tribes, placing children in boarding schools far from home for years at a time. The Indian Adoption Project undertaken by the Child Welfare League of America and the Bureau of Indian Affairs placed Native children in foster care for adoption by non-Native families. The legacy of these policies and their negative impacts on tribal communities and families continues today.

This testimony, along with presentations from tribal judges and other experts, helped the Lead Judges understand the importance of tribal children maintaining connections to family, community, and culture. Congress recognized the significance of these connections more than 30 years ago in the findings set forth in the ICWA:

> …there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe; that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families…[6]

With a deeper understanding of the impact of past governmental policies on Native children and their families, and a recognition that the ICWA's vision of keeping Native children connected with their tribal heritage is still unrealized, NCJFCJ's Model Court Lead Judges committed to improving compliance with the ICWA in their local jurisdictions.

With vision and commitment both on- and off-the-bench, judges have the power to make change. The Model Courts, the CCC initiative, and the work described in this publication are built on the premise that judges are gatekeepers to the foster care system. As gatekeepers, they are capable of initiating systems change through their leadership of a multidisciplinary collaborative body. No child enters or leaves foster care without a judge's order. Children's experiences are impacted by the decisions made and expectations set by judicial officers.

The ICWA is important even in states without federally-recognized tribes within their boundaries and in states with relatively low numbers of Native people. Data from the 2010 census show that 78 percent of Native people live in urban settings, not on tribal land, and that the population of tribal people living off tribal lands is growing. Regardless of the make-up of its population, it is the state court's responsibility to follow the ICWA. Commitment and partnerships from all involved in child welfare are necessary to achieve full ICWA compliance.

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5 Video and other resources from this meeting are available at http://ncjfcj.org/our-work/tribal-work

6 25 USC § 1901, et. seq.

In addition to the ICWA itself, four tools are available to help examine current court and system practices, identify improvements needed, and select specific practices and processes to follow for ICWA compliance:

- Improving Compliance with the Indian Child Welfare Act Discussion Guide, adapted from the California American Indian Enhancement Project's (CAIEP) "Implementation Toolkit."[7] The section of the document entitled "Continuum of Readiness" can assist child welfare systems in evaluating current resources and needs. A sample of the Discussion Guide is included at the end of this document and is available on the NCJFCJ website.

- The QUICWA Performance Checklist developed by the Minneapolis American Indian Center (MAIC) and the ICWA Performance Measurement Tool developed by the NCJFCJ are data collection tools to obtain ICWA performance measures in child abuse and neglect hearings. Either tool may be used depending on user needs.

- Improving Compliance with the Indian Child Welfare Act Action Planning Worksheet can be used by courts to develop specific plans aimed at achieving full compliance with the ICWA. A sample of the Action Planning Worksheet is included at the end of this document and is available on the NCJFCJ website.

- Indian Child Welfare Act Checklists for Juvenile and Family Court Judges[8] is a bench tool for judges and other professionals to follow the provisions of ICWA in each hearing involving Native children and families.

> I was struck by Rachael Kupcho's message that sometimes "love is not enough." We can provide children with affection, care and resources. But, there is no substitute for family. This is particularly true for Native American children who have a unique social and cultural heritage.
> – Judge Ned Gordon, New Hampshire Statewide Model Court

This technical assistance bulletin provides juvenile and family courts with practice recommendations and tools to improve compliance with the letter of the ICWA as well as with the "spirit of the ICWA" through services and supports. The first, most critical and ongoing step is to develop respectful and authentic relationships with tribes to fully implement the ICWA and best serve Native children. Following the development of relationships, courts should collaborate to examine practice, build understanding through training, develop an action plan, and monitor the action plan to ensure accountability and progress. Judges and child welfare workers must commit to a course of action that is inclusive of tribal voices and that leads to real and sustainable change for Native children and families.

The recommended practices below are based on the framework of judicially-led collaborative systems change processes where all stakeholder groups are represented at the table and contributing to the systems change work, such as those utilized in NCJFCJ Model Courts. A judicially-led collaborative

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7 For more information, please see the American Indian Enhancement Project website at http://calswec.berkeley.edu/toolkits/implementation-toolkit-american-indian-enhancement-project/implementation-toolkit-american-indian-enhancement-project. The continuum was developed by Tom Lidot (2009).

8 Available at http://ncjfcj.org/our-work/tribal-work

consists of a designated lead judge and key stakeholders from the court and the community. These include social service agencies, prosecuting attorneys, attorneys for the parents, guardians ad litem, court staff, tribal representatives, Court Appointed Special Advocates (CASA) volunteers, citizen review board members, foster youth alumni, parents who were previously involved in the child welfare system, and any other relevant participants. A judicially-led collaborative is the forum in which key decision-makers and system partners identify strengths and barriers to effective court and system practice and develop action plans that are built upon strengths to eliminate barriers and improve outcomes for children and families.

Step One: Develop Meaningful and Ongoing Collaborative Relationships

Developing meaningful and respectful relationships with tribal partners is critical to improving a state court's ICWA compliance because it is the first step to understanding the significance of keeping Native children connected with their culture and community. "The extent to which tribal and state cooperation succeeds or fails depends in large part upon the ability to understand each other's philosophical, legal, and historical realities. Cultural barriers to communication can, if left unattended, prevent meaningful cooperation from taking place."[9] This section of the guide provides strategies for juvenile and family courts and court systems to identify, reach out, and develop essential relationships.

The approach to tribal engagement and working with tribes should come from a place of honor, respect, and mutual learning. During the 2010 White House Tribal Nations Conference, the President shared this statement:

We know that, ultimately, this is not just a matter of legislation, not just a matter of policy. It's a matter of whether we're going to live up to our basic values. It's a matter of upholding an ideal that has always defined who we are as Americans… and I'm confident that if we keep up our efforts, that if we continue to work together… we will achieve a brighter future for the First Americans and for all Americans.

It has become the policy[10] of this nation to value tribal consultation and begin a new path of tribal-state relations which is a very different approach from the past. Relationship building with tribal representatives may take time, as governmental practices in the past have ignored, diminished, and were destructive to tribes by forcing assimilation and termination.

Genuine relationship building requires respect and an understanding of historical and political realities. Effective collaboration begins with carefully planned approaches to acknowledging historical trauma and striving to achieve an understanding of each other's perspectives. While ICWA only applies to federally recognized tribes, the "spirit of the ICWA" is so important to Native children's

safety, permanency, and well-being that the recommended best practices and tools in this bulletin should be applied to all Native children, regardless of federal tribal status. Many states have passed

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9 Aliza G. Organick & Tonya Kowalski, From Conflict to Cooperation: State and Tribal Court Relations in the Era of Self-Determination, 45 CT. REV. 48 (2008).

10 Executive Order 13175. See http://www.whitehouse.gov/the-press-office/memorandum-tribal-consultation-signed-president.

laws to apply the ICWA to state recognized tribes. For example, in 2006, the California Legislature passed Senate Bill 678, which allows participation of non-federally recognized tribes in dependency matters. Advocating for similar state legislation is a strategy the judicially-led collaborative could consider when developing an action plan.

Complying with ICWA is the state court's responsibility, however, each gathering of the collaborative builds the foundation for genuine state-tribal relationships and improved compliance with the ICWA. Court system professionals can approach these gatherings as opportunities to understand more about tribal culture and respectful approaches for establishing long-lasting relationships.

Meaningful relationship building requires:

- Respectful communication[11]

- Mutual learning

- Building trust through ongoing collaboration

The judicially-led collaborative should:

- Identify tribes within the state and in neighboring states, including tribes that are not federally or state recognized using the Federal Registry to obtain contact information.[12] If there are no tribes within the state identify tribes outside of the state whose members may be represented in the child welfare population.

- Research the state and local history regarding tribes. Learn about tribes that were removed from their lands within state borders, relocated, or extinguished.

- Determine if the tribes have a court, problem-solving council, or other resolution process in the community. The judge or judicial officer should reach out to the tribal court judge or tribal representative personally. This may require a series of phone calls or an in-person meeting, for example for coffee or lunch, to develop rapport and begin to build a meaningful relationship.

- Visit a tribal community to observe the tribal court and to learn more about the community culture. Be sure to ask the tribal court judge about how to follow tribal protocols.

- Invite the tribal court judge and/or tribal representatives to participate in the next collaborative meeting and ask the tribal court judge and/or tribal representative to talk about the tribal community, its history, tribal family law, and parenting practices. Ask to learn about:

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11 It is important to demonstrate respect in a way that others consider respectful, not just what the dominant culture considers respectful. The collaborative should become familiar with protocol prior to meeting with the tribal court judge. Tools such as Tribal STAR "Tips for Following Protocol When Working with Tribal Communities" are a valuable resource. Available at http://theacademy.sdsu.edu/TribalSTAR/PDF%20Files/TipsforProtocol.pdf

12 The Federal Registry includes the current list of designated tribal agents for service of notice. It is available from the Bureau of Indian Affairs at www.BIA.gov.

- o The tribe's successes and challenges regarding child welfare cases in state courts; and

- o The services the tribe can provide for children and families, and any state services available to assist.

• Ask a tribal court judge or tribal representative to participate in the judicially-led collaborative as an active stakeholder. The knowledge and expertise that this person will bring can help the collaborative more effectively problem-solve and improve the well-being of Native children and families. Tribes are not required to comply with the ICWA; however, they have a vested interest in the state court following the law.

• Identify the urban Indian organizations in the state.

• Identify existing resources and ICWA advocates or specialists within the state, who may be located at universities, state agencies, and local non-profit organizations and who have relationships with tribes or are working with tribal communities.

• Encourage work on a statewide level. Consider convening a tribal court-state court forum to improve relationships and the functioning of tribal and state judicial systems. Work with the state Court Improvement Project (CIP) to assist in fulfilling the CIP's mandate of meaningful and ongoing engagement with tribes.

The NCJFCJ can:

• Assist in identifying tribes and urban Indian organizations within the state and elsewhere in the country.

• Facilitate initial communication between the state court judges and tribal judges.

• Provide tools and sample protocols for inviting the tribal court judge and tribal council to the jurisdiction.

• Provide other targeted technical assistance relevant to developing relationships between state courts and tribal courts, councils, and communities.

Step Two: Build Understanding Through Training

It is essential for judges and child welfare stakeholders to develop solid working knowledge of the requirements of the ICWA, as well as an understanding of why the law is necessary in order to achieve full compliance. ICWA trainings should include an understanding of tribal sovereignty, intergenerational trauma, institutional and structural racism, and implicit bias. In the process of examining the history of institutional and structural racism, the court system should engage in *Courageous Conversations*[13] facilitated by an expert so each member of the collaborative has an opportunity to examine his or her own unconscious biases and belief systems, and their effect on decision-making in the child welfare system.

13 Casey Family Programs. (2008). Knowing Who You Are.

> We have a lot to learn about allowing families to have a voice in what will happen to their children. It is really clear that it is all about relationships and how we need to build upon them. I am learning patience and the importance of allowing stories to be told because the value of these stories is more important than time.
> – Judge Patricia Clark, Seattle, Washington Model Court

A multidisciplinary approach to training should be developed in collaboration with tribal partners, including tribal faculty, especially the voices of those who have experienced the child welfare system.

Training should include information on:

- Tribal sovereignty and the unique political status of tribes
- The history and understanding of "why" the ICWA was enacted
- The spirit of the ICWA
- Historical and intergenerational trauma
- ICWA inquiry and notification to tribes
- Tribal intervention and jurisdiction
- Active efforts and when active efforts apply
- Use of qualified expert witnesses
- Placement preferences
- Evidentiary standards throughout the child welfare case

> There is a direct tie between a court's or agency's respect for federal and state Indian Child Welfare Act (ICWA) laws and their understanding of Tribal sovereignty.
> – Professor Kurt D. Siedschlaw, University of Nebraska at Kearney

The judicially-led collaborative should:

- Assess the training needs of the judges and stakeholders.
- Involve tribal voices in training, including local and state agencies, tribal colleagues, directors of urban Indian organizations, and national partners (e.g., National Resource Center for Tribes, N National Resource Center for Legal and Judicial Issues), and contribution from Native adoptees and birth parents.
- Work with partners, including the state CIP to establish a series of multidisciplinary trainings that

include the key components above.

- Commit to ongoing training.

The NCJFCJ can:

- Serve as a liaison for tribal engagement with federally recognized tribes and urban Indian organizations, as well as state recognized tribes, and non-recognized bands, tribes, and Native communities.

- Assist with developing a training agenda.

- Connect the judicially-led collaborative with local and national speakers to facilitate the ongoing conversation about race, intergenerational trauma, and the ICWA, including experts able to provide first-hand testimony of their experiences in the child welfare system.

Step Three: Assess Current Practice

Once new and existing collaborative tribal partners have been identified and stakeholders have received training, the next step is to begin to work together to exchange information about child welfare practices in state and tribal systems in order to coordinate efforts where necessary. To achieve ICWA compliance it is essential at this early stage to assess the court and child welfare system's capacity to collect and evaluate data, including baseline data, so compliance can be measured. The work the collaborative accomplishes through information sharing and assessing practice is paramount to achieving the goal of full ICWA compliance and improving outcomes for Native children. Without it, the collaborative is subject to using a decision-making process that lacks the necessary information and insight required to fully implement the ICWA to the letter.

Once data is available, courts should be mindful of the fact that tribes have a vested interest in their children. Data involving tribal members represents the tribe's story of what is happening to its children. Since the tribe should be the one to tell its own story, whenever possible the tribe should be involved in how the data will be shared to develop strategies for achieving full ICWA compliance.

Assessment should include:

- Discussing successes and challenges in current and past initiatives

- Examining baseline data and information related to current practices

The judicially-led collaborative should:

- Review existing written materials from the court and child welfare agency describing policies and practices related to the ICWA.

- Utilize the Improving Compliance with the Indian Child Welfare Act Discussion Guide to discuss current practice, resources, and challenges to ICWA compliance.

- Examine state and federal circuit appellate cases to identify common issues preventing full compliance.

- Identify resources, capacity, and next steps to collect and evaluate data.

- Determine what the desired end result would look like to both the tribe and the state court jurisdiction when the ICWA is followed in its entirety (such as shifts in organizational culture and practices) and begin to strategize how to achieve the desired result.

- Utilize a performance measurement tool such as the QUICWA Performance Checklist.

- Decide how data will be used to improve practice and expand partnerships with tribes.

The NCJFCJ can:

- Provide assistance with research design, data collection, and evaluation.

- Assist with assessment of current practice, including conducting case file reviews.

- Provide examples of strategies used in other jurisdictions to improve compliance.

- Connect courts with partners such as the MAIC for assistance with research.

Step Four: Action Planning for Change

Action-planning is critical to achieve full ICWA compliance. Child welfare agencies, courts, and state CIPs have adopted a Continuous Quality Improvement (CQI) approach to action planning. This involves a "complete process of identifying, describing and analyzing strengths and problems and then testing, implementing, learning from and revising solutions."[14] By following a CQI approach to action planning, judicially-led collaboratives can better assess and respond to challenges in complying with the ICWA and measure the results of their efforts.

Action planning participants should include the judicially-led collaborative, tribal representatives and/or urban Indian organizations, and university-based professionals, or CIP representatives who may be able to assist with data collection and performance measurement.

The action plan should include:

- A description of each strategy, step, or activity

- Persons responsible for each strategy, step, or activity

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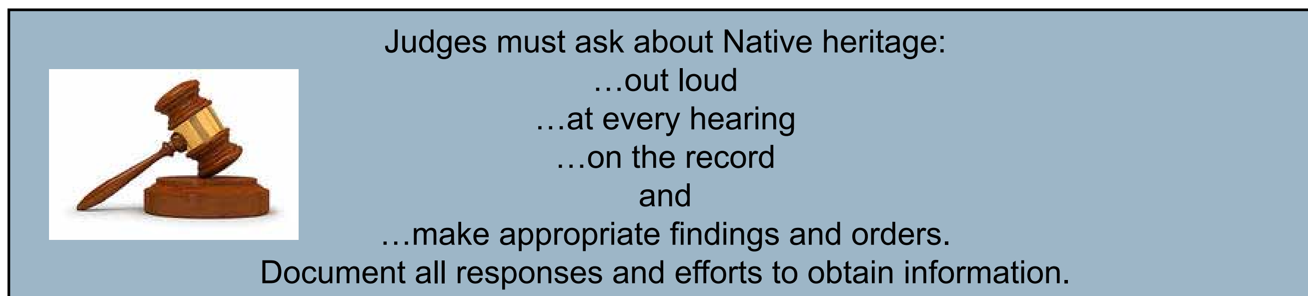
14 Peter Watson, National Resource Center for Organizational Improvement, presented at the 2012 Court Improvement Program Meeting, June 28, 2012. For more Information on CQI and how it is being used in child welfare and court systems visit http://www.americanbar.org/groups/child_law/what_we_do/projects/rclji/courtimp.html

• Time frames for completing the strategy, step, or activity

• Resources or materials needed

• Data or evidence to be collected to indicate accomplishments

• Plan for dissemination of results, both the successes and challenges



Based on the NCJFCJ's work with state and tribal court judges, the Model Court Liaisons have identified critical strategies and steps for judicially-led collaboratives to include in their action plan. These strategies are listed in detail below.

The judicially-led collaborative should:

• Ensure that judges and system stakeholders are asking if the child has Native heritage prior to the initial hearing and in every hearing following the initial hearing if applicability has not been determined.

• Child welfare workers should document who was asked and when they were asked and keep a running log in the case record. This will ensure due diligence and help determine ICWA applicability. The applicability or inapplicability of the ICWA must be asked about in every case and can never be assumed.

• Apply the higher standard required by ICWA when removing a child. There must be clear and convincing evidence that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

• Develop a list of qualified expert witnesses to rely on in hearings.

• Monitor the efforts made by the child welfare agency to ensure they qualify as active efforts.

• Engage with families and tribal members in the courtroom.

• Ask why the case is not in the tribal court at each hearing.

• Keep informed of culture-specific services available to Native families; advocate for the expansion of culture-specific services, including the addition of tribal foster placements.

- Develop mechanisms to collect and analyze data regularly.

- Review status of the action plan implementation; discuss successes as well as barriers for 100% ICWA compliance and correct course, when necessary, by modifying an action plan item.

- Take full advantage of the expertise and resources offered by the NCJFCJ.

- Think BIG and commit to a vision of 100% ICWA compliance by collaborating with tribes, the CIP, and child welfare stakeholders to move forward with a strategic plan of action.

The NCJFCJ can:

- Assist with data collection and link the collaborative with other resources such as university partners that can provide additional assistance.

- Provide samples of protocols, procedures, and forms used in other jurisdictions.

- Facilitate an action planning process, as funding allows.

- Assist with tracking progress on the action plan and offer recommendations when barriers to implementation are encountered.

- Provide cutting-edge information, research, and tools to guide improvement of ICWA compliance efforts.

- Indentify national training opportunities and resources

> One of the great lessons I've learned as a judicial leader is how important it is to follow-up and follow through on initiatives. I was shocked when confronted with the history of how our Indian families and communities were cruelly and systematically broken down by our government. I have come to understand that, because this is part of our history as Americans, it compels a responsibility for all of us to address, not just those who live in areas with a large Native population. Faced with these harsh realities and a sense of responsibility, it is easy to be inspired to want to make a change. All your best intentions, however, are only as good as your willingness to continue to stand behind them. To really make a difference, you must continue to revisit your initiatives and find ways to implement your intentions into a new way of business.
> –Judge Darlene Byrne, Austin, Texas Model Court

Successful action planning to achieve full ICWA compliance requires ongoing and active monitoring of plan implementation. It is critical for the collaborative to meet regularly to check on implementation progress. Regularly scheduled meetings allow the collaborative to stay on task with the implementation schedule, identify successes and barriers, and modify next steps as needed.

Conclusion

Judges have a great responsibility to protect our nation's children and correct a past that undermined Native families and cultural connections. Judicially-led collaboratives have an opportunity to bring knowledge and awareness, and to inspire a vision to fulfill the intent of the ICWA. With broad-based commitment to full ICWA compliance, state courts and child welfare systems can have a transforming effect on many lives, not only for the children and families before the court, but for the lives of generations to come.

Resources

National Council of Juvenile and Family Court Judges: http://www.ncjfcj.org

National Resource Center on Legal and Judicial Issues:http://www.apps.americanbar.org/child/rclji/home.html

National Resource Center for Tribes: http://www.nrc4tribes.org/

National Indian Child Welfare Association: http://www.nicwa.org

Minneapolis American Indian Center, QUICWA Compliance Collaborative: http://www.maicnet.org

Tribal STAR, a program of the Academy for Professional Excellence, San Diego State University School of Social Work: http://theacademy.sdsu.edu/TribalSTAR

Tribal Law and Policy Institute: http://www.tribal-institute.org/lists/icwa.htm

American Indian Enhancement Project of California Toolkit: http://calswec.berkeley.edu/CalSWEC/AIE/AIE_home.html

Tribal Projects Unit of the California Center for Families, Children, & the Courts: http://www.courts.ca.gov/3067.htm

Native American Rights Fund, Practical Guide to the Indian Child Welfare Act: http://www.narf.org/icwa/index.htm

Center for Court Innovation: http://www.courtinnovation.org/research/21/publication

ICWA Desk Guide: http://hss.state.ak.us/ocs/Publications/pdf/ICWA_Brochure.pdf

Working Effectively with Tribal Governments (online cultural competency course): http://tribal.golearnportal.org

SAMHSA Culture Card: http://store.samhsa.gov/shin/content/SMA08-4354/SMA08-4354.pdf

Indian Child Welfare Act Law Center: http://www.icwlc.org/training.html

Child Welfare Information Gateway. (2012). Tribal-State relations. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau: http://www.childwelfare.gov/pubs/issue_briefs/tribal_state/index.cfm

Child Welfare Information Gateway: http://www.childwelfare.gov/systemwide/courts/icwa.cfm

This list is not intended to be exhaustive. Please email us at caninfo@NCJFCJ.org if you have identified additional resources that could assist courts in engaging with tribes and complying with the Indian Child Welfare Act.

Preparing for a Trauma Consultation in Your Juvenile and Family Court

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OJJDP

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*Being **trauma-informed** means asking*
"What happened to you and how can we help?"
versus
"What is wrong with you?".

Executive Summary

The evidence is clear: traumatic stress can have substantial negative and lasting impacts on human development, functioning, and quality of life. An ever-growing body of research illuminates how child abuse and neglect, domestic violence, criminal victimization, and a host of other stressful experiences place people at risk for physical and mental health challenges, socio-legal problems, and even early mortality. The long-term human, social and economic costs associated with adverse experiences and traumatic events are substantial and emphasize the critical need for trauma-informed prevention and intervention to promote the lifelong well-being of youth, families, and communities.

Across the constellation of stakeholders working with our nation's most vulnerable children and families, juvenile and family judges and courts are in a unique position to promote healing and prevent future trauma. In 2013, the National Council of Juvenile and Family Court Judges (NCJFCJ) undertook development of a court trauma consultation protocol in response to an increase in requests for assistance from courts and allied systems (e.g., juvenile probation) seeking to become trauma-informed. Although the NCJFCJ and organizations such as the National Child Traumatic Stress Network (NCTSN) have an extensive history of providing training and technical assistance to courts on traumatic stress – there was no known protocol for conducting this type of consultation and subsequent technical assistance to promote trauma-informed care in the unique environments and institutions of courts.

Based on work in other child and family service systems, the NCJFCJ collaborated with affiliates from the NCTSN and select courts to develop a trauma consultation protocol for juvenile and family court settings. With funding support from the Office of Juvenile Justice and Delinquency Prevention, the development team worked with six pilot courts from a range of geographically diverse jurisdictions to explore what it means to be a trauma-informed court. The initial conceptual framework was founded on the following key principles: (1) courts have an integral role in the healing process for the youth and families that they serve; (2) all court stakeholders should experience a sense of safety, personal agency, and connectedness when engaged with the court; and (3) court environment, practice, and policy impact all court stakeholders. Throughout this framework we embraced a public health orientation and the importance of universal precautions (treating all who come before the court as if they might have a history of trauma) when working with populations with a high likelihood of injury.

The information presented in this document aims to help judges and courts decide whether a trauma consultation is appropriate for their jurisdiction and to outline what courts can expect before, during, and after a consultation. It is important to note this manual is not a 'how to' guide for courts to conduct their own internal trauma consultations. The trauma consultation process is nuanced and courts can face unintended consequences in attempting to conduct its own consultation. Thus, we strongly recommend that courts engage experienced and objective external consultation teams as they strive to become more trauma-informed through a consultation process.

Why Should Juvenile and Family Courts Be Trauma-Informed?

Stress is a normal and adaptive physiological response to fear. Stress serves an important survival function in that it helps us respond to danger very quickly and with little thought – typically through "fight, flight, or freeze" mechanisms. Everyone has experienced, and in many cases, benefited from stress responses. However, when stress overwhelms our ability to function, it can result in what is known as toxic stress, traumatic stress or posttraumatic stress disorder (PTSD).

Every day thousands of youth and families walk through the doors of juvenile and family courts[1]. Prevalence data suggests many of these people have been exposed to severe and chronic traumatic events in their lives and consequently have developed symptoms and behaviors associated with complex traumatic stress (Buffington, Dierkhising, & Marsh, 2010). As a result, it is not unusual for these individuals to present with problems in a variety of areas such as social, emotional, behavioral and cognitive development. They are also likely to experience co-occurring mental health disorders (e.g., depression, substance abuse, etc.), as well as physical health problems. Ultimately, it is likely those coming to the attention of the court have been injured in some way either psychologically or physically.

In 2012, more than three million children were reported to authorities for abuse or neglect, with approximately two million of those cases being substantiated (Department of Health and Human Services, 2013). These reports overwhelmingly included allegations of neglect (78.3%) and were perpetrated by the child's parents (80.3%). The total lifetime economic burden resulting from new cases of child maltreatment in the United States was estimated to be $124 billion in 2008 (Fang, Brown, Florence, & Mercy, 2012). These estimated costs included child health care costs; adult medical expenses; lost productivity; and child welfare, criminal justice, and special education costs. Further, it has been estimated that up to ten million children per year are exposed to domestic violence, and up to 60% of these children are also exposed to other forms of child maltreatment such as physical or sexual abuse (Bragg, 2003).

In comparison to their non-delinquent peers, delinquent youth involved in the juvenile justice system tend to have higher rates of early adverse experiences such as child maltreatment, community violence and loss. Indeed, similar to youth involved with dependency court, nearly all youth who enter the juvenile justice system have histories of exposure to trauma, and many justice-involved youth

1 Juvenile and family courts, for the purpose of this document, include both state courts and tribal courts.

report exposure to chronic trauma across childhood and adolescence (Dierkhising et al., 2013). It is not surprising then that youth in the dependency system are at-risk for entering the delinquency system as evidenced by high rates of youth involved in both the child welfare and juvenile justice system (i.e., dually-involved youth; Herz, Ryan, & Bilchik, 2010). Involvement in the juvenile justice system also is expensive, with the United States incurring as estimated $8 to $21 billion each year in long-term costs alone for the confinement of youth (Justice Policy Institute, 2014).

The experience of violence within the family is detrimental to children's well-being by contributing to developmental deficits, mental health disorders, and health problems across the lifespan. Children and adolescents who are exposed to child maltreatment and/or domestic violence are at increased risk for posttraumatic stress reactions, PTSD, depression, suicide, substance use, delinquency, arrest as a juvenile and adult, and unemployment (e.g., see Child Welfare League of America, 2011). Because of these cumulative effects of exposure to domestic violence and child maltreatment, adverse childhood experiences are considered to be a substantial public health problem (e.g., see The Adverse Childhood Experiences Study). However, it is important to note that adversity and trauma do not typically occur in isolation; rather, trauma exposure itself is a risk factor for subsequent victimization making maltreated children and adolescents an extremely vulnerable population.

The long-term and costly consequences of trauma exposure emphasize the critical need for stakeholders working with our nation's most vulnerable youth and families to be trauma-informed. In the constellation of stakeholders that form the healing community, juvenile and family courts are uniquely positioned to help identify individuals who have experienced trauma, ensure provision of appropriate intervention services, and improve the health and well-being of youth, families, staff and community. In many ways, our nation's juvenile and family courts can be considered the socio-legal emergency rooms for some of our most vulnerable populations.

> We use the term 'trauma-informed' because of the large body of research, advocacy, and training that has accompanied this term compared to 'trauma-responsive' or other related terms. There has also been a more comprehensive effort within service systems and academia to develop a definition of 'trauma-informed' service systems (e.g., Dierkhising, Halladay-Goldman, & Ko, 2013; Griffin, Germain, & Wilkerson, 2012). It is from this work that we draw our knowledge base and guiding framework. The NCTSN defines a child- and family-service system as one in which all parties involved recognize and respond to the impact of traumatic stress on those who have contact with the system including children, caregivers, and service providers. Programs and agencies within such a system infuse and sustain trauma awareness, knowledge, and skills into their organizational cultures, practices, and policies. They act in collaboration with all those who are involved with the child, using the best available science, to facilitate and support the recovery and resiliency of the child and family. A service system with a trauma-informed perspective is one in which programs, agencies, and service providers: (1) routinely screen for trauma exposure and related symptoms; (2) use culturally appropriate evidence-based assessment and treatment for traumatic stress and associated mental health symptoms; (3) make resources available to children, families, and providers on trauma exposure, its impact, and treatment; (4) engage in efforts to strengthen the resilience and protective factors of children and families impacted by and vulnerable to trauma; (5) address parent and caregiver trauma and its impact on the family system; (6) emphasize continuity of care and collaboration across child-service systems; and (7) maintain an environment of care for staff that addresses, minimizes, and treats secondary traumatic stress, and that increases staff resilience (see http://nctsn.org/resources/topics/creating-trauma-informed-systems).

What are the Key Definitions for this Work?

Being trauma-informed requires court stakeholders to develop a shared meaning of key terms. Common terms and definitions related to trauma work are outlined below.

Adverse Childhood Experiences: As operationalized in the ACE study, these include stressful experiences that occur before the age of 18 years such as divorce, abuse or neglect, substance abuse in the home, etc. Research suggests that greater numbers of ACE experienced is associated with negative outcomes throughout life, up to and including early mortality.

From a Youth's Perspective: The Impact of Trauma on Adolescents

Unfortunately many children grow up in cultures and communities riddled with violence. This constant exposure to negative role models and traumatic events influences their understanding of morality, responsibility, malevolence, and human accountability. Consider Roger, a youth who grew up around extreme violence within his community and family. When he was a young boy he hated gangs because of what he saw they did to his family; as a child he just wanted to play baseball. But, when he lost his older brother to violence he took the path he previously hated; "I became angry and hateful. That was the day I shaved my head." He then became involved in gangs, committed violence, and received life without parole for involvement in a gang shooting. Unfortunately, there are many youth like Roger who struggle with horrific traumatic events and instead of being protected from violence, become involved in violence. Youth are very sensitive to the failure of family, school, or community to protect them or carry out justice. Looking back Roger wonders, "Before my brother was murdered, I was already going down a negative path. When I was nine years old, my mom had to take me to the police station, because I had assaulted another kid with a rock. From that point on, I always had a probation officer. Why, instead of a probation officer, didn't I have a counselor, a therapist, or somebody I could talk to? Why didn't someone say, 'This kid is being violent at nine years old: what's going on at home that he's like this?'" (National Child Traumatic Stress Network, 2013).

Child Maltreatment: Any act or series of acts of commission or omission by a parent or other caregiver that result in harm, potential for harm, or threat of harm to a child or adolescent (Centers for Disease Control, 2014).

Child Traumatic Stress: Reactions to trauma that develop in children and adolescents that persist and affect their daily lives (i.e., ability to function and interact with others) after the traumatic events have ended. Traumatic reactions can include a variety of responses, including intense and ongoing emotional upset, depressive symptoms, anxiety, behavioral changes, difficulties with attention, academic difficulties, nightmares, physical symptoms such as difficulty sleeping and eating, and aches and pains, among others. Children who suffer from traumatic stress often have these types of symptoms when reminded in some way of the traumatic event (Claiming Children, 2003).

> Not all children and youth who experience a traumatic event subsequently experience traumatic stress; the development of traumatic stress depends on a variety of individual (e.g., age, gender, etc.) and situational risk and protective factors (e.g., parental support, community safety, etc.).

Chronic Trauma: Sometimes called polyvictimization, chronic trauma involves multiple or varied traumatic events such as a child who is exposed to domestic violence at home, is involved in a car accident, and then becomes a victim of community violence, or longstanding trauma such as physical abuse or war (Child Welfare Committee of the National Child Traumatic Stress Network, 2008).

Complex Trauma: The most common type of trauma witnessed in juvenile and family courts and involves exposure to chronic trauma -- usually caused by adults entrusted with the child's care, such as parents or caregivers -- and the immediate and long-term impact of such exposure on the child (Child Welfare Committee of the National Child Traumatic Stress Network, 2008).

Fight, Flight, or Freeze: The typical responses to threats that promote survival of a living organism (including humans). In other words, when faced with a serious threat we automatically seek to go on the offensive or defend our life, run away, or camouflage ourselves. In that case of the later (also known as detachment or dissociation), youth may perceive themselves as detached from their bodies (e.g., such as viewing themselves from the ceiling during stressful events) and feel as if they are in a dream or as if the experience is happening to someone else. Further, children may lose all memories or sense of the experiences having happened to them, resulting in gaps in time or even gaps in their personal history.

Hypervigilance: Abnormally increased arousal, responsiveness to stimuli, and scanning of the environment for threats that can develop after exposure to dangerous and life-threatening events (Dorland's Medical Dictionary for Health Consumers, 2007; Ford et al., 2000).

Intergenerational Trauma: Exposure of an earlier generation to a traumatic event that continues to affect the subsequent generations (American Psychological Association, Division 35, 2011).

Posttraumatic Stress Disorder: Upon exposure[2] to actual or threatened death, serious injury or sexual assault, the following symptoms persist beyond one month after the exposure: (1) experience intrusive re-experiencing symptoms (e.g., nightmares or flashbacks), (2) persistent avoidance of stimuli associated with the event(s) (e.g., person, place, object, thought, feeling or behavior) and/or numbing (e.g., lapses in memory and feelings of detachment), (3) negative alterations in cognitions and mood associated with the event(s) and (4) marked alterations in arousal and reactivity associated with the event(s) (e.g., hypervigilance) such as irritability and difficulty sleeping (Diagnostic and Statistical Manual for Psychiatric Disorders, Fifth Edition, 2013).

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2 Exposure includes direct experience of an event, including witnessing the event, learning that a traumatic event occurred to a close family member or friend, or repeated or extreme exposure to aversive details of a traumatic event (e.g., first responder collecting human remains; police officers repeatedly exposed to details of child abuse).

Posttraumatic Stress Disorder in Children: According to the DSM-V, PTSD in young children (6 years and under) manifests emotionally and behaviorally distinct from those of older youth and adults in relation to reaching to diagnostic criteria. Specifically, younger children do not need to exhibit as many traumatic stress symptoms compared to their older counterparts to be diagnosed with PTSD and functional impairment is more directly linked to the familial or caregiving dynamic. This represents a significant step towards developmental sensitivity in symptom expression.

> Although many children experiencing child traumatic stress may not have all of the symptoms necessary to receive a diagnosis of PTSD, these children and youth likely still have impairments in functioning (e.g., academic problems, arrest, etc.) related to traumatic stress reactions.

Resiliency: A pattern of positive adaptation in the context of past or present adversity (Wright & Masten, 2005). In other words, it is the ability to "bounce back" from difficult experiences (American Psychological Association, 2014).

> Although children and families who come in contact with the juvenile court may not seem resilient because of their legal problems, when one considers the amount of adversity that has accumulated within these families and across generations they are, in fact, quite resilient. It is these resiliencies on which the juvenile court can capitalize.

Secondary Traumatic Stress: The emotional duress that results when an individual is exposed to details about the firsthand traumatic experiences of another. Its symptoms mimic those of posttraumatic stress disorder (PTSD). Accordingly, individuals affected by secondary stress may find themselves re-experiencing personal trauma or notice an increase in arousal and avoidance reactions related to the indirect trauma exposure. They may also "experience changes in memory and perception; alterations in their sense of self-efficacy; a depletion of personal resources; and disruption in their perceptions of safety, trust, and independence" (National Child Traumatic Stress Network, 2014).

Traumatic Event: An intense event that threatens or causes harm to one's emotional and physical well-being (Claiming Children, 2003; Diagnostic and Statistical Manual for Psychiatric Disorders, Fifth Edition, 2013).

Traumatic Reminders: Any person, situation, sensation, feeling, or object that reminds a child of a traumatic event. When faced with these reminders, a child may re-experience the intense and disturbing feelings tied to the original trauma (Child Welfare Committee of the National Child Traumatic Stress Network, 2008).

What is the Conceptual and Operational Framework of the Trauma Consultation Team?

All stakeholders associated with juvenile and family courts can help identify individuals exposed to trauma and ensure provision of appropriate intervention services. Court hearings with robust judicial oversight offer an invaluable opportunity for communication, coordination, and accountability across stakeholders as well as case type (e.g., dependency, delinquency, divorce, custody, etc.).

Guiding Framework

Shifts in how juvenile and family courts work with children and families have been evident since the establishment of the juvenile court. For instance, the increase in juvenile crime along with the inaccurate description of youth as "superpredators" in the 80's and 90's increased the focus on punishment and led to harsher and longer dispositions for delinquent youth. More recently there is a renewed focus on rehabilitation and recovery for both families and children that come in contact with the court. At the federal and national level there is a movement towards a developmentally-informed approach to juvenile justice that reflects the growing scientific literature and our understanding that adolescents are different from adults in ways relevant for the juvenile court, such as having less ability to control impulses and appropriately consider consequences of actions (e.g., see Bonnie, Johnson, Chemers, & Schuck, 2013). As part of this move to embrace science, there has been a call to the field to make contact with the juvenile justice system "rare, fair, and beneficial" for children and families (Office of Juvenile Justice and Delinquency Prevention, 2014).

When striving to implement a developmentally-informed approach to court practice, this effort is by definition inclusive of trauma-informed practice because trauma and development are inextricably linked. Strong connections have been made between exposure to trauma and "derailed" development in that traumatic experiences change the brain in ways that cause people to think, feel and behave differently. In this approach, being attuned to what a child, youth, or family needs to promote well-being and healthy development should incorporate consideration of prior adversities regardless of the type of case before the court (e.g., dependency, domestic violence, divorce, delinquency). Further, this approach recognizes thematic and interrelated issues common among system-involved children, youth, and families: mental health, substance abuse, domestic violence, educational disengagement, and trauma or adverse experiences. Subsequently, this approach incorporates a public health orientation and recognizes that most people whom appear before the court are psychologically or physically injured in some way. Approaching injured parties through a holistic and contextual lens

encourages responsiveness to the *needs* of children and families versus processing based on the *needs* of institutions such as courts and those that seek to administer justice (e.g., hearing schedule preferences, docketing practices, paperwork requirements, staffing of information desks, etc.). For many people with a history of trauma, the judge and court are critical in identifying need and then coordinating proper interventions and evidence-based treatment to promote and sustain recovery. Responding in a developmentally-informed – and thus a trauma-informed – manner is hypothesized to enhance a sense of procedural justice and improve outcomes for both those seeking justice as well as those administering justice.

This change in focus of justice-serving systems has occurred because there have been significant advancements in science from multiple disciplines (e.g., behavioral science, developmental science, neuroscience, and public health) that have illuminated our understanding of the challenges and resiliencies of those involved in juvenile and family court.

> The shift toward trauma-informed practice and policy in juvenile and family courts is not a fad: it is a way of thinking about and responding to those injured that is supported by science.

The foundation of science-based reform is the basis for our guiding conceptual and operational framework for trauma-informed courts.

Juvenile and Family Courts are a Critical Point of Intervention in the Healing Community

Courts are part of the community and play an important role in improving the lives of youth and families. Juvenile and family courts are uniquely positioned to encourage better outcomes for youth and families because they come in contact with them when they are vulnerable and often distressed, which makes the court experience a critical time for intervention. The decisions made in a courtroom, facilitated by myriad stakeholders (e.g., attorneys, social workers, probation officers, etc.), can become more trauma-informed by incorporating such practices as ordering trauma screening, individualized trauma assessment, and **evidence-based treatment for traumatic stress.** The effectiveness of these court orders and the success of judicial decision-making are dependent on agencies and systems working collaboratively with a common understanding and vision and in a culturally-informed manner. Cross-system and cross-agency collaboration can streamline services, maximize resources by reducing duplicative services, and reduce confusion by utilizing consistent treatment and service planning.

A court that is founded on trauma-informed principles can be a safe and effective point of intervention for the youth and families that it serves. The trauma consultation team recognizes that all juvenile and family courts are unique and present with its own organizational culture based on geographic region (e.g., tribal, rural, and urban), local policy, structure of the court (e.g., separate dependency and delinquency dockets), size of the community they serve, and a host of other factors that are often out of the court's control. The trauma consultation process is intended to identify and cultivate the strengths of all of the court stakeholders within the context of the court community.

Feeling Safe, In Control, and Connected are Integral to Healing from Trauma

Courts play an important role in helping ensure injured parties experience safety, sense of personal control (i.e., agency or self-determination), and connection to positive social supports. These conditions are required to promote healing and cultivate resilience among those injured or experiencing traumatic stress.

Safety is of the utmost importance when recovering from trauma or experiencing and managing traumatic stress. If people feel psychologically or physically threatened they cannot heal from trauma and will have difficulties benefiting from services. The experience of trauma can lead to symptoms of hypervigilance that can increase ongoing perceptions of threat regardless of the degree to which there is an actual threat. Juvenile and family courts must work especially hard to minimize threats and maximize safety, both real and perceived, by those before the court in order to be effective.

Self-determination or "personal agency" is the awareness that individuals are in control of their life and active in decision-making that impacts their life. People who experience trauma can feel they have lost control over their lives or bodies, which can contribute to feelings of helplessness and shame. In order to promote healing, the juvenile court must seek to help re-establish feelings of agency and self-efficacy. This is especially difficult given the role of courts and judicial officers in making directives about system-involved children and families. Nevertheless, it is essential that the voices of youth and families are heard, validated, and that they feel they are part of the decision-making process to the best extent possible.

Social support is a protective factor that promotes resiliency in human beings. Those that have traumatic histories, due to the trauma itself or because of the problematic symptoms related to trauma exposure, are often isolated and disconnected from positive social supports. Courts can actively promote important social connections by ensuring injured parties have access to and contact with persons of character. Doing so helps injured parties heal by reducing isolation, forming positive connections, providing support, and offering a community in which to learn and practice skills important to recovery.

Trauma-informed Practice also Considers Staff Experiences

Establishing safety, promoting personal agency, and facilitating social connection does not only apply to the youth and families in the courtroom; it also applies to the stakeholders within the court (e.g., judicial officers, attorneys, court staff, clinicians, etc.). Each and every person who touches the lives of youth and families through the juvenile court are essential in the healing process, and are therefore impacted by the youth and families that they serve. Many court staff are chronically exposed to the traumatic histories of court involved children and families as well as the devastating effects of trauma on their families. Further, court environments and the administration of justice are stressful. Consequently, court personnel that do not feel safe, do not feel they can determine their own actions, and do not experience positive social support in the work environment often become vulnerable to burnout and developing secondary traumatic stress.

The Story of Michelle:

As a child, Michelle went through many negative physical and emotional experiences: her father battered her mother, there was substance abuse in the home, a neighbor sexually abused her, and she lived in a community marked by gangs and violence. Eventually, her home life became so toxic she was removed from her parents at the age of 12 and placed in foster care – only to run away after a heated fight with her foster parents over how she chose to dress. While on the run, Michelle was arrested for shoplifting, and subsequently became involved in the juvenile justice system. The years to follow were marked by an ongoing cycle of failed foster home placements, probation violations and further arrests for delinquent activities, several stays in juvenile detention, and a number of hospital stays for suicidal ideation. By the age of 16, Michelle was institutionalized after stabbing another girl during a fight at school. Her behavior in the youth correction facility is marked by conflicts with staff and other residents and regular rule violations that keep her on a restricted status. She has few positive relationships with staff and peers, and her parents rarely visit.

How would you assess Michelle's sense of safety, self-determination, and social support as conditions of healing?

Is Your Juvenile or Family Court Ready for a Trauma Consultation?

An essential component of an effective court reform effort includes the designation of a judicial leader who is willing to establish a team of key stakeholders who demonstrate strong leadership and collaboration both across and within the various components of a court system. Both the judicial leader and the court team should be willing to examine how their court processes affect everyday practice and how their practice impacts everyone involved with the court, including court staff. It is important that court stakeholders are prepared to work closely together to identify common challenges, as well as potential improvements based on evidence-based practices. As with any group - new or existing - tackling important system reform efforts, there may be periods of "forming, storming, norming, and performing" then adjourning (Tuckman, 1965).[3]

Courts should be committed to system improvement and a process of self-examination. It takes time, focus and effort to establish system-wide change. Addressing the issue of trauma, means making the commitment to put in place a number of new strategies and practices, and problem-solve unforeseen barriers as they arise. Addressing trauma is not a matter of providing a one-time training for court staff; rather, it requires champions at every level of the court system to consistently follow through on all trauma-informed improvements. The treatment of trauma itself requires special knowledge and skills, and it is critical to involve those disciplines that have such expertise, such as clinical psychologists, social workers, and other behavioral healthcare providers. Courts that have established programs and practices that can incorporate or access such expertise are well-situated to becoming a trauma-informed court.

With this context in mind, the following questions can help you determine if your court is ready for a NCJFCJ trauma consultation.

Question 1: Do you have the foundation for a successful trauma consultation?

Preparing for a trauma consultation requires an assessment of readiness. There are many steps in the process of conducting a trauma consultation in a court setting, and *judicial leadership is the*

3 Spend the time needed to assemble the group (forming). Allow for the conflicts or differences of perspectives that will emerge (storming). Work with the group to resolve differences, find areas of agreement, and figure out constructive ways to deal with the trauma issues the group perceives (norming). Put the members of the group to work to accomplish the work of the trauma consultation (performing). Celebrate successes and plan for group turnover to enhance sustainability (adjourning). In the course of this work the group will have to become more educated about trauma and its impact on adolescent and adult development.

foundation. A trauma consultation requires access to the court, access to pertinent stakeholders, and leadership/authority to complete the consultation successfully. Accordingly, the NCJFCJ recommends that a judicial officer serve as project lead. Judicial officers, by nature of their position, have the unique ability to convene stakeholders, encourage buy-in across all components of the court, and hold the court and court stakeholders accountable for completing the consultation. Further, judicial officers are uniquely positioned to implement and sustain recommendations for improving environment, practice and policy. Judges should provide leadership for:

- selecting the stakeholders who will work with the consultation team;
- helping define the scope and purpose of the consultation;
- facilitating access to the court;
- ensuring the consultation results are taken into consideration or implemented if feasible; and
- institutionalizing the consultation process as a "way of thinking" within the organizational culture of the court rather than seeing the consultation as a singular and isolated event.

Question 2: Do you have the necessary stakeholders at the table?

The leadership responsible for initiating the trauma consultation should identify the key stakeholders who will participate in and utilize the results of a consultation. Oftentimes, stakeholder groups have already been formed by the court for other projects, and those groups are ideal for implementing trauma-informed improvements. Whether using an existing group or forming a new group to inform the trauma consultation process, it is critical that:

(a) the group is of manageable size (we recommend no more than 8-10 people);

(b) only stakeholders that have a cogent role or interest in the outcome of the consultation be included; and

(c) stakeholder representatives have decision-making or resource assignment authority.

A typical stakeholder team might contain a combination of individuals from different disciplines and perspectives. Often this team is comprised of a judge, representatives from prosecution and defense counsel, child welfare and juvenile probation staff, court administration, security or law enforcement, and a court school liaison or clinical staff (e.g., court clinician) if available. CASA volunteers and community mental health professionals from outside the court system also can often provide unique perspective and expertise. Involving people from other systems that impact the lives of court-involved youth and families can bring in the broader perspective from those who many see a different part of the lives of those youth and families.

Oftentimes it is encouraged that courts consider including a "youth and parent" voice either as part of the stakeholder group or through interviews and focus groups with the NCJFCJ consultation team during the site visit. Consumers themselves, such as parents and youth who have successfully graduated from the court, can indeed be tremendous assets. However, a great deal of caution, attention, and clinical judgment must be exercised in identifying and vetting youth and family consumers to participate in the trauma consultation process. Ideally, consumer candidates should have a relatively remote history of involvement with the court and have demonstrated a stable mental health status. The process of physically returning to court or discussing their experience in the court system has the potential to remind consumers of previously feeling unsafe or scared. Thus, attention

should be paid to evaluate their personal readiness to cope with any anticipated or unanticipated trauma reminders. For this reason, we recommend that the actual NCJFCJ consultation team be consulted prior to involving and recruiting consumers to be involved in consultation activities.

Question 3: Are you and all stakeholders on the same page?

Developing a shared understanding of the purpose of the consultation (i.e., "Why conduct a consultation of your local court?") and the scope of the consultation (i.e., "What does the consultation need to cover?") is critical for success. Oftentimes, within existing stakeholder groups, the purpose of a consultation is relatively easy to establish as one part of an ongoing system improvement effort. However, it is recommended that the purpose of a trauma consultation be discussed openly so that there is a transparent and logical connection to the direction the court wants to take to continuously improve how youth, families and court staff members are treated in the system. Making the intention of the consultation explicit also helps prevent mission drift and serves as a foundation to continuously evaluate the necessity of proposed activities. In other words, a shared vision and purpose can help avoid pitfalls such as unnecessary use of resources to collect data that are not ultimately used.

Once the local stakeholder team agrees on why they want to participate in a consultation (i.e. what is the specific referral question?), and available resources are identified, it is then necessary to concretely define the scope of the consultation. For the purpose of this manual, it is assumed the juvenile or family court is the unit of analysis. In other words, it is assumed that only environments, practices, and policies that are under the authority of the court will be included in the consultation (versus allied agencies and community service providers). However, every court is different, and this basic unit of analysis (i.e., "the court") can vary substantially depending on how your system is organized. For example, in some juvenile courts, detention facilities are co-located in the same physical plant – and thus would be ripe for inclusion in an environment, practice and policy scan. Whatever the variance in your court, it is strongly recommended that project stakeholders frequently revisit what the scope of the trauma consultation is and ensure that there is a clear understanding about what it means to define the court as the unit of analysis (i.e., defining the outer range of what is appropriate to consultation) and to ensure there is ongoing stakeholder buy-in.

It addition, courts may want to consider that much smaller units of analysis might be appropriate given your resources and the stated purpose of the consultation. For example, it might not be initially feasible to do a consultation of your entire court. Rather, the scope might start small by focusing efforts on a given courtroom, or docket/case type, or a waiting area, or the security area at the entrance to the court. This strategy can lead to seeing the value of a larger, comprehensive trauma consultation and the natural motivation to apply the trauma consultation lens to other areas of the court.

The following questions can help guide your self-assessment to ensure that all stakeholders have a shared understanding of your effort to become a trauma-informed court:

- Who in the court community has identified addressing trauma as a need?
- Why do we want to do a trauma consultation? (Improve our court practices? Address issues youth and family face more effectively by using evidence-based practices? Decrease incidents of aggression and/or violence in the court? Reduce burn-out, absenteeism and turnover? Reduce recidivism? Is everyone frustrated with shrinking budgets and capacity to provide services? Diversion from deeper involvement in the

juvenile justice system? Reduce secondary traumatic stress among court staff? Greater efficiency? Improved outcomes for youth and families? Greater respect by the general public for adopting innovative practices? Improved quality of life for court staff?)

- What data related to trauma, trauma screening, trauma treatment, outcomes, etc. are being collected? How is the data used?
- Is there the political will to use the findings of the trauma consultation and work to institutionalize "trauma-informed practice" in the culture of the court?

Question 4: Can you afford a consultation?

Most courts can secure funding to support a trauma consultation, and in some cases, the NCJFCJ might be able to conduct a consultation via existing grants or cooperative agreements. However, it is critical for the consultation leadership and stakeholder group to explicitly identify what resources can be committed to conducting a consultation. In other words, efforts to become more trauma-informed involve not just finances, but time for activities such as: preparing for the consultation visit; assisting during the consultation visit; following up with the consultation team; and participating in action planning, evaluation efforts, etc. (see Table 1 for an overview of suggested timeframes). A commitment to trauma-informed court practice can be time intensive as it is an ongoing process to change thinking, culture, and practice. Ultimately, however, the benefits to the court, court-users, court staff, community partners and local community can be substantial in both humanitarian and financial terms. Even though some interventions can appear expensive at the outset – they can actually result in cost savings. For example, one cost benefit evaluation of **Functional Family Therapy** with juvenile probationers found that for every dollar spent there was $11.86 in benefit – a rate of return on financial investment of 641% which is only a correlate of the return on human investment (Washington State Institute for Public Policy, 2011).

TABLE 1. SUGGESTED TIMEFRAMES FOR CONSULTATION ACTIVITIES

Consultation Phase:	Pre-Consultation			Consultation Visit			Post-Consultation		Action Plan & Sustainability
Consultation Activity:	Consider if a consultation is right for you.	Request a Trauma Consultation	Consultation of Request and Notification	Planning Meeting	Distribute Stakeholder Electronic Survey	Court observation, focus groups, interviews and case file consultation	Receive Consultation Report	Consultation Report Process Call	Follow-Up Consultation Site Visit
Consultation Timeline:			Within 2 weeks of request	3 months prior to Consultation Visit	30 days prior to Consultation Visit	≈ 2 days on site	30 days after site visit	30 days After Receipt of Consultation Report	Within 3 months of receiving the Consultation Report

How Should Courts Prepare for a Consultation?

The trauma consultation team will work with the designated point of contact at the court to coordinate the consultation site visit. To get the most out of a trauma consultation it is important for the consultation team to see your court as it is (see **Business as Usual** below); meaning, without any changes or accommodations made in anticipation of the consultation. The trauma consultation team needs to understand how your court operates on a regular day-to-day basis to be able to make the best assessment of your environments, practices, and policies. Other than notifying court staff of the trauma consultation purpose, timing, and activities – no special changes in operations are warranted. The consultation team will work with the point of contact from the court to address issues of confidentiality, roles and responsibilities, a planning meeting, the pre- and/or post-consultation stakeholder survey, necessary post-consultation follow up, and any other special considerations.

Business as Usual: The trauma consultation team does not serve any role related to enforcement, sanctioning, or certification. Rather, the team works with the court in a collaborative manner to collect accurate information to assess the court's trauma-informed policies and practices. With this in mind, we strongly encourage courts and their staff to continue business as usual and not adjust their work when the consultation team is on-site or in preparation for the team's arrival. The team acknowledges that each court is unique and has different rules for visitors; the team will work with you in advance about how to best notify court staff when the consultation team will be on site and how consultation team members will be identified during the site visit.

Confidentiality: In some jurisdictions, courts require the trauma consultation team to adhere to specific rules of confidentiality in order to protect youth and families. Any necessary orders or agreements regarding confidentiality should be staffed with the consultation team and be in place prior to the site visit. In addition, the consultation team will collect informed consent or assent as necessary from all court staff, agencies, stakeholders, youth, and families that participate in individual or focus group interviews. Information collected during the course of the consultation will be reported in aggregate form to the extent data allows and will not include identifying information.

Roles and Responsibilities: The juvenile court must identify a point of contact or liaison that will assist in coordinating the logistics of the visit with the consultation team. This person will assist with coordinating a planning meeting (see below), arranging travel plans for the consultation team if necessary, scheduling among the court staff that will be participating in individual or focus

group interviews, and ensuring the consultation team has access to a sufficient number of court proceedings.

Planning Meeting: There should be an initial planning call between the individual(s) requesting the consultation and the consultation team. During this call the consultation team should be notified of any specific areas of concern or areas where the court feels its needs a higher level of evaluation (e.g., psychological assessment instruments, security, cultural/linguistic competency, etc.). During this meeting the consultation team will also request any additional information that may be necessary (e.g., policy manuals, sample trauma screens, statistics on the population the court serves, etc.) which the consultation team liaison should subsequently provide to the team with a sufficient amount of time for the team to consultation the materials (e.g., two weeks or depending on the amount of information requested).

Pre-Consultation Baseline Stakeholder Survey: Courts are required to distribute a web-based pre-consultation stakeholder survey one month prior to the consultation visit. This survey provides valuable information to guide the consultation process, as well as serve as a baseline against which to measure future and ongoing court performance. Survey participants should include all court staff such as judges, public defenders, prosecutors, social workers, probation officers and when possible youth and family consumers (see prior note of caution regarding obtaining consumer input). The survey is anonymous and all responses will be reported in an aggregate manner. In some cases, the pre-survey will be supplemented by a post-survey of stakeholders. Both surveys are designed to capture perspectives on definitions of trauma, collaboration across stakeholders, resources, and other information on practice within the jurisdiction (see sample survey **here**).

Special Considerations for Your Court: Juvenile and family court professionals are often quite busy and have limited availability, making it difficult to schedule activities outside of hearings. The consultation team is mindful of the strain that additional activities can place on courts and individuals. Besides individual and focus group interviews, when possible, the consultation team's visit should revolve around the court schedule or docket to reduce additional strain on time and scheduling.

What Should You Expect During the Consultation?

Length of Consultation: Trauma consultation site visits generally last one and one-half days to two days. There might be special circumstances that would require the team to stay longer (e.g., facilitating a town hall meeting or incorporating on-site training); but those additional activities would be decided on and arranged for in the pre-consultation planning phase in collaboration with the court.

Consultation Team: A typical trauma consultation team is multidisciplinary and usually consists of 2-3 content experts with experience working with juvenile and family courts. For example, a consultation team might consist of a psychologist with expertise in social, developmental or clinical psychology; an expert in domestic violence; and an expert in dependency and/or delinquency systems. The consultation team will have substantial expertise in trauma and justice systems, such as: (1) trauma and traumatic stress; (2) how trauma impacts human development and behavior; (3) how human behavior is linked to physical and social environments, interpersonal interactions, and the policies of systems/institutions; and (4) research, program evaluation, or organizational assessment experience in juvenile and family courts.

Environmental Observations and Scan: Observing the environment is an important part of the consultation. Sense of control in any given environment -- but particularly those that offer little expectation of control -- has been linked to the degree to which people experience stress or arousal and are impacted by stressors such as noise, temperature extremes, and crowding (Wener, 2012). Particular areas of interest are places that can be stressful and likely to trigger psychological and behavioral reactions, such as parking lots, security entrances, waiting rooms, and courtrooms themselves. Thus, as part of this environmental scan, the consultation team will measure temperature, lighting levels, humidity, and sound levels in various areas of the court. In addition to tracking and comparing these readings to those taken in other courts, the consultation team will compare them to suggested guidelines (e.g., see Woodson, Tillman, & Tillman, 1992).

Consultation Activities: During the visit, the consultation team will engage in varied activities, including focus groups, interviews, file consultations, and hearing observations (see below). The consultation visit is designed to provide the consultation team with a cross-sectional snapshot of how youth, families and court staff experience a typical encounter with the court across the various types of court (e.g., dependency, delinquency, drug/family/problem-solving etc.), types of case (e.g.,

pre-hearing staffing, mediation, trial, etc.), as well as judicial officers and their respective courtrooms. Again, these activities are intended to provide a snapshot of a typical encounter with the juvenile or family court that a young person or family who has experienced trauma would experience.[4]

Direct Court Hearing Observation: Hearing observation is a critical activity while on site as it allows the consultation team to observe key stakeholders in action and to develop a sense of case flow, demeanor, tone, stress, service matching, timeliness, etc. Depending on the jurisdiction and the scope of the consultation, the team will observe hearings across case types (e.g., delinquency, dependency, drug court, protection hearings, or other specialty dockets) and utilize a standardized observation rating form.

Focus Groups and Individual Interviews: The consultation team will conduct focus groups (a gathering of 4-8 participants) and individual interviews with staff members employed by the court or by an agency that works closely with the court (e.g., child protective services, juvenile probation or detention workers, attorneys, consumers, security staff, treatment providers, and court administration staff). The focus group sessions and the individual interviews will last approximately 30 minutes, will be facilitated by one or two team members, and will be guided by a semi-structured set of questions. Participants will be informed that participation in individual interviews and focus groups is voluntary and their responses will remain anonymous; they will also sign consent or assent forms to this effect.

It is not necessary or expected for participants in the consultation to either have experienced trauma or for them to disclose any personal information regarding their own history of exposure to trauma within or beyond the court.

File Consultations: Consultation of case files typically involves access to 5-10 case files of each case type (e.g., dependency, delinquency, civil protection, etc.). To the degree possible, case files should include not only case processing information (e.g., various orders, petitions, dispositions, etc.) but also psychosocial information (e.g., psychological screening/assessments, progress notes, etc.) even when this information is maintained in two separate files.

Wrap Up: Before leaving the site, the consultation team will have a final debrief meeting with the lead judge and any stakeholders invited by the judge to address questions and consultation next steps. At this time the court should not expect any formal recommendations from the consultation team. It is important that the consultation team has a chance to consultation and integrate all observations and data collected during the visit before formal recommendations can be provided. The consultation team will remind the court of the goal to have the final report available within 30 days and consultation suggestions/options for sustainability (see below).

4 To the extent feasible, it is desirable to include input from those children and families involved with the court – past or present. This input can take several forms, including consultation of consumer satisfaction surveys that might already be in place in the court; including consumers in the pre-site visit survey; and interviews or focus groups with court consumers while on site.

How Do You Use the Consultation Recommendations and How Do You Sustain Your Work?

For courts to improve the degree to which they are trauma-informed, it is critical they do not adopt a "one-and-done" approach. Ideally, within 30 days of the consultation visit, the consultation team will author a report summarizing consultation activities, impressions, recommendations, and suggested next steps for both the court and consultation teams. The consultation team recommends that the court participate in a call with the team within 30 days of receipt of the consultation report to clarify any questions, discuss the site's action plans, and confirm the role of the consultation team moving forward.

The consultation team strongly recommends that within three months of receiving the consultation report, at least one member of the team return to the court to facilitate action planning. This follow-up visit is critical for setting a meaningful and measurable framework for evaluating and sustaining improvement over time. An important part of the process is measuring trauma-informed changes that were implemented as the result of the consultation report. This means employing process measures to help identify the steps taken to put changes in place. It also means implementing outcome measures to determine if the changes made a positive difference, and to what extent. The consultation team can help operationalize how to monitor fidelity to practice improvements and evaluate the impact of new practice on dependent variables of interest (e.g., number of incidents of aggression/violence on site; number of staff sick days, etc.) as well as problem-solve data collection issues (e.g., realistic collection points, case level versus aggregate, behavioral outcomes versus attitude change, etc.). Further, the team can offer guidance on what instrumentation tools and resources might be available and appropriate for use by the court moving forward in their effort to be increasingly trauma-reformed. Ultimately, courts are encouraged to widely share their "lessons learned" from their work.

> For more information on initiating and sustaining organizational change see the Breakthrough Series Learning Collaborative quality improvement methodology (Institute for Healthcare Improvement, 2003)[5]

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5 A Breakthrough Series Collaborative is a short-term (6- to 15-month) learning system that brings together a large number of teams to seek improvement in a focused topic area. Since 1995, IHI has sponsored over 50 such Collaborative projects on several dozen topics involving over 2,000 teams from 1,000 health care organizations. Teams in such Collaboratives have achieved significant results, including reducing waiting times by 50 percent, reducing worker absenteeism by 25 percent, reducing Intensive Care Unit costs by 25 percent, and reducing hospitalizations for patients with congestive heart failure by 50 percent.

Summary

Becoming a trauma-informed juvenile or family court does not only mean educating system stakeholders, community agencies, and youth and family consumers about trauma and its impact on human development; it also includes utilizing trauma-informed practices, skills, and strategies to reduce traumatic stress, cultivate resilience and improve the well-being of children and families in their care and the staff that work with them. Requesting a trauma consultation is one way to work towards the goal of being a trauma-informed juvenile court that better serves youth, family, and staff. As part of this effort, careful consultation of this guide can help jurisdictions and juvenile courts decide whether a consultation is right for them, prepare for a consultation if they decide to proceed, and use the consultation recommendations to implement and maintain efforts to be trauma-informed.

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Appendices

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Conceptual framework for trauma-informed courts (article): http://www.ncjfcj.org/sites/default/files/Marsh%20Dierkhising_Conceptualizing%20Trauma-Informed%20Courts_%202013%20NCJFCJ%20condensed.pdf

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National Center for Trauma-Informed Care: http://www.samhsa.gov/nctic

National Center for PTSD: http://www.ptsd.va.gov/

National Child Traumatic Stress Network (NCTSN): http://www.nctsn.org

NCTSN Learning Center for Child and Adolescent Trauma: http://learn.nctsn.org

National Council of Juvenile and Family Court Judges: http://www.ncjfcj.org

SAMHSA's National Registry of Evidence-Based Programs and Practices: http://www.nrepp.samhsa.gov/

Ten things every juvenile court judge should know about trauma and delinquency (article): http://www.ncjfcj.org/sites/default/files/Trauma%20Bulletin.pdf

Tip sheet for clinicians: http://www.nctsn.org/sites/default/files/assets/pdfs/testifying_fact_sheet_final.pdf

Tip sheet for judges: http://www.ncjfcj.org/sites/default/files/Trauma%20Tips%20for%20Judges.pdf

Trauma and resilience (report): http://www.jlc.org/sites/default/files/publication_pdfs/Juvenile%20Law%20Center%20-%20Trauma%20and%20Resilience%20-%20Legal%20Advocacy%20for%20Youth%20in%20Juvenile%20Justice%20and%20Child%20Welfare%20Systems.pdf

Trauma benchcards: http://www.ncjfcj.org/sites/default/files/NCTSN%20Bench%20Cards.pdf

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Session 6: Indian Child Welfare Act: New Guidelines, New Regulations, Next Steps in Implementation- California Focus

ENFORCEMENT ACTIONS TAKEN BY TSA IN CALENDAR YEAR 2014—Continued

TSA Case number/type of violation	Penalty proposed/assessed
TSA Case # 2014IAD0082—TWIC—Fraudulent Use or Manufacture (49 CFR 1570.7)	$4,000/$4,000.
TSA Case # 2014IAD0083—TWIC—Fraudulent Use or Manufacture (49 CFR 1570.7)	$4,000/$2,000.

[FR Doc. 2015–03798 Filed 2–24–15; 8:45 am]
BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5851–N–01]

Rental Assistance Demonstration (RAD)—Alternative Requirements or Waivers: Waiving and Specifying Alternative Requirements for the 20 Percent Portfolio Cap on Project-Basing and Certain Tenant Protection and Participation Provisions for the San Francisco Housing Authority's RAD Projects

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The RAD statute gives HUD authority to establish waivers and alternative requirements. Pursuant to this authority, HUD has waived, to date, the statutory 20 percent cap on project-basing of a PHA's tenant-based voucher funding for RAD-converted units. This notice advises that HUD is waiving for the San Francisco Housing Authority (SFHA), to a limited extent and subject to certain conditions, the 20 percent cap on project-basing and certain other provisions governing project-based assistance with respect to an identified portfolio that includes RAD funding. These waivers are in response to plans submitted by SFHA to address capital needs of the portfolio and preserve available affordable housing for the SFHA's jurisdiction. Without this waiver, SFHA states that its plan for improving its affordable housing portfolio with RAD would not be workable, and the conversion of units under RAD would not be effective for its purpose.

DATES: *Effective Date:* March 9, 2015.

FOR FURTHER INFORMATION CONTACT: Janet Golrick, Acting Director of the Office of Recapitalization, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–7000; telephone number 202–708–0001 (this is not a toll-free number). Hearing- and speech-impaired persons may access these numbers through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Background and Action

The RAD statute (Pub. L. 112–55, approved November 18, 2011) gives HUD authority to waive or specify alternative requirements for, among other things, section 8(o)(13) of the United States Housing Act of 1937 (the 1937 Act). In order to utilize this authority, the RAD statute requires HUD to publish by notice in the **Federal Register** any waiver or alternative requirement no later than 10 days before the effective date of such notice. This notice meets this publication requirement.

On July 2, 2013, notice 2012–32 Rev-1(as corrected by the technical correction issued February 6, 2014) (''the revised notice'') superseded PIH Notice 2012–32. The revised notice is found at the following URL: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/publications/notices/2012.*

The revised notice at section 1.9, paragraph F, entitled ''Portfolio Awards,'' also sets forth a new option of a ''portfolio award,'' which allows PHAs to apply for RAD conversions affecting a group of projects. This type of award is meant to enable PHAs to create a comprehensive revitalization plan for multiple buildings they oversee. SFHA has submitted an application for a portfolio award under RAD.

The revised notice contains a waiver of 8(o)(13)(B) and other sections of the 1937 Act. Section 1.6, ''Special Provisions Affecting Conversions to PBVs,'' at paragraph A.1, allows a project that converts from one form of rental assistance to another under RAD to exceed the 20 percent project-basing cap. Section 1.6.A.2 allows sets alternate requirements for the percent limitation on the number of units in a project that may receive PBV assistance. Section 1.6.C. sets forth alternative requirements for resident rights and participation. (Collectively, the waivers and alternative requirements set forth in Sections 1.6.A.1, 1.6.A.2 and 1.6.C are referred to herein as the ''Applicable Alternative Tenanting Requirements.'')

As part of its application for a portfolio award, SFHA's comprehensive revitalization planning contemplates not only the conversion of assistance pursuant to RAD, but also to supplement such converted projects by project-basing additional voucher assistance. SFHA has submitted a waiver request that seeks permission to apply the Applicable Alternative Tenanting Requirements to all units in those projects with assistance converted under RAD. HUD has granted that request, subject to certain conditions which SFHA has agreed to carry out.

Dated: February 13, 2015.

Jemine A. Bryon,

Acting Assistant Secretary for Public and Indian Housing.

Biniam T. Gebre,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2015–03780 Filed 2–24–15; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[K00103 12/13 A3A10; 134D0102DR–DS5A300000–DR.5A311.IA000113]

Guidelines for State Courts and Agencies in Indian Child Custody Proceedings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: These updated guidelines provide guidance to State courts and child welfare agencies implementing the Indian Child Welfare Act's (ICWA) provisions in light of written and oral comments received during a review of the Bureau of Indian Affairs (BIA) *Guidelines for State Courts in Indian Child Custody Proceedings* published in 1979. They also reflect recommendations made by the Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence and significant developments in jurisprudence since ICWA's inception. The updated BIA *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings* promote compliance with ICWA's stated goals and provisions by providing a framework for State courts and child

welfare agencies to follow, as well as best practices for ICWA compliance. Effective immediately, these guidelines supersede and replace the guidelines published in 1979.

DATES: These guidelines are effective on February 25, 2015.

FOR FURTHER INFORMATION CONTACT: Hankie Ortiz, Deputy Director—Indian Services, Bureau of Indian Affairs, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240, (202) 208–2874; *hankie.ortiz@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

These updated BIA guidelines provide standard procedures and best practices to be used in Indian child welfare proceedings in State courts. The updated guidelines are issued in response to comments received during several listening sessions, written comments submitted throughout 2014, and recommendations of the Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence.

Congress enacted ICWA in 1978 to address the Federal, State, and private agency policies and practices that resulted in the ''wholesale separation of Indian children from their families.'' H. Rep. 95–1386 (July 24, 1978), at 9. Congress found ''that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions . . . . '' 25 U.S.C. 1901(4). Congress determined that cultural ignorance and biases within the child welfare system were significant causes of this problem and that state administrative and judicial bodies ''have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.'' 25 U.S.C. 1901(5); H. Rep. 95–1386, at 10. Congress enacted ICWA to ''protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishing minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes or institutions which will reflect the unique values of Indian culture.'' H. Rep. 95–1386, at 8. ICWA thus articulates a strong ''federal policy that, where possible, an Indian child should remain in the Indian community.'' *Mississippi Band of Choctaw Indians* v. *Holyfield,* 490 U.S. 30 (1989) (citing H. Rep. 95–1386 at 24).

Following ICWA's enactment, in July 1979, the Department of the Interior (Department) issued regulations addressing notice procedures for involuntary child custody proceedings involving Indian children, as well as governing the provision of funding for and administration of Indian child and family service programs as authorized by ICWA. *See* 25 CFR part 23. Those regulations did not address the specific requirements and standards that ICWA imposes upon State court child custody proceedings, beyond the requirements for contents of the notice. Also, in 1979, the BIA published guidelines for State courts to use in interpreting many of ICWA's requirements in Indian child custody proceedings. 44 FR 67584 (Nov. 26, 1979). Although there have been significant developments in ICWA jurisprudence, the guidelines have not been updated since they were originally published in 1979. Much has changed in the 35 years since the original guidelines were published, but many of the problems that led to the enactment of ICWA persist.

In 2014, the Department invited comments to determine whether to update its guidelines and what changes should be made. The Department held several listening sessions, including sessions with representatives of federally recognized Indian tribes, State court representatives (*e.g.,* the National Council of Juvenile and Family Court Judges and the National Center for State Courts' Conference of Chief Justices Tribal Relations Committee), the National Indian Child Welfare Association, and the National Congress of American Indians. The Department received comments from those at the listening sessions and also received written comments, including comments from individuals and additional organizations, such as the Christian Alliance for Indian Child Welfare and the American Academy of Adoption Attorneys. An overwhelming proportion of the commenters requested that the Department update its ICWA guidelines and many had suggestions for revisions that have been included. The Department reviewed and considered each comment in developing these revised Guidelines.

II. Statutory Authority

The Department is issuing these updated guidelines under ICWA, 25 U.S.C. 1901 *et seq.,* and its authority over the management of all Indian affairs under 25 U.S.C. 2.

III. Summary of Updates

The 1979 guidelines included ''commentary'' for each section, which was intended to explain the requirements of each section. The updated guidelines are clearer, making the commentary unnecessary. Recognizing the important role that child welfare agencies play in ICWA compliance, these updated guidelines broaden the audience of the guidelines to include both State courts and any agency or other party seeking placement of an Indian child. The guidelines identify procedures to address circumstances in which a parent desires anonymity in a voluntary proceeding. Those procedures clarify that a parent's desire for anonymity does not override the responsibility to comply with ICWA. The guidelines also establish that agencies and courts should document their efforts to comply with ICWA. The following paragraphs include section-by-section highlights of the substantive updates that these guidelines make to the 1979 version.

Section A. General Provisions (formerly, entitled ''Policy'')

The updated guidelines add several provisions to section A, to provide better context for the guidelines and clear direction on implementing the guidelines. For example, this section includes definitions of key terms used throughout the guidelines, such as ''active efforts'' and ''child custody proceeding.'' The phrase ''active efforts'' has been inconsistently interpreted. The guidelines' definition is intended to provide clarity—particularly in establishing that ''active efforts'' require a level of effort beyond ''reasonable efforts.''

Section A also includes an applicability section, which incorporates many of the provisions of the 1979 guidelines' section B.3. In addition, section A:

- Clarifies that agencies and State courts must ask, in every child custody proceeding, whether ICWA applies;
- Clarifies that courts should follow ICWA procedures even when the Indian child is not removed from the home, in order to allow tribes to intervene as early as possible to assist in preventing a breakup of the family; and
- Provides that, where agencies and State courts have reason to know that a child is an Indian child, they must treat that child as an Indian child unless and until it is determined that the child is not an Indian child.

These clarifications are necessary to ensure that the threshold question for determining whether ICWA applies (is

the child an Indian child?) is asked, and asked as soon as possible. If such inquiry is not timely made, a court proceeding may move forward without appropriate individuals aware that ICWA applies and that certain procedures must be followed. Tragic consequences may result.

The updated guidelines also add a section regarding how to contact a tribe, in case the agency or State court is unfamiliar with whom to contact.

Section A is intended to make clear that there is no existing Indian family (EIF) exception to application of ICWA. The EIF doctrine is a judicially-created exception to the application of ICWA. Since first recognition of the EIF in 1982, the majority of State appellate courts that have considered the EIF have rejected it as contrary to the plain language of ICWA. Some State legislatures have also explicitly rejected the EIF within their State ICWA statutes. The Department agrees with the States that have concluded that there is no existing Indian family exception to application of ICWA.

Section A also clarifies that ICWA and the guidelines apply in certain voluntary placements.

Section B. Pretrial Requirements

The updated guidelines, and section B in particular, promote the early identification of ICWA applicability. Such identifications will promote proper implementation of ICWA at an early stage, to prevent—as much as possible—delayed discoveries that ICWA applies. Often, those circumstances resulting from delayed discoveries have caused heartbreaking separations and have sometimes led to noncompliance with ICWA's requirements. By requiring agencies and courts to consider, as early as possible, whether ICWA applies, the updated guidelines will ensure that proper notice is given to parents/Indian custodians and tribes, that tribes have the opportunity to intervene or take jurisdiction over proceedings, as appropriate, and that ICWA's placement preferences are respected.

With regard to early discovery, section B requires agencies and courts to consider whether the child is an Indian child, and sets out the steps for verifying the tribe(s) and providing notice to the parents/Indian custodians and tribe(s). Section B also adds guidance regarding the evidence a court may require an agency to provide of the agency's investigations into whether the child is an Indian child.

With regard to application of ICWA, the updated section B clarifies when the Act's requirement to conduct ''active efforts'' begins. ICWA requires ''active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.'' *See* 25 U.S.C. 1912(d). The updated section B clarifies that active efforts must begin from the moment the possibility arises that the Indian child may be removed. This updated section also clarifies that active efforts should be conducted while verifying whether the child is an Indian child; this clarification ensures compliance with ICWA in cases in which the status of whether the child is an Indian child is not verified until later in the proceedings.

Section B adds a new paragraph clarifying that the tribe alone retains the responsibility to determine tribal membership. This section makes clear that there is no requirement for the child to have a certain degree of contact with the tribe or for a certain blood degree, and notes that a tribe may lack written rolls. The updated guidelines delete the provision allowing BIA, in lieu of the tribe, to verify the child's status. This provision has been deleted because it has become increasingly rare for the BIA to be involved in tribal membership determinations, as tribes determine their own membership. *See e.g., Santa Clara Pueblo* v. *Martinez,* 436 U.S. 49 (1978). (''Congress' authority over Indian matters is extraordinarily broad, and the role of courts in adjusting relations between and among tribes and their members correspondingly restrained.'') BIA may assist in contacting the tribe to ensure a determination, however.

The updated section B also expands upon procedures for determining a child's tribe in the event that more than one tribe is identified as the child's tribe. Specifically, it changes the criteria for determining with which tribe the child has ''significant contacts,'' adding that the parents' preference for membership will be considered, and deleting factors that are subjective or inapplicable to infants.

With regard to providing notice to Indian tribes and the child's parents/ Indian custodians, the updated section B:

- Clarifies that notice is required for each proceeding (not just for the first or last proceeding);
- States that notice must be sent, at a minimum, by registered mail, return receipt requested, and that personal service or other types of service may be in addition to, but not in lieu of, such mail; and
- Clarifies that the tribe has the right to intervene at any time.

This section also clarifies how guidelines apply if the child is transferred interstate.

The updated guidelines expand upon the emergency procedure provisions in light of evidence that some States routinely rely upon emergency removals and placements in a manner that bypasses implementation of ICWA. *See Oglala Sioux Tribe* v. *Hunnik,* Case No. 5:13–cv–05020–JLV, *Amicus Brief of the United States,* at *5–6 (D.S.D. Aug. 14, 2014) (involving allegations that: (1) Defendants are conducting perfunctory 48-hour hearings that do not adequately gather or evaluate information necessary to determine whether emergency removals or placements should be terminated, and that the orders issued at the end of the 48-hour hearing do not adequately instruct State officials to return the child to the home as soon as the emergency has ended; (2) Defendants are violating the Due Process Clause by preventing parents from testifying, presenting evidence, or cross-examining the State's witnesses at the 48-hour hearing; and (3) parents are not being provided adequate notice or the opportunity to be represented by appointed counsel and that the State courts are issuing orders to remove Indian children from their homes without basing those orders on evidence adduced in the hearing). Because ICWA was intended to help prevent the breakup of Indian families; therefore, emergency removals and emergency placements of Indian children should be severely limited, applying only in circumstances involving imminent physical damage or harm. The updated section B clarifies that the guidelines for emergency removal or placement apply regardless of whether the Indian child is a resident of or domiciled on a reservation. This section also explicitly states the standard for determining whether emergency removal or emergency placement is appropriate—*i.e.,* whether it is necessary to prevent imminent physical damage or harm to the child—and provides examples. The guidelines clearly state that the emergency removal/placement must be as short as possible, and provides guidance on how to ensure it is as short as possible. It also shortens the time period for temporary custody without a hearing or extraordinary circumstances from 90 days to 30 days. This shortened timeframe promotes ICWA's important goal of preventing the breakup of Indian families.

Section C. Procedures for Transfer to Tribal Court

The updated section C deletes the requirement that requests to transfer to

tribal court be made ''promptly after receiving notice of the proceeding'' because there is no such requirement in ICWA. Instead, the updated guidelines clarify that the right to transfer is available at any stage of a proceeding, including during an emergency removal. The updated section C also clarifies that the right to request a transfer occurs with each distinct proceeding. ICWA contains no restriction on the right to request a transfer occurring at the first, last, or any specific child custody proceeding. A tribe may decide that transfer is not appropriate until it reaches the stage where parental termination is being determined.

The updated section C also updates the ''good cause'' factors for denying transfer to tribal court. The updated criteria are more general; in summary, good cause may be found if either parent objects, the tribal court declines, or the State court otherwise determines that good cause exists. The updated guidelines specifically omit some of the factors that were the basis for finding that ''good cause'' exists under the 1979 guidelines. One such factor that should no longer be considered is whether the proceeding was at an advanced stage. As mentioned above, there may be valid reasons for waiting to transfer a proceeding until it reaches an advanced stage. Another factor that should no longer be considered is the level of contacts the child has had with the tribe—this factor unnecessarily introduces an outsider's evaluation of the child's relationship with the tribe and cannot sensibly be applied to infants.

The updated guidelines also specify that it is inappropriate to conduct an independent analysis, inconsistent with ICWA's placement preferences, of the ''best interest'' of an Indian child. The provisions of ICWA create a presumption that ICWA's placement preferences are in the best interests of Indian children; therefore, an independent analysis of ''best interest'' would undermine Congress's findings. Finally, the updated guidelines provide that the tribal court's prospective placement of an Indian child should not be considered, because it invites speculation regarding the tribal court's findings and conclusions and, therefore, undermines the independence of tribal court decision making.

Section D. Adjudication of Involuntary Placements, Adoptions, or Terminations or Terminations of Parental Rights

The updated section D establishes that parties have the right to examine records and reports in a timely manner; this ensures that parents/Indian custodians and tribes have the opportunity to examine information necessary to protect their rights under ICWA. This updated section also expands significantly on how to comply with the Act's ''active efforts'' requirement. Specifically, the updated guidelines:

- Require demonstration that ''active efforts'' were made, not only ''prior to'' the commencement of the proceeding, but also ''until'' the commencement of the proceeding;
- Require documentation of what ''active efforts'' were made; and

Require a showing that active efforts have been unsuccessful. The updated section D also provides guidance regarding how to identify an appropriate ''qualified expert witness.'' Commenters indicated that some States rely on witnesses' qualifications as child care specialists, or on other areas of expertise, but do not require any expert knowledge related to the tribal community. The updated guidelines establish a preferential order for witnesses who are experts in the culture and customs of the Indian child's tribe. This will ensure that the expert witness with the most knowledge of the Indian child's tribe is given priority.

Section E. Voluntary Proceedings

ICWA applies to voluntary proceedings that operate to prohibit an Indian child's parent or Indian custodian from regaining custody of the child upon demand; nevertheless, evidence suggests that ICWA is sometimes ignored or intentionally bypassed in voluntary proceedings. The updated section E clarifies that, even in voluntary proceedings, it is necessary to determine whether ICWA applies, and to comply with ICWA's provisions. To ensure that parents and Indian custodians understand the significance of their consent, the updated section E requires the consent document to identify any conditions to the consent and requires the court to explain the consequences of the consent before its execution. It also addresses steps for withdrawal of consent. The updated section E further restates the statutory restriction that a consent given prior to or within 10 days after birth of an Indian child is not valid.

Section F. Dispositions

The updated guidelines provide more information regarding when and how to apply ICWA's placement preferences for foster and adoptive placements. In some cases, agencies fail to conduct any investigation of whether placements that conform to ICWA's placement preferences are available. The updated section F requires that:

- The agency bears the burden of proof if it departs from any of the placement preferences and must demonstrate that it conducted a diligent search to identify placement options that satisfy the placement preferences, including notification to the child's parents or Indian custodians, extended family, tribe, and others; and
- The court determines whether ''good cause'' to deviate from the placement preferences exists before departing from the placement preferences.

The updated section F also adds provisions to ensure that ''good cause'' determinations are explained to all parties and documented.

Evidence suggests that ''good cause'' has been liberally relied upon to deviate from the placement preferences in the past. Commenters noted that, in some cases, a State court departed from the placement preferences because an Indian child has spent significant time in a family's care, despite the fact that the placement was made in violation of ICWA. The guidelines attempt to prevent such circumstances from arising by encouraging early compliance with ICWA (see sections A and B, in particular). The guidelines also specify in section F that ''good cause'' does not include normal bonding or attachment that may have resulted from a placement that failed to comply with the Act. As in other parts of the guidelines, this section clarifies that an independent consideration of the child's ''best interest'' is inappropriate for this determination because Congress has already addressed the child's best interest in ICWA. Because ICWA does not allow for consideration of socio-economic status in the placement preferences, this section also now clarifies that the court may not depart from the preferences based on the socio-economic status of one placement relative to another, except in extreme circumstances.

Section G. Post-Trial Rights

ICWA is intended to protect the rights, not only of Indian children, parents and Indian custodians, but also of Indian tribes. The updated guidelines establish that an Indian child, parent or Indian custodian, or tribe may petition to invalidate an action if the Act or guidelines have been violated, regardless of which party's rights were violated. This approach promotes compliance with ICWA and reflects that ICWA is intended to protect the rights of each of these parties.

Adults who had been adopted by non-Indian families and seek to reconnect with their tribes often face significant hurdles in obtaining needed information. The updated guidelines attempt to protect those adults' rights to obtain information about their tribal relationship by specifying that, even in States where adoptions remain closed, the relevant agency should facilitate communication directly with the tribe's enrollment office.

The guidelines also recommend that courts work with tribes to identify tribal designees who can assist adult adoptees to connect with their tribes.

Finally, the updated guidelines clarify that the requirement to maintain records on foster care, preadoptive placement and adoptive placements applies not only in involuntary proceedings, but also in voluntary proceedings.

IV. Guidance

These guidelines supersede and replace the guidelines published at 44 FR 67584 (November 28, 1979).

Guidelines for State Courts and Agencies in Indian Child Custody Proceedings

A. General Provisions
1. What is the purpose of these guidelines?
2. What terms do I need to know?
3. When does ICWA apply?
4. How do I contact a tribe under these guidelines?
5. How do these guidelines interact with State laws?

B. Pretrial Requirements
1. When does the requirement for active efforts begin?
2. What actions must an agency and State court undertake to determine whether a child is an Indian child?
3. Who makes the determination as to whether a child is a member of a tribe?
4. What is the procedure for determining an Indian child's tribe when the child is a member or eligible for membership in more than one tribe?
5. When must a State court dismiss an action?
6. What are the notice requirements for a child custody proceeding involving an Indian child?
7. What time limits and extensions apply?
8. What is the process for emergency removal of an Indian child?
9. What are the procedures for determining improper removal?

C. Procedures for Making Requests for Transfer to Tribal Court
1. How are petitions for transfer of proceeding made?
2. What are the criteria and procedures for ruling on transfer petitions?
3. How is a determination of ''good cause'' made?
4. What happens when a petition for transfer is made?

D. Adjudication of Involuntary Placements, Adoptions, or Terminations of Parental Rights
1. Who has access to reports or records?
2. What steps must a party take to petition a State court for certain actions involving an Indian child?
3. What are the applicable standards of evidence?
4. Who may serve as a qualified expert witness?

E. Voluntary Proceedings
1. What actions must an agency and State court undertake in voluntary proceedings?
2. How is consent obtained?
3. What information should the consent document contain?
4. How is withdrawal of consent achieved in a voluntary foster care placement?
5. How is withdrawal of consent to a voluntary adoption achieved?

F. Dispositions
1. When do the placement preferences apply?
2. What placement preferences apply in adoptive placements?
3. What placement preferences apply in foster care or preadoptive placements?
4. How is a determination for ''good cause'' to depart from placement procedures made?

G. Post-Trial Rights
1. What is the procedure for petitioning to vacate an adoption?
2. Who can make a petition to invalidate an action?
3. What are the rights of adult adoptees?
4. When must notice of a change in child's status be given?
5. What information must States furnish to the Bureau of Indian Affairs?
6. How must the State maintain records?

Guidelines for State Courts and Agencies in Indian Child Custody Proceedings

A. General Provisions

A.1. What is the purpose of these guidelines?

These guidelines clarify the minimum Federal standards, and best practices, governing implementation of the Indian Child Welfare Act (ICWA) to ensure that ICWA is applied in all States consistent with the Act's express language, Congress' intent in enacting the statute, and the canon of construction that statutes enacted for the benefit of Indians are to be liberally construed to their benefit. In order to fully implement ICWA, these guidelines should be applied in all proceedings and stages of a proceeding in which the Act is or becomes applicable.

A.2. What terms do I need to know?

Active efforts are intended primarily to maintain and reunite an Indian child with his or her family or tribal community and constitute more than reasonable efforts as required by Title IV–E of the Social Security Act (42 U.S.C. 671(a)(15)). Active efforts include, for example:

(1) Engaging the Indian child, the Indian child's parents, the Indian child's extended family members, and the Indian child's custodian(s);

(2) Taking steps necessary to keep siblings together;

(3) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;

(4) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate;

(5) Conducting or causing to be conducted a diligent search for the Indian child's extended family members for assistance and possible placement;

(6) Taking into account the Indian child's tribe's prevailing social and cultural conditions and way of life, and requesting the assistance of representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards;

(7) Offering and employing all available and culturally appropriate family preservation strategies;

(8) Completing a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;

(9) Notifying and consulting with extended family members of the Indian child to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child;

(10) Making arrangements to provide family interaction in the most natural setting that can ensure the Indian child's safety during any necessary removal;

(11) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or extended family in utilizing and accessing those resources;

(12) Monitoring progress and participation in services;

(13) Providing consideration of alternative ways of addressing the needs of the Indian child's parents and extended family, if services do not exist or if existing services are not available;

(14) Supporting regular visits and trial home visits of the Indian child during any period of removal, consistent with the need to ensure the safety of the child; and

(15) Providing post-reunification services and monitoring.

''Active efforts'' are separate and distinct from requirements of the Adoption and Safe Families Act

(ASFA), 42 U.S.C. 1305. ASFA's exceptions to reunification efforts do not apply to ICWA proceedings.

Agency means a private State-licensed agency or public agency and their employees, agents or officials involved in and/or seeking to place a child in a child custody proceeding.

Child custody proceeding means and includes any proceeding or action that involves:

(1) *Foster care placement,* which is any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, although parental rights have not been terminated;

(2) *Termination of parental rights,* which is any action resulting in the termination of the parent-child relationship;

(3) *Preadoptive placement,* which is the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; or

(4) *Adoptive placement,* which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Continued custody means physical and/or legal custody that a parent already has or had at any point in the past. The biological mother of a child has had custody of a child.

Custody means physical and/or legal custody under any applicable tribal law or tribal custom or State law. A party may demonstrate the existence of custody by looking to tribal law or tribal custom or State law.

Domicile means:

(1) For a parent or any person over the age of eighteen, physical presence in a place and intent to remain there;

(2) For an Indian child, the domicile of the Indian child's parents. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's mother. Under the principle for determining the domicile of an Indian child, it is entirely logical that ''[o]n occasion, a child's domicile of origin will be in a place where the child has never been.'' *Holyfield,* 490 U.S. at 48. *Holyfield* notes that tribal jurisdiction under 25 U.S.C. 1911(a) was not meant to be defeated by the actions of individual members of the tribe, because Congress was concerned not solely about the interests of Indian children and families, but also about the impact of large numbers of Indian children adopted by non-Indians on the tribes themselves. *Id.* at 49.

Extended family member is defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, is a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

Imminent physical damage or harm means present or impending risk of serious bodily injury or death that will result in severe harm if safety intervention does not occur.

Indian means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 43 CFR part 1606.

Indian child means any unmarried person who is under age eighteen and is either: (1) a member of an Indian tribe; or (2) eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

Indian child's tribe means: (1) the Indian tribe in which an Indian child is a member or eligible for membership; or (2) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts.

Indian Child Welfare Act (ICWA) or *Act* means 25 U.S.C. 1901 *et seq.*

Indian custodian means any person who has legal custody of an Indian child under tribal law or custom or under State law, whichever is more favorable to the rights of the parent, or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

Indian organization means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians or a tribe, or a majority of whose members are Indians.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c).

Parent means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include an unwed father where paternity has not been acknowledged or established. To qualify as a parent, an unwed father need only take reasonable steps to establish or acknowledge paternity. Such steps may include acknowledging paternity in the action at issue or establishing paternity through DNA testing.

Reservation means Indian country as defined in 18 U.S.C 1151, including any lands, title to which is held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

Secretary means the Secretary of the Interior or the Secretary's authorized representative acting under delegated authority.

Status offenses mean offenses that would not be considered criminal if committed by an adult; they are acts prohibited only because of a person's status as a minor (*e.g.,* truancy, incorrigibility).

Tribal court means a court with jurisdiction over child custody proceedings, including a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe vested with authority over child custody proceedings.

Upon demand means that the parent or Indian custodians can regain custody simply upon request, without any contingencies such as repaying the child's expenses.

Voluntary placement means a placement that either parent has, of his or her free will, chosen for the Indian child, including private adoptions.

A.3. When does ICWA apply?

(a) ICWA applies whenever an Indian child is the subject of a State child custody proceeding as defined by the Act. ICWA also applies to proceedings involving status offenses or juvenile delinquency proceedings if any part of those proceedings results in the need for placement of the child in a foster care, preadoptive or adoptive placement, or termination of parental rights.

(b) There is no exception to application of ICWA based on the so-called ''existing Indian family doctrine.'' Thus, the following non-exhaustive list of factors should not be considered in determining whether ICWA is applicable: the extent to which the parent or Indian child participates in or observes tribal customs, votes in tribal elections or otherwise participates in tribal community affairs, contributes to tribal or Indian charities, subscribes to tribal newsletters or other periodicals of special interest in Indians, participates in Indian religious, social, cultural, or political events, or maintains social contacts with other members of the tribe; the relationship between the Indian child and his/her Indian parents;

the extent of current ties either parent has to the tribe; whether the Indian parent ever had custody of the child; and the level of involvement of the tribe in the State court proceedings.

(c) Agencies and State courts, in every child custody proceeding, must ask whether the child is or could be an Indian child and conduct an investigation into whether the child is an Indian child. Even in those cases in which the child is not removed from the home, such as when an agency opens an investigation or the court orders the family to engage in services to keep the child in the home as part of a diversion, differential, alternative response or other program, agencies and courts should follow the verification and notice provisions of these guidelines. Providing notice allows tribes to intervene as early as possible in a child custody proceeding and provides an opportunity for the tribe to bring resources to bear to assist the family in preventing a breakup of the family.

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

(e) ICWA and these guidelines or any associated Federal guidelines do not apply to:

(1) Tribal court proceedings;

(2) Placements based upon an act by the Indian child which, if committed by an adult, would be deemed a criminal offense; or

(3) An award, in a divorce proceeding, of custody of the Indian child to one of the parents.

(f) Voluntary placements that do not operate to prohibit the child's parent or Indian custodian from regaining custody of the child upon demand are not covered by the Act.

(1) Such placements should be made pursuant to a written agreement, and the agreement should state explicitly the right of the parent or Indian custodian to regain custody of the child upon demand.

(2) Nevertheless, it is a best practice to follow the procedures in these guidelines to determine whether a child is an Indian child and to notify the tribe.

(g) Voluntary placements in which a parent consents to a foster care placement or seeks to permanently terminate his or her rights or to place the child in a preadoptive or adoptive placement are covered by the Act.

A.4. How do I contact a tribe under these guidelines?

To contact a tribe to provide notice or obtain information or verification under these Guidelines, you should direct the notice or inquiry as follows:

(1) Many tribes designate an agent for receipt of ICWA notices. The Bureau of Indian Affairs publishes a list of tribes' designated tribal agents for service of ICWA notice in the **Federal Register** each year and makes the list available on its Web site at *www.bia.gov.*

(2) For tribes without a designated tribal agent for service of ICWA notice, contact the tribe(s) to be directed to the appropriate individual or office.

(3) If you do not have accurate contact information for the tribe(s) or the tribe(s) contacted fail(s) to respond to written inquiries, you may seek assistance in contacting the Indian tribe(s) from the Bureau of Indian Affairs' Regional Office and/or Central Office in Washington DC (see *www.bia.gov*).

A.5. How do these guidelines interact with State laws?

(a) These guidelines provide minimum Federal standards and best practices to ensure compliance with ICWA and should be applied in all child custody proceedings in which the Act applies.

(b) In any child custody proceeding where applicable State or other Federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Act, ICWA requires that the State court must apply the higher standard.

B. Pretrial Requirements

B.1. When does the requirement for active efforts begin?

(a) The requirement to engage in "active efforts" begins from the moment the possibility arises that an agency case or investigation may result in the need for the Indian child to be placed outside the custody of either parent or Indian custodian in order to prevent removal.

(b) Active efforts to prevent removal of the child must be conducted while investigating whether the child is a member of the tribe, is eligible for membership in the tribe, or whether a biological parent of the child is or is not a member of a tribe.

B.2. What actions must an agency and State court undertake in order to determine whether a child is an Indian child?

(a) Agencies must ask whether there is reason to believe a child that is subject to a child custody proceeding is an Indian child. If there is reason to believe that the child is an Indian child, the agency must obtain verification, in writing, from all tribes in which it is believed that the child is a member or eligible for membership, as to whether the child is an Indian child.

(b) State courts must ask, as a threshold question at the start of any State court child custody proceeding, whether there is reason to believe the child who is the subject of the proceeding is an Indian child by asking each party to the case, including the guardian ad litem and the agency representative, to certify on the record whether they have discovered or know of any information that suggests or indicates the child is an Indian child.

(1) In requiring this certification, the court may require the agency to provide:

(i) Genograms or ancestry charts for both parents, including all names known (maiden, married and former names or aliases); current and former addresses of the child's parents, maternal and paternal grandparents and great grandparents or Indian custodians; birthdates; places of birth and death; tribal affiliation including all known Indian ancestry for individuals listed on the charts, and/or other identifying information; and/or

(ii) The addresses for the domicile and residence of the child, his or her parents, or the Indian custodian and whether either parent or Indian custodian is domiciled on or a resident of an Indian reservation or in a predominantly Indian community.

(2) If there is reason to believe the child is an Indian child, the court must confirm that the agency used active efforts to work with all tribes of which the child may be a member to verify whether the child is in fact a member or eligible for membership in any tribe, under paragraph (a).

(c) An agency or court has reason to believe that a child involved in a child custody proceeding is an Indian child if:

(1) Any party to the proceeding, Indian tribe, Indian organization or public or private agency informs the agency or court that the child is an Indian child;

(2) Any agency involved in child protection services or family support has discovered information suggesting that the child is an Indian child;

(3) The child who is the subject of the proceeding gives the agency or court reason to believe he or she is an Indian child;

(4) The domicile or residence of the child, parents, or the Indian custodian is known by the agency or court to be, or is shown to be, on an Indian

reservation or in a predominantly Indian community; or

(5) An employee of the agency or officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

(d) In seeking verification of the child's status, in a voluntary placement proceeding where a consenting parent evidences a desire for anonymity, the agency or court must keep relevant documents confidential and under seal. A request for anonymity does not relieve the obligation to obtain verification from the tribe(s) or to provide notice.

B.3. Who makes the determination as to whether a child is a member of a tribe?

(a) Only the Indian tribe(s) of which it is believed a biological parent or the child is a member or eligible for membership may make the determination whether the child is a member of the tribe(s), is eligible for membership in the tribe(s), or whether a biological parent of the child is a member of the tribe(s).

(b) The determination by a tribe of whether a child is a member, is eligible for membership, or whether a biological parent is or is not a member of that tribe, is solely within the jurisdiction and authority of the tribe.

(c) No other entity or person may authoritatively make the determination of whether a child is a member of the tribe or is eligible for membership in the tribe.

(1) There is no requirement that the child maintain a certain degree of contacts with the tribe or for a certain blood quantum or degree of Indian blood.

(2) A tribe need not formally enroll its members for a child to be a member or eligible for membership. In some tribes, formal enrollment is not required for tribal membership. Some tribes do not have written rolls and others have rolls that list only persons that were members as of a certain date. *See United States* v. *Broncheau,* 597 F.2d 1260, 1263 (9th Cir. 1979). The only relevant factor is whether the tribe verifies that the child is a member or eligible for membership.

(d) The State court may not substitute its own determination regarding a child's membership or eligibility for membership in a tribe or tribes.

B.4. What is the procedure for determining an Indian child's tribe when the child is a member or eligible for membership in more than one tribe?

(a) Agencies are required to notify all tribes, of which the child may be a member or eligible for membership, that the child is involved in a child custody proceeding. The notice should specify the other tribe or tribes of which the child may be a member or eligible for membership.

(b) If the Indian child is a member or eligible for membership in only one tribe, that tribe should be designated as the Indian child's tribe.

(c) If an Indian child is a member or eligible for membership in more than one tribe, ICWA requires that the Indian tribe with which the Indian child has the more significant contacts be designated as the Indian child's tribe.

(1) In determining significant contacts, the following may be considered:

(i) Preference of the parents for membership of the child;

(ii) Length of past domicile or residence on or near the reservation of each tribe;

(iii) Tribal membership of custodial parent or Indian custodian; and

(iv) Interest asserted by each tribe in response to the notice that the child is involved in a child custody proceeding;

(d) When an Indian child is already a member of a tribe, but is also eligible for membership in another tribe, deference should be given to the tribe in which the Indian child is a member, unless otherwise agreed to by the tribes. However, if the Indian child is not a member of any tribe, an opportunity should be provided to allow the tribes to determine which of them should be designated as the Indian child's tribe.

(i) If the tribes are able to reach an agreement, the agreed upon tribe should be designated as the Indian child's tribe.

(ii) If the tribes do not agree, the following factors should be considered in designating the Indian child's tribe:

(A) The preference of the parents or extended family members who are likely to become foster care or adoptive placements; and/or

(B) Tribal membership of custodial parent or Indian custodian; and/or

(C) If applicable, length of past domicile or residence on or near the reservation of each tribe; and/or

(D) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes; and/or

(E) Self-identification by the child; and/or

(F) Availability of placements.

(iii) In the event the child is eligible for membership in a tribe but is not yet a member of any tribe, the agency should take the steps necessary to obtain membership for the child in the tribe that is designated as the Indian child's tribe.

(3) Once an Indian tribe is designated as the child's Indian tribe, all tribes which received notice of the child custody proceeding must be notified in writing of the determination and a copy of that document must be filed with the court and sent to each party to the proceeding and to each person or governmental agency that received notice of the proceeding.

(4) A determination of the Indian child's tribe for purposes of ICWA and these guidelines does not constitute a determination for any other purpose or situation.

(d) The tribe designated as the Indian child's tribe may authorize another tribe to act as a representative for the tribe in a child custody case, including, for example, having the representative tribe perform home studies or expert witness services for the Indian child's tribe.

B.5. When must a State court dismiss an action?

Subject to B.8 (emergency procedures), the following limitations on a State court's jurisdiction apply:

(a) The court must dismiss any child custody proceeding as soon as the court determines that it lacks jurisdiction.

(b) The court must make a determination of the residence and domicile of the Indian child. If either the residence or domicile is on a reservation where the tribe exercises exclusive jurisdiction over child custody proceedings, the State court must dismiss the State court proceedings, the agency must notify the tribe of the dismissal based on the tribe's exclusive jurisdiction, and the agency must transmit all available information regarding the Indian child custody proceeding to the tribal court.

(c) If the Indian child has been domiciled or previously resided on an Indian reservation, the State court must contact the tribal court to determine whether the child is a ward of the tribal court. If the child is a ward of a tribal court, the State court must dismiss the State court proceedings, the agency must notify the tribe of the dismissal, and the agency must transmit all available information regarding the Indian child custody proceeding to the tribal court.

B.6. What are the notice requirements for a child custody proceeding involving an Indian child?

(a) When an agency or court knows or has reason to know that the subject of an involuntary child custody proceeding is an Indian child, the agency or court must send notice of each such proceeding (including but not limited to a temporary custody hearing, any removal or foster care placement, any adoptive placement, or any termination of parental or custodial

rights) by registered mail with return receipt requested to:

(1) Each tribe where the child may be a member or eligible for membership;

(2) The child's parents; and

(3) If applicable, the Indian custodian.

(b) Notice may be sent via personal service or electronically in addition to the methods required by the Act, but such alternative methods do not replace the requirement for notice to be sent by registered mail with return receipt requested.

(c) Notice must be in clear and understandable language and include the following:

(1) Name of the child, the child's birthdate and birthplace;

(2) Name of each Indian tribe(s) in which the child is a member or may be eligible for membership;

(3) A copy of the petition, complaint or other document by which the proceeding was initiated;

(4) Statements setting out:

(i) The name of the petitioner and name and address of petitioner's attorney;

(ii) The right of the parent or Indian custodian to intervene in the proceedings.

(iii) The Indian tribe's right to intervene at any time in a State court proceeding for the foster care placement of or termination of a parental right.

(iv) If the Indian parent(s) or, if applicable, Indian custodian(s) is unable to afford counsel based on a determination of indigency by the court, counsel will be appointed to represent the parent or Indian custodian where authorized by State law.

(v) The right to be granted, upon request, a specific amount of additional time (up to 20 additional days) to prepare for the proceedings due to circumstances of the particular case.

(vi) The right to petition the court for transfer of the proceeding to tribal court under 25 U.S.C. 1911, absent objection by either parent: *Provided, that* such transfer is subject to declination by the tribal court.

(vii) The mailing addresses and telephone numbers of the court and information related to all parties to the proceeding and individuals notified under this section.

(viii) The potential legal consequences of the proceedings on the future custodial and parental rights of the Indian parents or Indian custodians.

(d) In order to assist the Indian tribe(s) in making a determination regarding whether the child is a member or eligible for membership, the agency or court should include additional information in the notice, such as:

(1) Genograms or ancestry charts for both parents, including all names known (maiden, married and former names or aliases); current and former addresses of the child's parents, maternal and paternal grandparents and great grandparents or Indian custodians; birthdates; places of birth and death; tribal affiliation including all known Indian ancestry for individuals listed on the charts, and/or other identifying information; and/or

(2) The addresses for the domicile and residence of the child, his or her parents, or the Indian custodian and whether either parent or Indian custodian is domiciled on or a resident of an Indian reservation or in a predominantly Indian community.

(3) In the event that a parent has requested anonymity, the agency and court must take steps to keep information related to the parent confidential and sealed from disclosure.

(e) If the identity or location of the Indian parents, Indian custodians or tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to believe the child is an Indian child, notice of the child custody proceeding must be sent to the appropriate Bureau of Indian Affairs Regional Director (see *www.bia.gov*). To establish tribal identity, as much information as is known regarding the child's direct lineal ancestors should be provided (see section B.6.(c) of these guidelines regarding notice requirements). The Bureau of Indian Affairs will not make a determination of tribal membership, but may, in some instances, be able to identify tribes to contact.

(f) Because child custody proceedings are usually conducted on a confidential basis, information contained in the notice should be kept confidential to the extent possible.

(g) The original or a copy of each notice sent under this section should be filed with the court together with any return receipts or other proof of service.

(h) If a parent or Indian custodian appears in court without an attorney, the court must inform him or her of the right to appointed counsel, the right to request that the proceeding be transferred to tribal court, the right to object to such transfer, the right to request additional time to prepare for the proceeding and the right (if the parent or Indian custodian is not already a party) to intervene in the proceedings.

(i) If the court or an agency has reason to believe that a parent or Indian custodian possesses limited English proficiency and is therefore not likely to understand the contents of the notice, the court or agency must, at no cost, provide a translated version of the notice or have the notice read and explained in a language that the parent or Indian custodian understands. To secure such translation or interpretation support, a court or agency should contact the Indian child's tribe or the local BIA agency for assistance in locating and obtaining the name of a qualified translator or interpreter.

(j) In voluntary proceedings, notice should also be sent in accordance with this section because the Indian tribe might have exclusive jurisdiction and/or the right to intervene. Further, notice to and involvement of the Indian tribe in the early stages of the proceedings aids the agency and court in satisfying their obligations to determine whether the child is an Indian child and in complying with 25 U.S.C. 1915.

(k) If the child is transferred interstate, regardless of whether the Interstate Compact on the Placement of Children (ICPC) applies, both the originating State court and receiving State court must provide notice to the tribe(s) and seek to verify whether the child is an Indian child.

(l) The notice requirement includes providing responses to requests for additional information, where available, in the event that a tribe indicates that such information is necessary to determine whether a child is an Indian child.

B.7. What time limits and extensions apply?

(a) No hearings regarding decisions for the foster care or termination of parental rights may begin until the waiting periods to which the parents or Indian custodians and to which the Indian child's tribe are entitled have passed. Additional extensions of time may also be granted beyond the minimum required by the Act.

(b) A tribe, parent or Indian custodian entitled to notice of the pendency of a child custody proceeding has a right, upon request, to be granted an additional 20 days from the date upon which notice was received in accordance with 25 U.S.C. 1912(a) to prepare for participation in the proceeding.

(c) The proceeding may not begin until all of the following dates have passed:

(1) 10 days after each parent or Indian custodian (or Secretary where the parent or Indian custodian is unknown to the petitioner) has received notice in accordance with 25 U.S.C. 1912(a);

(2) 10 days after the Indian child's tribe (or the Secretary if the Indian child's tribe is unknown to the party

seeking placement) has received notice in accordance with 25 U.S.C. 1912(a);

(3) 30 days after the parent or Indian custodian has received notice in accordance with 25 U.S.C. 1912(a), if the parent or Indian custodian has requested an additional 20 days to prepare for the proceeding; and

(4) 30 days after the Indian child's tribe has received notice in accordance with 25 U.S.C. 1912(a), if the Indian child's tribe has requested an additional 20 days to prepare for the proceeding.

(d) The court should allow, if it possesses the capability, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

B.8. What is the process for the emergency removal of an Indian child?

(a) The emergency removal and emergency placement of an Indian child in a foster home or institution under applicable State law is allowed only as necessary to prevent imminent physical damage or harm to the child. This requirement applies to all Indian children regardless of whether they are domiciled or reside on a reservation. This does not, however, authorize a State to remove a child from a reservation where a tribe exercises exclusive jurisdiction.

(b) Any emergency removal or emergency placement of any Indian child under State law must be as short as possible. Each involved agency or court must:

(1) Diligently investigate and document whether the removal or placement is proper and continues to be necessary to prevent imminent physical damage or harm to the child;

(2) Promptly hold a hearing to hear evidence and evaluate whether the removal or placement continues to be necessary whenever new information is received or assertions are made that the emergency situation has ended; and

(3) Immediately terminate the emergency removal or placement once the court possesses sufficient evidence to determine that the emergency has ended.

(c) If the agency that conducts an emergency removal of a child whom the agency knows or has reason to know is an Indian child, the agency must:

(1) Treat the child as an Indian child until the court determines that the child is not an Indian child;

(2) Conduct active efforts to prevent the breakup of the Indian family as early as possible, including, if possible, before removal of the child;

(3) Immediately take and document all practical steps to confirm whether the child is an Indian child and to verify the Indian child's tribe;

(4) Immediately notify the child's parents or Indian custodians and Indian tribe of the removal of the child;

(5) Take all practical steps to notify the child's parents or Indian custodians and Indian tribe about any hearings regarding the emergency removal or emergency placement of the child; and

(6) Maintain records that detail the steps taken to provide any required notifications under section B.6 of these guidelines.

(d) A petition for a court order authorizing emergency removal or continued emergency physical custody must be accompanied by an affidavit containing the following information:

(1) The name, age and last known address of the Indian child;

(2) The name and address of the child's parents and Indian custodians, if any;

(3) If such persons are unknown, a detailed explanation of what efforts have been made to locate them, including notice to the appropriate Bureau of Indian Affairs Regional Director (see *www.bia.gov*);

(4) Facts necessary to determine the residence and the domicile of the Indian child;

(5) If either the residence or domicile is believed to be on an Indian reservation, the name of the reservation;

(6) The tribal affiliation of the child and of the parents and/or Indian custodians;

(7) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;

(8) If the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to transfer the child to the tribe's jurisdiction;

(9) A statement of the specific active efforts that have been taken to assist the parents or Indian custodians so the child may safely be returned to their custody; and

(10) A statement of the imminent physical damage or harm expected and any evidence that the removal or emergency custody continues to be necessary to prevent such imminent physical damage or harm to the child.

(e) At any court hearing regarding the emergency removal or emergency placement of an Indian child, the court must determine whether the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. The court should accept and evaluate all information relevant to the agency's determination provided by the child, the child's parents, the child's Indian custodians, the child's tribe or any participants in the hearing.

(f) Temporary emergency custody should not be continued for more than 30 days. Temporary emergency custody may be continued for more than 30 days only if:

(1) A hearing, noticed in accordance with these guidelines, is held and results in a determination by the court, supported by clear and convincing evidence and the testimony of at least one qualified expert witness, that custody of the child by the parent or Indian custodian is likely to result in imminent physical damage or harm to the child; or

(2) Extraordinary circumstances exist.

(g) The emergency removal or placement must terminate as soon as the imminent physical damage or harm to the child which resulted in the emergency removal or placement no longer exists, or, if applicable, as soon as the tribe exercises jurisdiction over the case, whichever is earlier.

(h) Once an agency or court has terminated the emergency removal or placement, it must expeditiously:

(1) Return the child to the parent or Indian custodian within one business day; or

(2) Transfer the child to the jurisdiction of the appropriate Indian tribe if the child is a ward of a tribal court or a resident of or domiciled on a reservation; or

(3) Initiate a child custody proceeding subject to the provisions of the Act and these guidelines.

(i) The court should allow, if it possesses the capability, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

B.9. What are the procedures for determining improper removal?

(a) If, in the course of any Indian child custody proceeding, any party asserts or the court has reason to believe that the Indian child may have been improperly removed from the custody of his or her parent or Indian custodian, or that the Indian child has been improperly retained, such as after a visit or other temporary relinquishment of custody, the court must immediately stay the proceeding until a determination can be made on the question of improper removal or retention, and such

determination must be conducted expeditiously.

(b) If the court finds that the Indian child was improperly removed or retained, the court must terminate the proceeding and the child must be returned immediately to his or her parents or Indian custodian, unless returning the child to his parent or custodian would subject the child to imminent physical damage or harm.

C. Procedures for Making Requests for Transfer to Tribal Court

C.1. How are petitions for transfer of proceeding made?

(a) Either parent, the Indian custodian, or the Indian child's tribe may request, orally on the record or in writing, that the State court transfer each distinct Indian child custody proceeding to the tribal court of the child's tribe.

(b) The right to request a transfer occurs with each proceeding. For example, a parent may request a transfer to tribal court during the first proceeding for foster placement and/or at a proceeding to determine whether to continue foster placement, and/or at a later proceeding, for example at a hearing for termination of parental rights.

(c) The right to request a transfer is available at any stage of an Indian child custody proceeding, including during any period of emergency removal.

(d) The court should allow, if possible, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

C.2. What are the criteria and procedures for ruling on transfer petitions?

(a) Upon receipt of a petition to transfer by a parent, Indian custodian or the Indian child's tribe, the State court must transfer the case unless any of the following criteria are met:

(1) Either parent objects to such transfer;

(2) The tribal court declines the transfer; or

(3) The court determines that good cause exists for denying the transfer.

(b) To minimize delay, the court should expeditiously provide all records related to the proceeding to the tribal court.

C.3. How is a determination of ''good cause'' made?

(a) If the State court believes, or any party asserts, that good cause not to transfer exists, the reasons for such belief or assertion must be stated on the record or in writing and made available to the parties who are petitioning for transfer.

(b) Any party to the proceeding must have the opportunity to provide the court with views regarding whether good cause to deny transfer exists.

(c) In determining whether good cause exists, the court may not consider whether the case is at an advanced stage or whether transfer would result in a change in the placement of the child because the Act created concurrent, but presumptively, tribal jurisdiction over proceedings involving children not residing or domiciled on the reservation, and seeks to protect, not only the rights of the Indian child as an Indian, but the rights of Indian communities and tribes in retaining Indian children. Thus, whenever a parent or tribe seeks to transfer the case it is presumptively in the best interest of the Indian child, consistent with the Act, to transfer the case to the jurisdiction of the Indian tribe.

(d) In addition, in determining whether there is good cause to deny the transfer, the court may not consider:

(1) The Indian child's contacts with the tribe or reservation;

(2) Socio-economic conditions or any perceived inadequacy of tribal or Bureau of Indian Affairs social services or judicial systems; or

(3) The tribal court's prospective placement for the Indian child.

(e) The burden of establishing good cause not to transfer is on the party opposing the transfer.

C.4. What happens when a petition for transfer is made?

(a) Upon receipt of a transfer petition the State court must promptly notify the tribal court in writing of the transfer petition and request a response regarding whether the tribal court wishes to decline the transfer. The notice should specify how much time the tribal court has to make its decision; provided that the tribal court has at least 20 days from the receipt of notice of a transfer petition to decide whether to accept or decline the transfer.

(b) The tribal court should inform the State court of its decision to accept or decline jurisdiction within the time required or may request additional time; provided that the reasons for additional time are explained.

(c) If the tribal court accepts the transfer, the State court should promptly provide the tribal court with all court records.

D. Adjudication of Involuntary Placements, Adoptions, or Terminations or Terminations of Parental Rights

D.1. Who has access to reports or records?

(a) The court must inform each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child of his or her right to timely examination of all reports or other documents filed with the court and all files upon which any decision with respect to such action may be based.

(b) Decisions of the court may be based only upon reports, documents or testimony presented on the record.

D.2. What steps must a party take to petition a State court for certain actions involving an Indian child?

(a) Any party petitioning a State court for foster care placement or termination of parental rights to an Indian child must demonstrate to the court that prior to, and until the commencement of, the proceeding, active efforts have been made to avoid the need to remove the Indian child from his or her parents or Indian custodians and show that those efforts have been unsuccessful.

(b) Active efforts must be documented in detail and, to the extent possible, should involve and use the available resources of the extended family, the child's Indian tribe, Indian social service agencies and individual Indian care givers.

D.3. What are the applicable standards of evidence?

(a) The court may not issue an order effecting a foster care placement of an Indian child unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody with the child's parents or Indian custodian is likely to result in serious harm to the child.

(b) The court may not order a termination of parental rights unless the court's order is supported by evidence beyond a reasonable doubt, supported by the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious harm to the child.

(c) Clear and convincing evidence must show a causal relationship between the existence of particular conditions in the home that are likely to result in serious emotional or physical damage to the particular child who is the subject of the proceeding. Evidence that shows only the existence of

community or family poverty or isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence that continued custody is likely to result in serious emotional or physical damage to the child.

D.4. Who may serve as a qualified expert witness?

(a) A qualified expert witness should have specific knowledge of the Indian tribe's culture and customs.

(b) Persons with the following characteristics, in descending order, are presumed to meet the requirements for a qualified expert witness:

(1) A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices.

(2) A member of another tribe who is recognized to be a qualified expert witness by the Indian child's tribe based on their knowledge of the delivery of child and family services to Indians and the Indian child's tribe.

(3) A layperson who is recognized by the Indian child's tribe as having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe.

(4) A professional person having substantial education and experience in the area of his or her specialty who can demonstrate knowledge of the prevailing social and cultural standards and childrearing practices within the Indian child's tribe.

(c) The court or any party may request the assistance of the Indian child's tribe or the Bureau of Indian Affairs agency serving the Indian child's tribe in locating persons qualified to serve as expert witnesses.

E. Voluntary Proceedings

E.1. What actions must an agency and State court undertake in voluntary proceedings?

(a) Agencies and State courts must ask whether a child is an Indian child in any voluntary proceeding under sections B.2. to B.4. of these guidelines.

(b) Agencies and State courts should provide the Indian tribe with notice of the voluntary child custody proceedings, including applicable pleadings or executed consents, and their right to intervene under section B.6. of these guidelines.

E.2. How is consent to termination of parental rights, foster care placement or adoption obtained?

(a) A voluntary termination of parental rights, foster care placement or adoption must be executed in writing and recorded before a court of competent jurisdiction.

(b) Prior to accepting the consent, the court must explain the consequences of the consent in detail, such as any conditions or timing limitations for withdrawal of consent and, if applicable, the point at which such consent is irrevocable.

(c) A certificate of the court must accompany a written consent and must certify that the terms and consequences of the consent were explained in detail in the language of the parent or Indian custodian, if English is not the primary language, and were fully understood by the parent or Indian custodian.

(d) Execution of consent need not be made in open court where confidentiality is requested or indicated.

(e) A consent given prior to or within 10 days after birth of the Indian child is not valid.

E.3. What information should a consent document contain?

(a) The consent document must contain the name and birthdate of the Indian child, the name of the Indian child's tribe, identifying tribal enrollment number, if any, or other indication of the child's membership in the tribe, and the name and address of the consenting parent or Indian custodian. If there are any conditions to the consent, the consent document must clearly set out the conditions.

(b) A consent to foster care placement should contain, in addition to the information specified in subsection (a), the name and address of the person or entity by or through whom the placement was arranged, if any, or the name and address of the prospective foster parents, if known at the time.

E.4. How is withdrawal of consent achieved in a voluntary foster care placement?

(a) Withdrawal of consent must be filed in the same court where the consent document was executed.

(b) When a parent or Indian custodian withdraws consent to foster care placement, the child must be returned to that parent or Indian custodian immediately.

E.5. How is withdrawal of consent to a voluntary adoption achieved?

(a) A consent to termination of parental rights or adoption may be withdrawn by the parent at any time prior to entry of a final decree of voluntary termination or adoption, whichever occurs later. To withdraw consent, the parent must file, in the court where the consent is filed, an instrument executed under oath asserting his or her intention to withdraw such consent.

(b) The clerk of the court in which the withdrawal of consent is filed must promptly notify the party by or through whom any preadoptive or adoptive placement has been arranged of such filing and the child must be returned to the parent or Indian custodian as soon as practicable.

F. Dispositions

F.1. When do the placement preferences apply?

(a) In any preadoptive, adoptive or foster care placement of an Indian child, the Act's placement preferences apply; except that, if the Indian child's tribe has established by resolution a different order of preference than that specified in the Act, the agency or court effecting the placement must follow the tribe's placement preferences.

(b) The agency seeking a preadoptive, adoptive or foster care placement of an Indian child must always follow the placement preferences. If the agency determines that any of the preferences cannot be met, the agency must demonstrate through clear and convincing evidence that a diligent search has been conducted to seek out and identify placement options that would satisfy the placement preferences specified in sections F.2. or F.3. of these guidelines, and explain why the preferences could not be met. A search should include notification about the placement hearing and an explanation of the actions that must be taken to propose an alternative placement to:

(1) The Indian child's parents or Indian custodians;

(2) All of the known, or reasonably identifiable, members of the Indian child's extended family members;

(3) The Indian child's tribe;

(4) In the case of a foster care or preadoptive placement:

(i) All foster homes licensed, approved, or specified by the Indian child's tribe; and

(ii) All Indian foster homes located in the Indian child's State of domicile that are licensed or approved by any authorized non-Indian licensing authority.

(c) Where there is a request for anonymity, the court should consider whether additional confidentiality protections are warranted, but a request for anonymity does not relieve the

agency or the court of the obligation to comply with the placement preferences.

(d) Departure from the placement preferences may occur only after the court has made a determination that good cause exists to place the Indian child with someone who is not listed in the placement preferences.

(e) Documentation of each preadoptive, adoptive or foster care placement of an Indian child under State law must be provided to the State for maintenance at the agency. Such documentation must include, at a minimum: the petition or complaint; all substantive orders entered in the proceeding; the complete record of, and basis for, the placement determination; and, if the placement deviates from the placement preferences, a detailed explanation of all efforts to comply with the placement preferences and the court order authorizing departure from the placement preferences.

F.2. What placement preferences apply in adoptive placements?

(a) In any adoptive placement of an Indian child under State law, preference must be given in descending order, as listed below, to placement of the child with:

(1) A member of the child's extended family;

(2) Other members of the Indian child's tribe; or

(3) Other Indian families, including families of unwed individuals.

(b) The court should, where appropriate, also consider the preference of the Indian child or parent.

F.3. What placement preferences apply in foster care or preadoptive placements?

In any foster care or preadoptive placement of an Indian child:

(a) The child must be placed in the least restrictive setting that:

(1) Most approximates a family;

(2) Allows his or her special needs to be met; and

(3) Is in reasonable proximity to his or her home, extended family, and/or siblings.

(b) Preference must be given, in descending order as listed below, to placement of the child 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, whether on or off the reservation;

(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 which has a program suitable to meet the child's needs.

F.4. How is a determination for ''good cause'' to depart from the placement preferences made?

(a) If any party asserts that good cause not to follow the placement preferences exists, the reasons for such belief or assertion must be stated on the record or in writing and made available to the parties to the proceeding and the Indian child's tribe.

(b) The party seeking departure from the preferences bears the burden of proving by clear and convincing evidence the existence of ''good cause'' to deviate from the placement preferences.

(c) A determination of good cause to depart from the placement preferences must be based on one or more of the following considerations:

(1) The request of the parents, if both parents attest that they have reviewed the placement options that comply with the order of preference.

(2) The request of the child, if the child is able to understand and comprehend the decision that is being made.

(3) The extraordinary physical or emotional needs of the child, such as specialized treatment services that may be unavailable in the community where families who meet the criteria live, as established by testimony of a qualified expert witness; provided that extraordinary physical or emotional needs of the child does not include ordinary bonding or attachment that may have occurred as a result of a placement or the fact that the child has, for an extended amount of time, been in another placement that does not comply with the Act. The good cause determination does not include an independent consideration of the best interest of the Indian child because the preferences reflect the best interests of an Indian child in light of the purposes of the Act.

(4) The unavailability of a placement after a showing by the applicable agency in accordance with section F.1., and a determination by the court that active efforts have been made to find placements meeting the preference criteria, but none have been located. For purposes of this analysis, a placement may not be considered unavailable if the placement conforms to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(d) The court should consider only whether a placement in accordance with the preferences meets the physical, mental and emotional needs of the child; and may not depart from the preferences based on the socio-economic status of any placement relative to another placement.

G. Post-Trial Rights

G.1. What is the procedure for petitioning to vacate an adoption?

(a) Within two years after a final decree of adoption of any Indian child by a State court, or within any longer period of time permitted by the law of the State, a parent who executed a consent to termination of paternal rights or adoption of that child may petition the court in which the final adoption decree was entered to vacate the decree and revoke the consent on the grounds that consent was obtained by fraud or duress, or that the proceeding failed to comply with ICWA.

(b) Upon the filing of such petition, the court must give notice to all parties to the adoption proceedings and the Indian child's tribe.

(c) The court must hold a hearing on the petition.

(d) Where the court finds that the parent's consent was obtained through fraud or duress, the court must vacate the decree of adoption, order the consent revoked and order that the child be returned to the parent.

G.2. Who can make a petition to invalidate an action?

(a) Any of the following may petition any court of competent jurisdiction to invalidate an action for foster care placement or termination of parental rights where it is alleged that the Act has been violated:

(1) An Indian child who is the subject of any action for foster care placement or termination of parental rights;

(2) A parent or Indian custodian from whose custody such child was removed; and

(3) The Indian child's tribe.

(b) Upon a showing that an action for foster care placement or termination of parental rights violated any provision of 25 U.S.C. 1911, 1912, or 1913, the court must determine whether it is appropriate to invalidate the action.

(c) There is no requirement that the particular party's rights under the Act be violated to petition for invalidation; rather, any party may challenge the action based on violations in implementing the Act during the course of the child custody proceeding. For example, it is acceptable for the tribe to petition to invalidate an action because

it violated the rights of a parent, or for a parent to petition to invalidate an action because the action violated the statutory rights of the tribe. ICWA is designed to provide rights to ensure that tribes, parents, and children are protected. In light of Congressional findings in ICWA, it is presumed that the Indian child is disadvantaged if any of those rights are violated.

(d) The court should allow, if it possesses the capability, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

G.3. What are the rights of adult adoptees?

(a) Upon application by an Indian individual who has reached age 18 who was the subject of an adoptive placement, the court that entered the final decree must inform such individual of the tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights, which may include tribal membership, resulting from the individual's tribal relationship.

(b) This section should be applied regardless of whether the original adoption was subject to the provisions of the Act.

(c) Where State law prohibits revelation of the identity of the biological parent, assistance of the Bureau of Indian Affairs should be sought to help an adoptee who is eligible for membership in a tribe to become a tribal member without breaching the Privacy Act or confidentiality of the record.

(d) In States where adoptions remain closed, the relevant agency should, at a minimum, communicate directly with the tribe's enrollment office and provide the information necessary to facilitate the establishment of the adoptee's tribal membership.

(e) Agencies should work with the tribe to identify at least one tribal designee familiar with 25 U.S.C. 1917 to assist adult adoptees statewide with the process of reconnecting with their tribes and to provide information to State judges about this provision on an annual basis.

G.4. When must notice of a change in child's status be given?

(a) Notice by the court, or an agency authorized by the court, must be given to the child's biological parents or prior Indian custodians and the Indian child's tribe whenever:

(1) A final decree of adoption of an Indian child has been vacated or set aside; or

(2) The adoptive parent has voluntarily consented to the termination of his or her parental rights to the child; or

(3) Whenever an Indian child is removed from a foster care home or institution to another foster care placement, preadoptive placement, or adoptive placement.

(b) The notice must inform the recipient of the right to petition for return of custody of the child.

(c) A parent or Indian custodian may waive his or her right to such notice by executing a written waiver of notice filed with the court. The waiver may be revoked at any time by filing with the court a written notice of revocation. A revocation of the right to receive notice does not affect any proceeding which occurred before the filing of the notice of revocation.

G.5. What information must States furnish to the Bureau of Indian Affairs?

(a) Any state entering a final adoption decree or order must furnish a copy of the decree or order to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW., Mail Stop 4513 MIB, Washington, DC 20240, along with the following information:

(1) Birth name of the child, tribal affiliation and name of the child after adoption;

(2) Names and addresses of the biological parents;

(3) Names and addresses of the adoptive parents;

(4) Name and contact information for any agency having files or information relating to the adoption;

(5) Any affidavit signed by the biological parent or parents asking that their identity remain confidential; and

(6) Any information relating to the enrollment or eligibility for enrollment of the adopted child.

(b) Confidentiality of such information must be maintained and is not subject to the Freedom of Information Act, 5 U.S.C. 552, as amended.

G.6. How must the State maintain records?

(a) The State must establish a single location where all records of every voluntary or involuntary foster care, preadoptive placement and adoptive placement of Indian children by courts of that State will be available within seven days of a request by an Indian child's tribe or the Secretary.

(b) The records must contain, at a minimum, the petition or complaint, all substantive orders entered in the proceeding, and the complete record of the placement determination.

Dated: February 19, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–03925 Filed 2–24–15; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–17253; PX.PD077160I.00.4]

Draft Environmental Impact Statement for Alcatraz Ferry Embarkation Plan, San Francisco County, California.

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) has prepared a Draft Environmental Impact Statement (DEIS) for the Alcatraz Ferry Embarkation project. The project would establish a new, long-term ferry embarkation site for passenger service between the northern San Francisco waterfront and Alcatraz Island. It would also establish occasional special ferry service between the selected Alcatraz ferry embarkation site and the existing Fort Baker pier, as well as between Fort Mason and other destinations in San Francisco Bay.

DATES: All comments must be postmarked or transmitted not later than 90 days from the date of publication in the **Federal Register** of the Environmental Protection Agency's notice of filing and release of the DEIS. Upon confirmation of this date, we will notify all entities on the project mailing list, and public announcements about the DEIS review period will be posted on the project Web site (*http://parkplanning.nps.gov/ALCAembarkation*) and distributed via local and regional press media.

FOR FURTHER INFORMATION CONTACT: Please contact the Golden Gate National Recreation Area Planning Division at (415) 561–4930 or *goga_planning@nps.gov.*

SUPPLEMENTARY INFORMATION: The purpose and need for the project is driven by the following factors: (1) Alcatraz Island ferry service has been subject to location changes every 10 years, which has led to visitor confusion, community concerns, and inconsistency in visitor support services. The site and associated connections should be a consistent feature for visitors to Golden Gate National Recreation Area (GGNRA). (2)

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the public to submit comments; the comment period as set in the NPR ends March 16, 2015. The Commission is extending the comment period until April 15, 2015.

DATES: Submit comments by April 15, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2014–0033, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through: *http://www.regulations.gov*. The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov* and insert the Docket No. CPSC–2014–0033 into the ''Search'' box and follow the prompts.

SUPPLEMENTARY INFORMATION: On December 30, 2014, the Commission published an NPR in the **Federal Register** proposing to prohibit children's toys and child care articles containing specified phthalates. (79 FR 78324). The Commission issued the proposed rule under the authority of section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The Commission is extending the comment period until April 15, 2015 to allow additional time for public comment on the NPR.

Alberta E. Mills,

Acting Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2015–06389 Filed 3–19–15; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR 23

[K00103 12/13 A3A10; 134D0102DR–DS5A300000–DR.5A311.IA000113]

RIN 1076–AF25

Regulations for State Courts and Agencies in Indian Child Custody Proceedings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a new subpart to the Department of the Interior's (Department) regulations implementing the Indian Child Welfare Act (ICWA), to improve ICWA implementation by State courts and child welfare agencies. These regulations complement recently published *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings,* reflect recommendations made by the Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence, and address significant developments in jurisprudence since ICWA's inception. This publication also announces the dates and locations for tribal consultation sessions and public meetings to receive comment on this proposed rule.

DATES: Comments must be received on or before May 19, 2015. *Comments on the information collections contained in this proposed regulation are separate from those on the substance of the proposed rule.* Comments on the information collection burden should be received by April 20, 2015 to ensure consideration, but must be received no later than May 19, 2015. See the **SUPPLEMENTARY INFORMATION** section of this document for dates of public meetings and tribal consultation sessions.

ADDRESSES: You may submit comments by any of the following methods:

—*Federal rulemaking portal: www.regulations.gov*. The rule is listed under the agency name ''Bureau of Indian Affairs'' or ''BIA.'' The rule has been assigned Docket ID: BIA–2015–0001.

—*Email: comments@bia.gov*. Include ''ICWA'' in the subject line of the message.

—*Mail or hand-delivery:* Ms. Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1849 C Street NW., MS 3642, Washington, DC 20240, (202) 273–4680.

Comments on the Paperwork Reduction Act information collections contained in this rule are separate from comments on the substance of the rule. Submit comments on the information collection requirements in this rule to the Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov* or by facsimile at (202) 395–5806. Please also send a copy of your comments to *comments@bia.gov.*

See the **SUPPLEMENTARY INFORMATION** section of this document for locations of public meetings and tribal consultation sessions.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1849 C Street NW., MS 3642, Washington, DC 20240, (202) 273–4680; *elizabeth.appel@bia.gov.* You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Since ICWA was enacted by Congress in 1978, it has improved child welfare practices regarding Indian children. Commentators have asserted, however, that it has not reached its full potential due largely to ineffective or inconsistent implementation in some case. This proposed rule would establish a new subpart to regulations implementing ICWA at 25 CFR 23 to address Indian child welfare proceedings in State courts. This proposed rule is published in response to comments received during several listening sessions, written comments submitted throughout 2014, and recommendations that regulations are needed to fully implement ICWA. *See, e.g.,* Attorney General's Advisory Committee on American Indian and Alaska Native Children Exposed to Violence: Ending Violence So Children Can Thrive (November 2014), p. 77. This proposed rule would also respond to significant developments in jurisprudence since

the regulations were established in 1979 and last substantively updated in 1994.

This proposed rule would incorporate many of the changes made to the recently revised guidelines into regulations, establishing the Department's interpretation of ICWA as a binding interpretation to ensure consistency in implementation of ICWA across all States. This consistency is necessary to ensure that the goals of ICWA are carried out with each Indian child custody proceeding, regardless of the child welfare worker, judge, and State involved. The proposed rule would establish the following procedures to ensure compliance with ICWA: Determining whether ICWA applies to any child custody proceeding, providing notice to the parents or Indian custodian and Indian tribe(s), requesting and responding to requests to transfer proceedings to tribal court, adjudication of involuntary placements, adoptions, and terminations of parental rights, undertaking voluntary proceedings, identifying and applying placement preferences, and post-proceeding actions.

The Department requests comment on this proposed rule.

II. Background

Congress enacted ICWA in 1978 to address the Federal, State, and private agency policies and practices that resulted in the ''wholesale separation of Indian children from their families.'' H. Rep. 95–1386 (July 24, 1978), at 9. Congress found ''that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions . . . .'' 25 U.S.C. 1901(4). Congress determined that cultural ignorance and biases within the child welfare system were significant causes of this problem and that state administrative and judicial bodies ''have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.'' 25 U.S.C. 1901(5); H. Rep. 95–1386, at 10. Congress enacted ICWA to ''protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishing minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes or institutions which will reflect the unique values of Indian culture.'' H. Rep. 95–1386, at 8. The ICWA thus articulates a strong ''federal policy that, where possible, an Indian child should remain in the Indian community.'' *Mississippi Band of Choctaw Indians* v. *Holyfield,* 490 U.S. 30, 37 (1989) (citing H. Rep. 95–1386 at 24).

Following ICWA's enactment, in July 1979, the Department issued regulations addressing notice procedures for involuntary child custody proceedings involving Indian children, as well as governing the provision of funding for and administration of Indian child and family service programs as authorized by ICWA. *See* 25 CFR part 23. Those regulations did not address the specific requirements and standards that ICWA imposes upon State court child custody proceedings, beyond the requirements for contents of the notice. Also, in 1979, BIA published guidelines for State courts to use in interpreting many of ICWA's requirements in Indian child custody proceedings. 44 FR 67584 (Nov. 26, 1979).

In 2014, the Department invited comments to determine whether to update its guidelines and if so, what changes should be made. The Department held several listening sessions, including sessions with representatives of federally recognized Indian tribes, State court representatives (*e.g.,* the National Council of Juvenile and Family Court Judges and the National Center for State Courts' Conference of Chief Justices Tribal Relations Committee), the National Indian Child Welfare Association, and the National Congress of American Indians. The Department received comments from those at the listening sessions and also received written comments, including comments from individuals and additional organizations. An overwhelming proportion of the commenters requested not only that the Department update its ICWA guidelines but that the Department also issue regulations addressing the requirements and standards that ICWA imposes upon State court child custody proceedings. The Department reviewed and considered each comment in developing this proposed rule.

The Department has examined its authority to interpret and implement ICWA, including through a rulemaking, and has concluded that it possesses authority to implement the statute through rulemaking. ICWA instructs that ''[w]ithin [180] days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.'' 25 U.S.C. 1952. This is a broad grant of authority to the Secretary of the Interior (Secretary) to issue rules in order to ensure that the statute is fully and properly implemented. In addition to this express authority in ICWA, the Secretary is charged with ''the management of all Indian affairs and of all matters arising out of Indian relations,'' 25 U.S.C. 2, and may ''prescribe such regulations as [s]he may think fit for carrying into effect the various provisions of any act relating to Indian affairs.'' 25 U.S.C. 9. Finally, the United States has long been understood to have a special relationship with Indian nations, which includes the duty and power to protect them. Congress referred to this inherent authority in the opening language of ICWA, which explains that the ''United States has a direct interest, as trustee, in protecting Indian children.'' 25 U.S.C. 1901(3). These regulations, which are intended to improve the implementation of ICWA, uphold this Federal interest.

The Department has concluded that these regulations are now necessary to effectively carry out the provisions of ICWA. In issuing the guidelines in 1979, the Department found that primary responsibility for interpreting many of ICWA's provisions rests with the State courts that decide Indian child custody cases. *See, e.g.,* 44 FR 67,584 (November 26, 1979). At the time, the Department opined that the promulgation of regulations was not necessary to carry out ICWA. Since that time, it has become clear that a uniform interpretation of key provisions is necessary to ensure compliance with ICWA. These regulations will provide a stronger measure of consistency in the implementation of ICWA, which has been interpreted in different, and sometimes conflicting, ways by various State courts and agencies and has resulted in different minimum standards being applied across the United States, contrary to Congress' intent. Moreover, conflicting interpretations can lead to arbitrary outcomes, and certain interpretations and applications threaten the rights that ICWA was intended to protect. *See, e.g., Holyfield,* 490 U.S. at 45–46 (describing the need for uniformity in defining ''domicile'' under ICWA).

III. Overview of the Proposed Rule

This proposed rule addresses ICWA implementation by State courts and child welfare agencies, including updating definitions, and replacing current notice provisions at 25 CFR 23.11 with a proposed new subpart I to 25 CFR part 23. The proposed new subpart also addresses other aspects of ICWA compliance by State courts and child welfare agencies including, but

not limited to, other pretrial requirements, procedures for requesting transfer of an Indian child custody proceeding to tribal court, adjudications of involuntary placements, adoptions, and termination of parental rights, voluntary proceedings, dispositions, and post-trial rights. For example, the proposed rule clarifies ICWA applicability and codifies that there is no ''Existing Indian Family Exception (EIF)'' to ICWA. Since first identification of the EIF in 1982, the majority of State appellate courts that have considered the EIF have rejected it as contrary to the plain language of ICWA. Some State legislatures have also explicitly rejected the EIF within their State ICWA statutes. When Congress enacted ICWA, it intended that an ''Indian child'' was the threshold for application of ICWA. The Department agrees with the States that have concluded that there is no existing Indian family exception to application of ICWA. The proposed rule also promotes the early identification of ICWA applicability. Such identifications will promote proper implementation of ICWA at an early stage, to prevent—as much as possible—delayed discoveries that ICWA applies.

We welcome comments on all aspects of this rule. We are particularly interested in the use of ''should'' versus ''must.'' The proposed rule makes several of the provisions issued in the recently published *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings,* 80 FR 10146 (February 25, 2015), binding as regulation. These proposed mandatory provisions (indicating an action ''must'' be taken, for example) are authorized by ICWA. Some proposed provisions indicate that certain actions ''should'' be taken. We welcome comment on whether mandatory language is authorized by ICWA in those instances and any appropriate revisions to further promote compliance with ICWA.

IV. Public Meetings & Tribal Consultation Sessions

The Department will host both public meetings and tribal consultation sessions on this proposed rule.

A. Public Meetings

All are invited to the public meetings. Dates and locations for the public meetings are as follows:

Date	Time	Location	Venue
Wednesday, April 22, 2015	9 a.m.–noon Local Time	Portland, Oregon	BIA Regional Office, 911 NE 11th Ave, Portland, OR 97232*.
Thursday, April 23, 2015	1–4 p.m. Local Time	Rapid City, South Dakota	Best Western Ramkota Hotel, 2111 N Lacrosse St., Rapid City, SD 57701.
Tuesday, May 5, 2015	1–4 p.m. Local Time	Albuquerque, New Mexico	National Indian Programs Training Center, 1011 Indian School Road NW., Suite 254 Albuquerque, NM 87104*.
Thursday, May 7, 2015	1–4 p.m. Local Time	Prior Lake, Minnesota	Mystic Lake Casino Hotel, 2400 Mystic Lake Blvd., Prior Lake, MN 55372.
Tuesday, May 12, 2015	1 p.m.–4 p.m. Eastern Time	Via teleconference	888–730–9138, Passcode: INTERIOR.
Thursday, May 14, 2015	1–4 p.m. Local Time	Tulsa, Oklahoma	Tulsa Marriott Southern Hills, 1902 East 71st, Tulsa, OK 74136.

*Please RSVP for the Portland and Albuquerque meetings to *consultation@bia.gov,* bring photo identification, and arrive early to allow for time to get through security, as these are Federal buildings. No RSVP is necessary for the other locations.

B. Tribal Consultation Sessions

Tribal consultation sessions are for representatives of currently federally recognized tribes only, to discuss the rule on a government-to-government basis with the Department. These sessions may be closed to the public. The dates and locations for the tribal consultations are as follows:

Date	Time	Location	Venue
Monday, April 20, 2015	3:30 p.m.–5:30 p.m. Local Time	Portland, Oregon	Hilton Portland & Executive Towers, 921 SW. Sixth Avenue, Portland, OR 97204, (at the same location as NICWA conference).
Thursday, April 23, 2015	9 a.m.–12 p.m. Local Time	Rapid City, South Dakota	Best Western Ramkota Hotel, 2111 N Lacrosse St, Rapid City, SD 57701.
Tuesday, May 5, 2015	9 a.m.–12 p.m. Local Time	Albuquerque, New Mexico	National Indian Programs Training Center, 1011 Indian School Road, NW., Suite 254, Albuquerque, NM 87104*.
Thursday, May 7, 2015	9 a.m.–12 p.m. Local Time	Prior Lake, Minnesota	Mystic Lake Casino Hotel, 2400 Mystic Lake Blvd., Prior Lake, MN 55372.
Monday, May 11, 2015	1 p.m.–4 p.m. Eastern Time	Via teleconference	Call-in number: 888–730–9138 Passcode: INTERIOR =.

Date	Time	Location	Venue
Thursday, May 14, 2015	9 a.m.–12 p.m. Local Time	Tulsa, Oklahoma	Tulsa Marriott Southern Hills, 1902 East 71st, Tulsa, OK 74136.

V. Statutory Authority

The Department is issuing this proposed rule pursuant to ICWA, 25 U.S.C. 1901 *et seq.,* and its authority over the management of all Indian affairs under 25 U.S.C. 2, 9.

VI. Procedural Requirements

1. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The Department has developed this rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

3. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The rule's requirements will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' A takings implication assessment is therefore not required.

6. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The Department has determined that this rule complies with the fundamental Federalism principles and policymaking criteria established in EO 13132. Congress determined that the issue of Indian child welfare is sufficiently national in scope and significance to justify a statute that applies uniformly across States. This rule invokes the United States' special relationship with Indian tribes and children by establishing a regulatory baseline for implementation to further the goals of ICWA. Such goals include protecting the best interests of Indian children and promoting the stability and security of Indian tribes and families by establishing minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes that reflect the unique values of Indian culture. States are required to comply with ICWA even in the absence of this rule, and that requirement has existed since ICWA's passage in 1978. In the spirit of EO 13132, the Department specifically solicits comment on this proposed rule from State officials, including suggestions for how the rule could be made more flexible for State implementation.

7. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

8. Consultation With Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments,'' Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized Indian tribes and Indian trust assets. The Department hosted several listening sessions on the ICWA guidelines and notified each federally recognized tribal leader of the sessions. Several federally recognized Indian tribes submitted written comments and many suggested developing regulations. The Department considered each tribe's comments and concerns and have addressed them, where possible, in the proposed rule. The Department will be continuing to consult with tribes during the public comment period on this rule. The dates and locations of consultation sessions are listed in section IV, above.

9. Paperwork Reduction Act

OMB Control Number: 1076–NEW

Title: Indian Child Welfare Act (ICWA) Proceedings in State Court

Brief Description of Collection: This collection addresses the reporting, third-party disclosure, and recordkeeping requirements of ICWA, which requires State courts and agencies to provide notice to tribes and parents/custodians of any child custody proceeding that may involve an ''Indian child,'' and

requires State courts and agencies to document certain actions and maintain certain records regarding the removal and placement of an ''Indian child.''

Type of Review: Existing collection in use without OMB control number.

Respondents: State governments and individuals.

Number of Respondents: 5,500 on average (each year).

Number of Responses: 116,100 on average (each year).*

Frequency of Response: On occasion.

Estimated Time per Response: Ranges from 15 minutes to 12 hours.

Estimated Total Annual Hour Burden: 277,276 hours.

Estimated Total Annual Non-Hour Cost: $868,400.**

Sec.	Information collection	Annual number of respondents	Frequency of responses	Annual number of responses	Completion time per response	Total annual burden hours
23.107	Obtain information on whether child is ''Indian child''.	50	260	13,000	12	156,000
23.109(c)(3)	Notify of tribal membership where more than 1 tribe.	50	130	6,500	1	6,500
23.111, 23.113	Notify tribe, parents, Indian custodian of child custody proceeding.	50	260	13,000	6	78,000
23.113	Document basis for emergency removal/placement.	50	260	13,000	0.5	6,500
23.113	Maintain records detailing steps to provide notice.	50	260	13,000	0.5	6,500
23.113	Petition for court order authorizing emergency removal/placement (with required contents).	50	260	13,000	0.5	6,500
23.118	Notify tribal court of transfer, provide records.	50	5	250	0.25	63
23.120	Document ''active efforts''	50	130	6,500	0.5	3,250
23.125	Parental consent to termination or adoption (with required contents).	5,000	1	5,000	0.5	2,500
23.126, 127	Notify placement of withdrawal of consent.	50	2	100	0.25	25
23.128	Document each placement (including required documents).	50	130	6,500	0.5	3,250
23.128	Maintain records of placements	50	130	6,500	0.5	3,250
23.132	Notify of petition to vacate	50	5	250	0.25	63
23.135	Notify of change in status quo	50	130	6,500	0.25	1,625
23.136	Notify of final adoption decree/order.	50	130	6,500	0.25	1,625
23.137	Maintain records in a single location and respond to inquiries.	50	130	6,500	0.25	1,625
				116,100	6.75	277,276

10. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment because it is of an administrative, technical, and procedural nature. *See,* 43 CFR 46.210(i). No extraordinary circumstances exist that would require greater review under the National Environmental Policy Act.

11. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

12. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments by one of the methods listed in the ''COMMENTS'' section. To better help revise the rule, your comments should be as specific as possible. For example, include the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where lists or tables would be useful, etc.

13. Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying

* The following table shows estimates of the hour burden above what a State court or agency would do in a child custody proceeding that does not involve ICWA requirements:

** In many cases, there are no start-up costs associated with these information collections because State courts are agencies are already implementing child custody actions. However, it is possible that some States may not yet have a single location, or electronic database accessible from anywhere, housing all placement records. For this reason, we are estimating a start-up cost of $487,500 (or just under $10,000 per state on average, with the understanding that there will be no start-up costs in some states and up to $20,000 or more in others). The annual cost burden to respondents associated with providing notice by registered mail is $11.95 and the cost of a return receipt green card is $2.70. For each Indian child custody proceeding, at least two notices must be sent—one to the parent and one to the tribe, totaling $29.30. At an annual estimated 13,000 child welfare proceedings that may involve an ''Indian child,'' this totals: $380,900. Together with the start-up cost, the total non-hour cost burden for all 50 States is $868,400.

information from public review, we cannot guarantee that we will be able to do so.

The Department cannot ensure that comments received after the close of the comment period (see DATES) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

List of Subjects in 25 CFR Part 23

Administrative practice and procedure, Child welfare, Indians, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to amend part 23 in Title 25 of the Code of Federal Regulations as follows:

PART 23—INDIAN CHILD WELFARE ACT

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 1901–1952.

■ 2. In § 23.2:
■ a. Add a definition for ''active efforts'';
■ b. Revise the definition of ''child custody proceeding'';
■ c. Add definitions for ''continued custody'', ''custody'', and ''domicile'';
■ d. Revise the definition of ''extended family member'';
■ e. Add a definition for ''imminent physical danger or harm'';
■ f. Revise the definition of ''Indian child's tribe'', ''Indian custodian'', ''parent'', ''reservation'', and ''Secretary'';
■ g. Add a definition for ''status offenses'';
■ h. Revise the definition of ''tribal court''; and
■ i. Add definitions for ''upon demand'' and ''voluntary placement''.

The additions and revisions read as follows:

Revise the following definitions to read as follows:

§ 23.2 Definitions.

* * * * *

Active efforts means actions intended primarily to maintain and reunite an Indian child with his or her family or tribal community and constitute more than reasonable efforts as required by Title IV–E of the Social Security Act (42 U.S.C. 671(a)(15)). Active efforts include, for example:

(1) Engaging the Indian child, the Indian child's parents, the Indian child's extended family members, and the Indian child's custodian(s);

(2) Taking steps necessary to keep siblings together;

(3) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;

(4) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate;

(5) Conducting or causing to be conducted a diligent search for the Indian child's extended family members for assistance and possible placement;

(6) Taking into account the Indian child's tribe's prevailing social and cultural conditions and way of life, and requesting the assistance of representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards;

(7) Offering and employing all available and culturally appropriate family preservation strategies;

(8) Completing a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;

(9) Notifying and consulting with extended family members of the Indian child to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child;

(10) Making arrangements to provide family interaction in the most natural setting that can ensure the Indian child's safety during any necessary removal;

(11) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or extended family in utilizing and accessing those resources;

(12) Monitoring progress and participation in services;

(13) Providing consideration of alternative ways of addressing the needs of the Indian child's parents and extended family, if services do not exist or if existing services are not available;

(14) Supporting regular visits and trial home visits of the Indian child during any period of removal, consistent with the need to ensure the safety of the child; and

(15) Providing post-reunification services and monitoring.

* * * * *

Child custody proceeding means and includes any proceeding or action that involves:

(1) *Foster care placement,* which is any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, although parental rights have not been terminated;

(2) *Termination of parental rights,* which is any action resulting in the termination of the parent-child relationship;

(3) *Preadoptive placement,* which is the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; or

(4) *Adoptive placement,* which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

* * * * *

Continued custody means physical and/or legal custody that a parent already has or had at any point in the past. The biological mother of a child has had custody of a child.

Custody means physical and/or legal custody under any applicable tribal law or tribal custom or State law. A party may demonstrate the existence of custody by looking to tribal law or tribal custom or State law.

Domicile means:

(1) For a parent or any person over the age of eighteen, physical presence in a place and intent to remain there;

(2) For an Indian child, the domicile of the Indian child's parents. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's mother.

Extended family member is defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, is a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

* * * * *

Imminent physical damage or harm means present or impending risk of serious bodily injury or death.

* * * * *

Indian child's tribe means:

(1) The Indian tribe in which an Indian child is a member or eligible for membership; or

(2) In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts.

Indian custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child. An Indian person may demonstrate that he or she is an Indian custodian by looking to tribal law or tribal custom or State law.

* * * * *

Parent means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include an unwed father where paternity has not been acknowledged or established.

Reservation means Indian country as defined in 18 U.S.C. 1151, including any lands, title to which is held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

Secretary means the Secretary of the Interior or the Secretary's authorized representative acting under delegated authority.

* * * * *

Status offenses mean offenses that would not be considered criminal if committed by an adult; they are acts prohibited only because of a person's status as a minor (*e.g.,* truancy, incorrigibility).

* * * * *

Tribal court means a court with jurisdiction over child custody proceedings, including a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe vested with authority over child custody proceedings.

* * * * *

Upon demand means that the parent or Indian custodians can regain custody simply upon request, without any contingencies such as repaying the child's expenses.

* * * * *

Voluntary placement means a placement that either parent has, of his or her free will, chosen for the Indian child, including private adoptions.

■ 3. In § 23.11, revise paragraph (d) and remove paragraphs (e), (f), and (g).

The revision reads as follows:

§ 23.11 Notice.

* * * * *

(d) Notice to the appropriate BIA Area Director pursuant to paragraph (b) of this section must be sent by registered mail with return receipt requested and must include the information required by § 23.111 of these regulations.

* * * * *

■ 4. Add subpart I to read as follows:

Subpart I—Indian Child Welfare Act Proceedings

General Provisions

Sec.
23.101 What is the purpose of this subpart?
23.102 What terms do I need to know?
23.103 When does ICWA apply?
23.104 How do I contact a tribe under the regulations in this subpart?
23.105 How does this subpart interact with State laws?

Pretrial Requirements

23.106 When does the requirement for active efforts begin?
23.107 What actions must an agency and State court undertake to determine whether a child is an Indian child?
23.108 Who makes the determination as to whether a child is a member of a tribe?
23.109 What is the procedure for determining an Indian child's tribe when the child is a member or eligible for membership in more than one tribe?
23.110 When must a State court dismiss an action?
23.111 What are the notice requirements for a child custody proceeding involving an Indian child?
23.112 What time limits and extensions apply?
23.113 What is the process for the emergency removal of an Indian child?
23.114 What are the procedures for determining improper removal?

Procedures for Making Requests for Transfer to Tribal Court

23.115 How are petitions for transfer of proceeding made?
23.116 What are the criteria and procedures for ruling on transfer petitions?
23.117 How is a determination of ''good cause'' not to transfer made?
23.118 What happens when a petition for transfer is made?

Adjudication of Involuntary Placements, Adoptions, or Terminations of Parental Rights

23.119 Who has access to reports or records?
23.120 What steps must a party take to petition a State court for certain actions involving an Indian child?
23.121 What are the applicable standards of evidence?
23.122 Who may serve as a qualified expert witness?

Voluntary Proceedings

23.123 What actions must an agency and State court undertake in voluntary proceedings?
23.124 How is consent obtained?
23.125 What information should the consent document contain?
23.126 How is withdrawal of consent achieved in a voluntary foster care placement?
23.127 How is withdrawal of consent to a voluntary adoption achieved?

Dispositions

23.128 When do the placement preferences apply?
23.129 What placement preferences apply in adoptive placements?
23.130 What placement preferences apply in foster care or preadoptive placements?
23.131 How is a determination for ''good cause'' to depart from the placement preferences made?

Post-Trial Rights & Recordkeeping

23.132 What is the procedure for petitioning to vacate an adoption?
23.133 Who can make a petition to invalidate an action?
23.134 What are the rights of adult adoptees?
23.135 When must notice of a change in child's status be given?
23.136 What information must States furnish to the Bureau of Indian Affairs?
23.137 How must the State maintain records?
23.138 How does the Paperwork Reduction Act affect this subpart?

General Provisions

§ 23.101 What is the purpose of this subpart?

These regulations clarify the minimum Federal standards governing implementation of the Indian Child Welfare Act (ICWA) to ensure that ICWA is applied in all States consistent with the Act's express language, Congress' intent in enacting the statute, and the canon of construction that statutes enacted for the benefit of Indians are to be liberally construed to their benefit. In order to fully implement ICWA, these regulations apply in all proceedings and stages of a proceeding in which ICWA is or becomes applicable.

§ 23.102 What terms do I need to know?

The following terms and their definitions apply to this subpart. All other terms have the meanings assigned in § 23.2.

Agency means a private State-licensed agency or public agency and their employees, agents or officials involved in and/or seeking to place a child in a child custody proceeding.

Indian organization means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians or a tribe, or a majority of whose members are Indians.

§ 23.103 When does ICWA apply?

(a) ICWA applies whenever an Indian child is the subject of a State child custody proceeding as defined by the Act. ICWA also applies to proceedings involving status offenses or juvenile delinquency proceedings if any part of

those proceedings results in the need for placement of the child in a foster care, preadoptive or adoptive placement, or termination of parental rights.

(b) There is no exception to application of ICWA based on the so-called ''existing Indian family doctrine'' and, the following non-exhaustive list of factors that have been used by courts in applying the existing Indian family doctrine may not be considered in determining whether ICWA is applicable:

(1) The extent to which the parent or Indian child

(i) Participates in or observes tribal customs,

(ii) Votes in tribal elections or otherwise participates in tribal community affairs,

(iii) Contributes to tribal or Indian charities, subscribes to tribal newsletters or other periodicals of special interest in Indians,

(iv) Participates in Indian religious, social, cultural, or political events, or maintains social contacts with other members of the tribe;

(2) The relationship between the Indian child and his/her Indian parents;

(3) The extent of current ties either parent has to the tribe;

(4) Whether the Indian parent ever had custody of the child;

(5) The level of involvement of the tribe in the State court proceedings; and/or

(6) Blood quantum.

(c) Agencies and State courts, in every child custody proceeding, must ask whether the child is or could be an Indian child and conduct an investigation into whether the child is an Indian child.

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

(e) ICWA and these regulations or any associated Federal guidelines do not apply to:

(1) Tribal court proceedings;

(2) Placements based upon an act by the Indian child which, if committed by an adult, would be deemed a criminal offense; or

(3) An award, in a divorce proceeding, of custody of the Indian child to one of the parents.

(f) Voluntary placements that do not operate to prohibit the child's parent or Indian custodian from regaining custody of the child upon demand are not covered by ICWA. Such placements should be made pursuant to a written agreement, and the agreement should state explicitly the right of the parent or Indian custodian to regain custody of the child upon demand.

(g) Voluntary placements in which a parent consents to a foster care placement or seeks to permanently terminate his or her rights or to place the child in a preadoptive or adoptive placement are covered by ICWA.

§ 23.104 How do I contact a tribe under the regulations in this subpart?

To contact a tribe to provide notice or obtain information or verification under these regulations, you should direct the notice or inquiry as follows:

(a) Many tribes designate an agent for receipt of ICWA notices. The BIA publishes a list of tribes' designated tribal agents for service of ICWA notice in the **Federal Register** each year and makes the list available on its Web site at *www.bia.gov.*

(b) For tribes without a designated tribal agent for service of ICWA notice, contact the tribe(s) to be directed to the appropriate individual or office.

(c) If you do not have accurate contact information for the tribe(s) or the tribe(s) contacted fail(s) to respond to written inquiries, you may seek assistance in contacting the Indian tribe(s) from the BIA Regional Office and/or Central Office in Washington, DC (see *www.bia.gov*).

§ 23.105 How does this subpart interact with State laws?

(a) These regulations provide minimum Federal standards to ensure compliance with ICWA and are applicable in all child custody proceedings in which ICWA applies.

(b) In any child custody proceeding where applicable State or other Federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Act, ICWA requires that the State court must apply the higher standard.

Pretrial Requirements

§ 23.106 When does the requirement for active efforts begin?

(a) The requirement to engage in ''active efforts'' begins from the moment the possibility arises that an agency case or investigation may result in the need for the Indian child to be placed outside the custody of either parent or Indian custodian in order to prevent removal.

(b) Active efforts to prevent removal of the child must be conducted while investigating whether the child is a member of the tribe, is eligible for membership in the tribe, or whether a biological parent of the child is or is not a member of a tribe.

§ 23.107 What actions must an agency and State court undertake in order to determine whether a child is an Indian child?

(a) Agencies must ask whether there is reason to believe a child that is subject to a child custody proceeding is an Indian child. If there is reason to believe that the child is an Indian child, the agency must obtain verification, in writing, from all tribes in which it is believed that the child is a member or eligible for membership, as to whether the child is an Indian child.

(b) State courts must ask, as a threshold question at the start of any State court child custody proceeding, whether there is reason to believe the child who is the subject of the proceeding is an Indian child by asking each party to the case, including the guardian ad litem and the agency representative, to certify on the record whether they have discovered or know of any information that suggests or indicates the child is an Indian child.

(1) In requiring this certification, courts may wish to consider requiring the agency to provide:

(i) Genograms or ancestry charts for both parents, including all names known (maiden, married and former names or aliases); current and former addresses of the child's parents, maternal and paternal grandparents and great grandparents or Indian custodians; birthdates; places of birth and death; tribal affiliation including all known Indian ancestry for individuals listed on the charts, and/or other identifying information; and/or

(ii) The addresses for the domicile and residence of the child, his or her parents, or the Indian custodian and whether either parent or Indian custodian is domiciled on or a resident of an Indian reservation or in a predominantly Indian community.

(2) If there is reason to believe the child is an Indian child, the court must confirm that the agency used active efforts to work with all tribes of which the child may be a member to verify whether the child is in fact a member or eligible for membership in any tribe, under paragraph (a) of this section.

(c) An agency or court has reason to believe that a child involved in a child custody proceeding is an Indian child if:

(1) Any party to the proceeding, Indian tribe, Indian organization or public or private agency informs the agency or court that the child is an Indian child;

(2) Any agency involved in child protection services or family support has discovered information suggesting that the child is an Indian child;

(3) The child who is the subject of the proceeding gives the agency or court

reason to believe he or she is an Indian child;

(4) The domicile or residence of the child, parents, or the Indian custodian is known by the agency or court to be, or is shown to be, on an Indian reservation or in a predominantly Indian community; or

(5) An employee of the agency or officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

(d) In seeking verification of the child's status, in a voluntary placement proceeding where a consenting parent evidences a desire for anonymity, the agency or court must keep relevant documents confidential and under seal. A request for anonymity does not relieve the obligation to obtain verification from the tribe(s) or to provide notice.

§ 23.108 Who makes the determination as to whether a child is a member of a tribe?

(a) Only the Indian tribe(s) of which it is believed a biological parent or the child is a member or eligible for membership may make the determination whether the child is a member of the tribe(s), is eligible for membership in the tribe(s), or whether a biological parent of the child is a member of the tribe(s).

(b) The determination by a tribe of whether a child is a member, is eligible for membership, or whether a biological parent is or is not a member, is solely within the jurisdiction and authority of the tribe.

(c) No other entity or person may authoritatively make the determination of whether a child is a member of the tribe or is eligible for membership in the tribe.

(d) The State court may not substitute its own determination regarding a child's membership or eligibility for membership in a tribe or tribes.

§ 23.109 What is the procedure for determining an Indian child's tribe when the child is a member or eligible for membership in more than one tribe?

(a) Agencies must notify all tribes, of which the child may be a member or eligible for membership, that the child is involved in a child custody proceeding. The notice should specify the other tribe or tribes of which the child may be a member or eligible for membership.

(b) If the Indian child is a member or eligible for membership in only one tribe, that tribe should be designated as the Indian child's tribe.

(c) If an Indian child is a member or eligible for membership in more than one tribe, ICWA requires that the Indian tribe with which the Indian child has the more significant contacts be designated as the Indian child's tribe.

(1) In determining significant contacts, the following may be considered:

(i) Preference of the parents for membership of the child;

(ii) Length of past domicile or residence on or near the reservation of each tribe;

(iii) Tribal membership of custodial parent or Indian custodian; and

(iv) Interest asserted by each tribe in response to the notice that the child is involved in a child custody proceeding;

(2) When an Indian child is already a member of a tribe, but is also eligible for membership in another tribe, deference should be given to the tribe in which the Indian child is a member, unless otherwise agreed to by the tribes. However, if the Indian child is not a member of any tribe, an opportunity should be provided to allow the tribes to determine which of them should be designated as the Indian child's tribe.

(i) If the tribes are able to reach an agreement, the agreed upon tribe should be designated as the Indian child's tribe.

(ii) If the tribes do not agree, the following factors should be considered in designating the Indian child's tribe:

(A) The preference of the parents or extended family members who are likely to become foster care or adoptive placements; and/or

(B) Tribal membership of custodial parent or Indian custodian; and/or

(C) If applicable, length of past domicile or residence on or near the reservation of each tribe; and/or

(D) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes; and/or

(E) Self-identification by the child; and/or

(F) Availability of placements.

(3) Once an Indian tribe is designated as the child's Indian tribe, all tribes which received notice of the child custody proceeding must be notified in writing of the determination and a copy of that document must be filed with the court and sent to each party to the proceeding and to each person or governmental agency that received notice of the proceeding.

(4) A determination of the Indian child's tribe for purposes of ICWA and these regulations does not constitute a determination for any other purpose or situation.

(d) The tribe designated as the Indian child's tribe may authorize another tribe to act as a representative for the tribe in a child custody case.

§ 23.110 When must a State court dismiss an action?

Subject to § 23.113 (emergency procedures), the following limitations on a State court's jurisdiction apply:

(a) The court must dismiss any child custody proceeding as soon as the court determines that it lacks jurisdiction.

(b) The court must make a determination of the residence and domicile of the Indian child. If either the residence or domicile is on a reservation where the tribe exercises exclusive jurisdiction over child custody proceedings, the State court must dismiss the State court proceedings, the agency must notify the tribe of the dismissal based on the tribe's exclusive jurisdiction, and the agency must transmit all available information regarding the Indian child custody proceeding to the tribal court.

(c) If the Indian child has been domiciled or previously resided on an Indian reservation, the State court must contact the tribal court to determine whether the child is a ward of the tribal court. If the child is a ward of a tribal court, the State court must dismiss the State court proceedings, the agency must notify the tribe of the dismissal, and the agency must transmit all available information regarding the Indian child custody proceeding to the tribal court.

§ 23.111 What are the notice requirements for a child custody proceeding involving an Indian child?

(a) When an agency or court knows or has reason to believe that the subject of a voluntary or involuntary child custody proceeding is an Indian child, the agency or court must send notice of each such proceeding (including but not limited to a temporary custody proceeding, any removal or foster care placement, any adoptive placement, or any termination of parental or custodial rights) by registered mail with return receipt requested to:

(1) Each tribe where the child may be a member or eligible for membership;

(2) The child's parents; and

(3) If applicable, the Indian custodian.

(b) Notice may be sent via personal service or electronically in addition to the methods required by ICWA, but such alternative methods do not replace the requirement for notice to be sent by registered mail with return receipt requested.

(c) Notice must be in clear and understandable language and include the following:

(1) Name of the child, the child's birthdate and birthplace;

(2) Name of each Indian tribe(s) in which the child is a member or may be eligible for membership;

(3) A copy of the petition, complaint or other document by which the proceeding was initiated;

(4) Statements setting out:

(i) The name of the petitioner and name and address of petitioner's attorney;

(ii) The right of the parent or Indian custodian to intervene in the proceedings.

(iii) The Indian tribe's right to intervene at any time in a State court proceeding for the foster care placement of or termination of a parental right.

(iv) If the Indian parent(s) or, if applicable, Indian custodian(s) is unable to afford counsel based on a determination of indigency by the court, counsel will be appointed to represent the parent or Indian custodian where authorized by State law.

(v) The right to be granted, upon request, a specific amount of additional time (up to 20 additional days) to prepare for the proceedings due to circumstances of the particular case.

(vi) The right to petition the court for transfer of the proceeding to tribal court under 25 U.S.C. 1911, absent objection by either parent: *Provided, that* such transfer is subject to declination by the tribal court.

(vii) The mailing addresses and telephone numbers of the court and information related to all parties to the proceeding and individuals notified under this section.

(viii) The potential legal consequences of the proceedings on the future custodial and parental rights of the Indian parents or Indian custodians.

(d) If the identity or location of the Indian parents, Indian custodians or tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to believe the child is an Indian child, notice of the child custody proceeding must be sent to the appropriate Bureau of Indian Affairs Regional Director (see *www.bia.gov*). To establish tribal identity, as much information as is known regarding the child's direct lineal ancestors should be provided (see § 23.111 of this subpart regarding notice requirements). The Bureau of Indian Affairs will not make a determination of tribal membership, but may, in some instances, be able to identify tribes to contact.

(e) The original or a copy of each notice sent under this section should be filed with the court together with any return receipts or other proof of service.

(f) If a parent or Indian custodian appears in court without an attorney, the court must inform him or her of the right to appointed counsel, the right to request that the proceeding be transferred to tribal court, the right to object to such transfer, the right to request additional time to prepare for the proceeding and the right (if the parent or Indian custodian is not already a party) to intervene in the proceedings.

(g) If the court or an agency has reason to believe that a parent or Indian custodian possesses limited English proficiency and is therefore not likely to understand the contents of the notice, the court or agency must, at no cost, provide a translated version of the notice or have the notice read and explained in a language that the parent or Indian custodian understands. To secure such translation or interpretation support, a court or agency should contact the Indian child's tribe or the local BIA agency for assistance in locating and obtaining the name of a qualified translator or interpreter.

(h) No substantive proceedings, rulings or decisions on the merits related to the involuntary placement of the child or termination of parental rights may occur until the notice and waiting periods in this section have elapsed.

(i) If the child is transferred interstate, regardless of whether the Interstate Compact on the Placement of Children (ICPC) applies, both the originating State court and receiving State court must provide notice to the tribe(s) and seek to verify whether the child is an Indian child.

§ 23.112 What time limits and extensions apply?

(a) No proceedings regarding decisions for the foster care or termination of parental rights may begin until the waiting periods to which the parents or Indian custodians and to which the Indian child's tribe are entitled have passed. Additional extensions of time may also be granted beyond the minimum required by ICWA.

(b) A tribe, parent or Indian custodian entitled to notice of the pendency of a child custody proceeding has a right, upon request, to be granted an additional 20 days from the date upon which notice was received in accordance with 25 U.S.C. 1912(a) to prepare for participation in the proceeding.

(c) The proceeding may not begin until all of the following dates have passed:

(1) 10 days after each parent or Indian custodian (or Secretary where the parent or Indian custodian is unknown to the petitioner) has received notice in accordance with 25 U.S.C. 1912(a);

(2) 10 days after the Indian child's tribe (or the Secretary if the Indian child's tribe is unknown to the party seeking placement) has received notice in accordance with 25 U.S.C. 1912(a);

(3) 30 days after the parent or Indian custodian has received notice in accordance with 25 U.S.C. 1912(a), if the parent or Indian custodian has requested an additional 20 days to prepare for the proceeding; and

(4) 30 days after the Indian child's tribe has received notice in accordance with 25 U.S.C. 1912(a), if the Indian child's tribe has requested an additional 20 days to prepare for the proceeding.

(d) The court should allow, if it possesses the capability, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

§ 23.113 What is the process for the emergency removal of an Indian child?

(a) Any emergency removal or emergency placement of any Indian child under State law must be as short as possible. Each involved agency or court must:

(1) Diligently investigate and document whether the removal or placement is proper and continues to be necessary to prevent imminent physical damage or harm to the child;

(2) Promptly hold a hearing to hear evidence and evaluate whether the removal or placement continues to be necessary whenever new information is received or assertions are made that the emergency situation has ended; and

(3) Immediately terminate the emergency removal or placement once the court possesses sufficient evidence to determine that the emergency has ended.

(b) If the agency that conducts an emergency removal of a child whom the agency knows or has reason to believe is an Indian child, the agency must:

(1) Treat the child as an Indian child until the court determines that the child is not an Indian child;

(2) Conduct active efforts to prevent the breakup of the Indian family as early as possible, including, if possible, before removal of the child;

(3) Immediately take and document all practical steps to confirm whether the child is an Indian child and to verify the Indian child's tribe;

(4) Immediately notify the child's parents or Indian custodians and Indian tribe of the removal of the child;

(5) Take all practical steps to notify the child's parents or Indian custodians and Indian tribe about any proceeding, or hearings within a proceeding,

regarding the emergency removal or emergency placement of the child; and

(6) Maintain records that detail the steps taken to provide any required notifications under § 23.111.

(d) A petition for a court order authorizing emergency removal or continued emergency physical custody must be accompanied by an affidavit containing the following information:

(1) The name, age and last known address of the Indian child;

(2) The name and address of the child's parents and Indian custodians, if any;

(3) If such persons are unknown, a detailed explanation of what efforts have been made to locate them, including notice to the appropriate BIA Regional Director (see *www.bia.gov*);

(4) Facts necessary to determine the residence and the domicile of the Indian child;

(5) If either the residence or domicile is believed to be on an Indian reservation, the name of the reservation;

(6) The tribal affiliation of the child and of the parents and/or Indian custodians;

(7) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;

(8) If the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to transfer the child to the tribe's jurisdiction;

(9) A statement of the specific active efforts that have been taken to assist the parents or Indian custodians so the child may safely be returned to their custody; and

(10) A statement of the imminent physical damage or harm expected and any evidence that the removal or emergency custody continues to be necessary to prevent such imminent physical damage or harm to the child.

(e) At any court hearing regarding the emergency removal or emergency placement of an Indian child, the court must determine whether the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(f) Temporary emergency custody should not be continued for more than 30 days. Temporary emergency custody may be continued for more than 30 days only if:

(1) A hearing, noticed in accordance with these regulations, is held and results in a determination by the court, supported by clear and convincing evidence and the testimony of at least one qualified expert witness, that custody of the child by the parent or Indian custodian is likely to result in imminent physical damage or harm to the child; or

(2) Extraordinary circumstances exist.

(g) The emergency removal or placement must terminate as soon as the imminent physical damage or harm to the child which resulted in the emergency removal or placement no longer exists, or, if applicable, as soon as the tribe exercises jurisdiction over the case, whichever is earlier.

(h) Once an agency or court has terminated the emergency removal or placement, it must expeditiously:

(1) Return the child to the parent or Indian custodian within one business day; or

(2) Transfer the child to the jurisdiction of the appropriate Indian tribe if the child is a ward of a tribal court or a resident of or domiciled on a reservation; or

(3) Initiate a child custody proceeding subject to the provisions of ICWA and these regulations.

(i) The court should allow, if it possesses the capability, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

§ 23.114 What are the procedures for determining improper removal?

(a) If, in the course of any Indian child custody proceeding, any party asserts or the court has reason to believe that the Indian child may have been improperly removed from the custody of his or her parent or Indian custodian, or that the Indian child has been improperly retained, such as after a visit or other temporary relinquishment of custody, the court must immediately stay the proceeding until a determination can be made on the question of improper removal or retention, and such determination must be conducted expeditiously.

(b) If the court finds that the Indian child was improperly removed or retained, the court must terminate the proceeding and the child must be returned immediately to his or her parents or Indian custodian, unless returning the child to his parent or custodian would subject the child to imminent physical damage or harm.

Procedures for Making Requests for Transfer to Tribal Court

§ 23.115 How are petitions for transfer of proceeding made?

(a) Either parent, the Indian custodian, or the Indian child's tribe may request, orally on the record or in writing, that the State court transfer each distinct Indian child custody proceeding to the tribal court of the child's tribe.

(b) The right to request a transfer occurs with each proceeding.

(c) The right to request a transfer is available at any stage of an Indian child custody proceeding, including during any period of emergency removal.

(d) The court should allow, if possible, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

§ 23.116 What are the criteria and procedures for ruling on transfer petitions?

(a) Upon receipt of a petition to transfer by a parent, Indian custodian or the Indian child's tribe, the State court must transfer the case unless any of the following criteria are met:

(1) Either parent objects to such transfer;

(2) The tribal court declines the transfer; or

(3) The court determines that good cause exists for denying the transfer.

(b) The court should expeditiously provide all records related to the proceeding to the tribal court.

§ 23.117 How is a determination of "good cause" not to transfer made?

(a) If the State court believes, or any party asserts, that good cause not to transfer exists, the reasons for such belief or assertion must be stated on the record or in writing and made available to the parties who are petitioning for transfer.

(b) Any party to the proceeding must have the opportunity to provide the court with views regarding whether good cause to deny transfer exists.

(c) In determining whether good cause exists, the court may not consider whether the case is at an advanced stage or whether transfer would result in a change in the placement of the child.

(d) In addition, in determining whether there is good cause to deny the transfer, the court may not consider:

(1) The Indian child's contacts with the tribe or reservation;

(2) Socio-economic conditions or any perceived inadequacy of tribal or BIA social services or judicial systems; or

(3) The tribal court's prospective placement for the Indian child.

(e) The burden of establishing good cause not to transfer is on the party opposing the transfer.

§ 23.118 What happens when a petition for transfer is made?

(a) Upon receipt of a transfer petition the State court must promptly notify the

tribal court in writing of the transfer petition and request a response regarding whether the tribal court wishes to decline the transfer. The notice should specify how much time the tribal court has to make its decision; provided that the tribal court must be provided 20 days from the receipt of notice of a transfer petition to decide whether to accept or decline the transfer.

(b) If the tribal court accepts the transfer, the State court should promptly provide the tribal court with all court records.

Adjudication of Involuntary Placements, Adoptions, or Terminations or Terminations of Parental Rights

§ 23.119 Who has access to reports or records?

(a) The court must inform each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child of his or her right to timely examination of all reports or other documents filed with the court and all files upon which any decision with respect to such action may be based.

(b) Decisions of the court may be based only upon reports, documents or testimony presented on the record.

§ 23.120 What steps must a party take to petition a State court for certain actions involving an Indian child?

(a) Any party petitioning a State court for foster care placement or termination of parental rights to an Indian child must demonstrate to the court that prior to, and until the commencement of, the proceeding, active efforts have been made to avoid the need to remove the Indian child from his or her parents or Indian custodians and show that those efforts have been unsuccessful.

(b) Active efforts must be documented in detail and, to the extent possible, should involve and use the available resources of the extended family, the child's Indian tribe, Indian social service agencies and individual Indian care givers.

§ 23.121 What are the applicable standards of evidence?

(a) The court may not issue an order effecting a foster care placement of an Indian child unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody with the child's parents or Indian custodian is likely to result in serious physical damage or harm to the child.

(b) The court may not order a termination of parental rights unless the court's order is supported by evidence beyond a reasonable doubt, supported by the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious physical damage or harm to the child.

(c) Clear and convincing evidence must show a causal relationship between the existence of particular conditions in the home that are likely to result in serious emotional or physical damage to the particular child who is the subject of the proceeding.

(d) Evidence that only shows the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence that continued custody is likely to result in serious emotional or physical-damage to the child.

§ 23.122 Who may serve as a qualified expert witness?

(a) A qualified expert witness should have specific knowledge of the Indian tribe's culture and customs.

(b) Persons with the following characteristics, in descending order, are presumed to meet the requirements for a qualified expert witness:

(1) A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices.

(2) A member of another tribe who is recognized to be a qualified expert witness by the Indian child's tribe based on their knowledge of the delivery of child and family services to Indians and the Indian child's tribe.

(3) A layperson who is recognized by the Indian child's tribe as having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe.

(4) A professional person having substantial education and experience in the area of his or her specialty who can demonstrate knowledge of the prevailing social and cultural standards and childrearing practices within the Indian child's tribe.

(c) The court or any party may request the assistance of the Indian child's tribe or the BIA agency serving the Indian child's tribe in locating persons qualified to serve as expert witnesses.

Voluntary Proceedings

§ 23.123 What actions must an agency and State court undertake in voluntary proceedings?

(a) Agencies and State courts must ask whether a child is an Indian child in any voluntary proceeding under § 23.107 of these regulations.

(b) Agencies and State courts must provide the Indian tribe with notice of the voluntary child custody proceedings, including applicable pleadings or executed consents, and their right to intervene under § 23.111 of this part.

§ 23.124 How is consent obtained?

(a) A voluntary termination of parental rights, foster care placement or adoption must be executed in writing and recorded before a court of competent jurisdiction.

(b) Prior to accepting the consent, the court must explain the consequences of the consent in detail, such as any conditions or timing limitations for withdrawal of consent and, if applicable, the point at which such consent is irrevocable.

(c) A certificate of the court must accompany a written consent and must certify that the terms and consequences of the consent were explained in detail in the language of the parent or Indian custodian, if English is not the primary language, and were fully understood by the parent or Indian custodian.

(d) Execution of consent need not be made in open court where confidentiality is requested or indicated.

(e) A consent given prior to or within 10 days after birth of the Indian child is not valid.

§ 23.125 What information should a consent document contain?

(a) The consent document must contain the name and birthdate of the Indian child, the name of the Indian child's tribe, identifying tribal enrollment number, if any, or other indication of the child's membership in the tribe, and the name and address of the consenting parent or Indian custodian. If there are any conditions to the consent, the consent document must clearly set out the conditions.

(b) A consent to foster care placement should contain, in addition to the information specified in paragraph (a) of this section, the name and address of the person or entity by or through whom the placement was arranged, if any, or the name and address of the prospective foster parents, if known at the time.

§ 23.126 How is withdrawal of consent achieved in a voluntary foster care placement?

(a) Withdrawal of consent must be filed in the same court where the consent document was executed.

(b) When a parent or Indian custodian withdraws consent to foster care placement, the child must be returned to that parent or Indian custodian immediately.

§ 23.127 How is withdrawal of consent to a voluntary adoption achieved?

(a) A consent to termination of parental rights or adoption may be withdrawn by the parent at any time prior to entry of a final decree of voluntary termination or adoption, whichever occurs later. To withdraw consent, the parent must file, in the court where the consent is filed, an instrument executed under oath asserting his or her intention to withdraw such consent.

(b) The clerk of the court in which the withdrawal of consent is filed must promptly notify the party by or through whom any preadoptive or adoptive placement has been arranged of such filing and the child must be returned to the parent or Indian custodian as soon as practicable.

Dispositions

§ 23.128 When do the placement preferences apply?

(a) In any preadoptive, adoptive or foster care placement of an Indian child, ICWA's placement preferences apply; except that, if the Indian child's tribe has established by resolution a different order of preference than that specified in ICWA, the agency or court effecting the placement must follow the tribe's placement preferences.

(b) The agency seeking a preadoptive, adoptive or foster care placement of an Indian child must always follow the placement preferences. If the agency determines that any of the preferences cannot be met, the agency must demonstrate through clear and convincing evidence that a diligent search has been conducted to seek out and identify placement options that would satisfy the placement preferences specified in §§ 23.129 and 23.130 of these regulations, and explain why the preferences could not be met. A search should include notification about the placement proceeding and an explanation of the actions that must be taken to propose an alternative placement to:

(1) The Indian child's parents or Indian custodians;

(2) All of the known, or reasonably identifiable, members of the Indian child's extended family members;

(3) The Indian child's tribe;

(4) In the case of a foster care or preadoptive placement:

(i) All foster homes licensed, approved, or specified by the Indian child's tribe; and

(ii) All Indian foster homes located in the Indian child's State of domicile that are licensed or approved by any authorized non-Indian licensing authority.

(c) Where there is a request for anonymity, the court should consider whether additional confidentiality protections are warranted, but a request for anonymity does not relieve the agency or the court of the obligation to comply with the placement preferences.

(d) Departure from the placement preferences may occur only after the court has made a determination that good cause exists to place the Indian child with someone who is not listed in the placement preferences.

(e) Documentation of each preadoptive, adoptive or foster care placement of an Indian child under State law must be provided to the State for maintenance at the agency. Such documentation must include, at a minimum: The petition or complaint; all substantive orders entered in the proceeding; the complete record of, and basis for, the placement determination; and, if the placement deviates from the placement preferences, a detailed explanation of all efforts to comply with the placement preferences and the court order authorizing departure from the placement preferences.

§ 23.129 What placement preferences apply in adoptive placements?

(a) In any adoptive placement of an Indian child under State law, preference must be given in descending order, as listed below, to placement of the child with:

(1) A member of the child's extended family;

(2) Other members of the Indian child's tribe; or

(3) Other Indian families, including families of unwed individuals.

(b) The court should, where appropriate, also consider the preference of the Indian child or parent.

§ 23.130 What placement preferences apply in foster care or preadoptive placements?

In any foster care or preadoptive placement of an Indian child:

(a) The child must be placed in the least restrictive setting that:

(1) Most approximates a family;

(2) Allows his or her special needs to be met; and

(3) Is in reasonable proximity to his or her home, extended family, and/or siblings.

(b) Preference must be given, in descending order as listed below, to placement of the child 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, whether on or off the reservation;

(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 which has a program suitable to meet the child's needs.

§ 23.131 How is a determination for "good cause" to depart from the placement preferences made?

(a) If any party asserts that good cause not to follow the placement preferences exists, the reasons for such belief or assertion must be stated on the record or in writing and made available to the parties to the proceeding and the Indian child's tribe.

(b) The party seeking departure from the preferences bears the burden of proving by clear and convincing evidence the existence of "good cause" to deviate from the placement preferences.

(c) A determination of good cause to depart from the placement preferences must be based on one or more of the following considerations:

(1) The request of the parents, if both parents attest that they have reviewed the placement options that comply with the order of preference.

(2) The request of the child, if the child is able to understand and comprehend the decision that is being made.

(3) The extraordinary physical or emotional needs of the child, such as specialized treatment services that may be unavailable in the community where families who meet the criteria live, as established by testimony of a qualified expert witness; provided that extraordinary physical or emotional needs of the child does not include ordinary bonding or attachment that may have occurred as a result of a placement or the fact that the child has, for an extended amount of time, been in another placement that does not comply with ICWA.

(4) The unavailability of a placement after a showing by the applicable agency in accordance with § 23.128(b) of this subpart, and a determination by the

court that active efforts have been made to find placements meeting the preference criteria, but none have been located. For purposes of this analysis, a placement may not be considered unavailable if the placement conforms to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(d) The court should consider only whether a placement in accordance with the preferences meets the physical, mental and emotional needs of the child; and may not depart from the preferences based on the socio-economic status of any placement relative to another placement.

Post-Trial Rights

§ 23.132 What is the procedure for petitioning to vacate an adoption?

(a) Within two years after a final decree of adoption of any Indian child by a State court, or within any longer period of time permitted by the law of the State, a parent who executed a consent to termination of paternal rights or adoption of that child may petition the court in which the final adoption decree was entered to vacate the decree and revoke the consent on the grounds that consent was obtained by fraud or duress, or that the proceeding failed to comply with ICWA.

(b) Upon the filing of such petition, the court must give notice to all parties to the adoption proceedings and the Indian child's tribe.

(c) The court must hold a hearing on the petition.

(d) Where the court finds that the parent's consent was obtained through fraud or duress, the court must vacate the decree of adoption, order the consent revoked and order that the child be returned to the parent.

§ 23.133 Who can make a petition to invalidate an action?

(a) Any of the following may petition any court of competent jurisdiction to invalidate an action for foster care placement or termination of parental rights where it is alleged that ICWA has been violated:

(1) An Indian child who is the subject of any action for foster care placement or termination of parental rights;

(2) A parent or Indian custodian from whose custody such child was removed; and

(3) The Indian child's tribe.

(b) Upon a showing that an action for foster care placement or termination of parental rights violated any provision of 25 U.S.C. 1911, 1912, or 1913, the court must determine whether it is appropriate to invalidate the action.

(c) There is no requirement that the particular party's rights under ICWA be violated to petition for invalidation; rather, any party may challenge the action based on violations in implementing ICWA during the course of the child custody proceeding.

(d) The court should allow, if it possesses the capability, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

§ 23.134 What are the rights of adult adoptees?

(a) Upon application by an Indian individual who has reached age 18 who was the subject of an adoptive placement, the court that entered the final decree must inform such individual of the tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights, which may include tribal membership, resulting from the individual's tribal relationship.

(b) Where State law prohibits revelation of the identity of the biological parent, assistance of the BIA should be sought to help an adoptee who is eligible for membership in a tribe to become a tribal member without breaching the Privacy Act or confidentiality of the record.

(c) In States where adoptions remain closed, the relevant agency should communicate directly with the tribe's enrollment office and provide the information necessary to facilitate the establishment of the adoptee's tribal membership.

(d) Agencies should work with the tribe to identify at least one tribal designee familiar with 25 U.S.C. 1917 to assist adult adoptees statewide with the process of reconnecting with their tribes and to provide information to State judges about this provision on an annual basis.

§ 23.135 When must notice of a change in child's status be given?

(a) Notice by the court, or an agency authorized by the court, must be given to the child's biological parents or prior Indian custodians and the Indian child's tribe whenever:

(1) A final decree of adoption of an Indian child has been vacated or set aside; or

(2) The adoptive parent has voluntarily consented to the termination of his or her parental rights to the child; or

(3) Whenever an Indian child is removed from a foster care home or institution to another foster care placement, preadoptive placement, or adoptive placement.

(b) The notice must inform the recipient of the right to petition for return of custody of the child.

(c) A parent or Indian custodian may waive his or her right to such notice by executing a written waiver of notice filed with the court. The waiver may be revoked at any time by filing with the court a written notice of revocation. A revocation of the right to receive notice does not affect any proceeding which occurred before the filing of the notice of revocation.

§ 23.136 What information must States furnish to the Bureau of Indian Affairs?

(a) Any state entering a final adoption decree or order must furnish a copy of the decree or order to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW., Mail Stop 4513 MIB, Washington, DC 20240, along with the following information:

(1) Birth name of the child, tribal affiliation and name of the child after adoption;

(2) Names and addresses of the biological parents;

(3) Names and addresses of the adoptive parents;

(4) Name and contact information for any agency having files or information relating to the adoption;

(5) Any affidavit signed by the biological parent or parents asking that their identity remain confidential; and

(6) Any information relating to tribal membership or eligibility for tribal membership of the adopted child.

(b) Confidentiality of such information must be maintained and is not subject to the Freedom of Information Act, 5 U.S.C. 552, as amended.

§ 23.137 How must the State maintain records?

(a) The State must establish a single location where all records of every voluntary or involuntary foster care, preadoptive placement and adoptive placement of Indian children by courts of that State will be available within seven days of a request by an Indian child's tribe or the Secretary.

(b) The records must contain, at a minimum, the petition or complaint, all substantive orders entered in the proceeding, and the complete record of the placement determination (including, but not limited to the findings in the court record and social worker's statement).

§ 23.138 How does the Paperwork Reduction Act affect this subpart?

The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–XXXX. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number. Send comments regarding this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer—Indian Affairs, 1849 C Street NW., Washington, DC 20240.

Dated: March 16, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–06371 Filed 3–18–15; 11:15 am]

BILLING CODE 4310–6W–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2014–0712; FRL–9924–82–Region–4]

Tennessee: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Tennessee has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). These changes correspond to certain Federal rules promulgated between July 1, 2004 and June 30, 2006 (also known as RCRA Clusters XV and XVI). With this proposed rule, EPA is proposing to grant final authorization to Tennessee for these changes.

DATES: Send your written comments by April 20, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2014–0712, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: merizalde.carlos@epa.gov.*
- *Fax:* (404) 562–9964 (prior to faxing, please notify the EPA contact listed below)
- *Mail:* Send written comments to Carlos E. Merizalde, RCRA Corrective Action and Permitting Section, RCRA Cleanup and Brownfields Branch, Resource Conservation and Restoration Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
- *Hand Delivery or Courier:* Deliver your comments to Carlos E. Merizalde, RCRA Corrective Action and Permitting Section, RCRA Cleanup and Brownfields Branch, Resource Conservation and Restoration Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Please see the direct final rule in the ''Rules and Regulations'' section of this issue of the **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Carlos E. Merizalde, RCRA Corrective Action and Permitting Section, RCRA Cleanup and Brownfields Branch, Resource Conservation and Restoration Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303; telephone number: (404) 562–8606; fax number: (404) 562–9964; email address: *merizalde.carlos@epa.gov.*

SUPPLEMENTARY INFORMATION: Along with this proposed rule, EPA is publishing a direct final rule in the ''Rules and Regulations'' section of this issue of the **Federal Register** pursuant to which EPA is authorizing these changes. EPA did not issue a proposed rule before today because EPA believes this action is not controversial and does not expect comments that oppose it. EPA has explained the reasons for this authorization in the direct final rule. Unless EPA receives written comments that oppose this authorization during the comment period, the direct final rule in this issue of the **Federal Register** will become effective on the date it establishes, and EPA will not take further action on this proposal. If EPA receives comments that oppose this action, EPA will withdraw the direct final rule and it will not take effect. EPA will then respond to public comments in a later final rule based on this proposed rule. You may not have another opportunity to comment on these State program changes. If you want to comment on this action, you must do so at this time. For additional information, please see the direct final rule published in the ''Rules and Regulations'' section of this issue of the **Federal Register**.

Dated: March 2, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2015–06511 Filed 3–19–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 15–53; FCC 15–30]

Amendment to the Commission's Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission asks whether it should adopt a rebuttable presumption that cable operators are subject to effective competition. A franchising authority is permitted to regulate basic cable rates only if the cable system is not subject to effective competition. This proceeding will also implement section 111 of the STELA Reauthorization Act of 2014, which directs the Commission to adopt a streamlined effective competition process for small cable operators.

DATES: Comments are due on or before April 9, 2015; reply comments are due on or before April 20, 2015. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before May 19, 2015.

ADDRESSES: You may submit comments, identified by MB Docket No. 15–53, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Department of the Interior,
Bureau of Indian Affairs

Comment Form

To: Ms. Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action – Indian Affairs, U.S. Department of the Interior, 1849 C. Street N.W., MS 3642 Washington, DC 20240

From: Judicial Council of California

Tribal Affiliation: Comment prepared with input from the Tribal Court–State Court Forum, an advisory committee comprised of 30 members, including tribal and state court judges and input from the Family and Juvenile Law Advisory Committee.

Date:

Comment:

The summary of the proposed rule *Regulations for State Courts and Agencies in Indian Child Custody Proceedings* (as published in the Federal Register on March 20, 2015 (Vol. 80 FR No. 54 14880) states that the proposed rules will improve ICWA implementation by state courts and child welfare agencies. The Judicial Council of California (JCC) supports these goals and agrees with the need for more specific federal regulations to provide guidance and clarity on issues that have been the subject of conflict and difference in interpretation. The JCC supports full ICWA compliance.

We are writing this comment to describe the impact the proposed regulations and newly issued guidelines would have on California state courts. Our comments are grouped into several areas that reflect the following general concerns: (1) the proposed regulations are at times unclear or confusing; (2) the proposed regulations are in a number of instances inconsistent with the statute (25 U.S.C.§§ 1901 – 1963); (3) the regulations do not resolve inconsistencies between ICWA and other relevant federal statutes, which interfere with ICWA compliance; (4) the regulations transfer current Bureau of Indian Affairs (BIA) responsibility to state courts and agencies which is not most conducive to ICWA implementation; (5) the regulations fail to take advantage of technological advances that could facilitate ICWA implementation and compliance; and (6) the regulations unduly fetter the discretion of state judicial officers.

1) **Certain proposed regulations are unclear and confusing**

a) **Proposed regulation §23.103, When does ICWA apply? (page 14886)**
There is a need to clarify the application of ICWA in delinquency proceedings given that proposed regulations §23.103(a) and §23.103(e)(2) seem to conflict.

ICWA (25 U.S.C. 1903 (1)) excludes "a placement based upon an act which, if committed by an adult, would be deemed a crime.…." This general exclusion is expressed in proposed regulation §23.103(e)(2).

However, proposed regulation §23.103(a) states that ICWA applies to

> juvenile delinquency proceedings if any part of those proceedings **results in the need for placement of the child in foster care**, preadoptive or adoptive placement, or termination of parental rights. (Emphasis added.)

Does this mean ICWA applies even when the delinquency proceedings are based on a criminal act? If so, what definition of "foster care" is intended in this regulation?

There are different definitions of foster care in different federal statutes. In addition to the definition in ICWA, 42 U.S.C. § 672(c) defines foster care to include a family home or child care institution accommodating 25 children or less, but explicitly exclude

> detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent." (42 U.S.C. § 672 (c))

Is there any relationship between this definition and §23.103(a)?

b) **The investigation requirements at the start of a proceeding**
The scope of required ICWA inquiry has been the subject of a great deal of litigation in California. In proposed regulations §23.103(c) and §23.107(b), it would be helpful to clarify **who** state courts are required to ask whether the child is an Indian child and what exactly must be asked. Is it sufficient to ask the parents and child (if old enough)? What specifically must be asked? It would be helpful to clarify what the "investigation" required under §23.103(c) consists of beyond asking and whether an "investigation" must be conducted if all of the individuals asked about Indian status say that there is no Indian ancestry.

c) **The definition of "Indian child" being used in the regulations.**
The Act (25 U.S.C. § 1903(4)) defines an Indian child as

> "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."

Various sections of the proposed regulations, however, refer only to the Indian child being "a member or eligible for membership" in a tribe. (See proposed regulation §23.2(1); §23.107(a) and (b)(2); §23.108(a); §23.109 Title, (a), (b) and (c); §23.111(a)(1) and (d)) Is it the intent of the regulations to expand the practical definition of an Indian child?

d) The notice requirements

i) How do the new requirements concerning notice, found in proposed section 23.111, relate to the existing notice requirements in 25 CFR §23.11(a)? This section permits notice to be sent "by certified mail, return receipt requested." Section 23.111(a) of the proposed regulations states that notice must be sent "by registered mail with return receipt requested." This appears to create a conflict.

We urge you to continue to allow certified mail to be used for ICWA notice. In 1994, the BIA considered amending the regulations to require registered mail rather than certified mail.[1] This was ultimately rejected because it was determined that it undermined the purpose of ICWA notice:

> Comment. One commenter recommended that revised regulations require ICWA notices be sent to tribes via registered mail…
>
> Response. No change is made in the manner in which ICWA notices are served due to considerations given for proof of delivery of said notices in a timely manner. Registered mail is delivered only to the addressee. This means ICWA notices may not be delivered should the addressee not be present at the time of mail delivery. Unclaimed registered mail is held by the mail service for a limited number of days and then returned to the sender. On the other hand, mail delivered via certified mail with return receipt requested may be delivered to the office in the address rather than only to a specific person. **Because the intent of providing ICWA notices is timely tribal notification of child custody proceedings and proof that such notice was given, certified mail with return receipt requested is the preferred method of serving ICWA notices to assure its timely delivery**. (Emphasis added at page 2254)

Registered mail is generally much slower than certified mail. Whereas certified mail within the United States is generally delivered within two to three business days,

[1] See final rule adopted at 59 FR 2248-01

registered mail generally takes fourteen business days.[2] In addition there is a substantial cost differential between registered and certified mail. Registered mail costs $11.95 per item. Certified mail costs $3.30 in addition to the first class mail cost.

e) **The requirements of §23.107(d)**
This section requires the court to keep identifying documents as confidential and under seal when a parent requests anonymity, but says that it does not relieve the court from the obligation of verifying a child's Indian status. Please clarify how a court can simultaneously comply with these seemingly conflicting requirements.

f) **Proposed regulation §23.107: what actions must an agency and state court undertake in order to determine whether a child is an Indian child?**
Our state courts need clarity and specificity as to what will satisfy the investigation requirements of ICWA. Specifically who must the agency ask whether there is reason to believe a child is an Indian child and what specific questions must be asked?

This proposed regulation should also be revised to require only that an agency and state court seek verification in writing rather than obtain verification in writing from all tribes in which a child may be a member. Proposed subsection 23.107 (a) requires that if an agency has "reason to believe" that a child is an Indian child the agency:

> must obtain verification, in writing, from all tribes in which it is believed that the child is a member or eligible for membership, as to whether the child is an Indian child.

Agencies and state courts have no authority to require tribes to provide written verification. All agencies and state courts can do is **seek** or request a tribe to provide written verification of a child's status.

g) **The level of information that provides a court with "reason to believe" the child is an Indian child.**
Proposed regulation 23.107(c) is confusing. Specifically subsection 23.107(c)(1)-(5) uses differing and inconsistent language in discussing what gives a court 'reason to believe":

(1) Any party to the proceeding, Indian tribe, Indian organization or public or private agency informs the agency or court that the child is an Indian child
(2) Any agency involved in child protection services or family support has discovered information suggesting that the child is an Indian child;
(3) The child who is the subject of the proceeding gives the agency or court reason to believe he or she is an Indian child;
(4) The domicile or residence of the child, parents, or the Indian custodian is known by the agency or court to be, or is shown to be, on an Indian reservation

[2] http://smallbusiness.chron.com/difference-between-certified-amp-registered-mail-40089.html

or in a predominantly Indian community; or

(5) An employee of the agency or officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

What is the difference between these? Is knowledge that the child may be an Indian child different from information suggesting that the child is an Indian child?

h) Who designates a child's tribe under §23.109?

Proposed §23.109 requires an agency to notify all potential tribes when a child is eligible for membership in multiple tribes. If the tribes do not agree on which should be designated as the child's tribe, is it the agency that makes a decision on which tribe should be designated? Currently, in California in the event of a conflict the court would decide which tribe should be designated after a noticed evidentiary hearing at which all parties and tribes would have an opportunity to be heard. Section 23.108 seems to contemplate that the agency would decide rather than the court.

i) Conflicting provisions on appointment of counsel

Proposed subsection §23.111(c)(4)(iv) says the court must advise parents or Indian custodians of the right to appointed counsel "where authorized by State law." This is inconsistent with §23.111(f) that says the court must inform of the "right to appointed counsel…." It does not contain the limiting language "where authorized by State law." Further the statute 25 U.S.C. §1912(b) does not limit appointment of counsel to "where authorized by State law."

j) The waiting periods in §23.111 and §23.112

How many times can a party ask for an additional 20 days to prepare? Is this something that happens once? With each hearing? With each "proceeding" (see question re "proceeding" below)?

k) What is meant by "each distinct Indian child custody proceeding" in §23.115?

This proposed subsection says that the right to request a transfer to tribal court "occurs with each proceeding" and "each distinct Indian child custody proceeding." These terms are unclear. If there is one initiating petition or document and many hearings within that action, when is there a distinct or separate proceeding for the purpose of §23.115?

l) Clarify proposed regulation §23.110: when must a state court dismiss an action?

It is not clear how a state court determines whether a tribe exercises exclusive jurisdiction over a particular reservation.

Agencies and courts in California may come into contact with families and children affiliated with tribes throughout the country. State agencies and courts do not have ready access to information about the governmental status of reservation lands and whether any particular tribe has successfully petitioned to resume exclusive jurisdiction. This information is within the knowledge of the tribe and/or the BIA. To facilitate state court

compliance, improve accuracy and efficiency and reduce the burden on state courts, the BIA should compile information on which reservations are subject to the exclusive child welfare jurisdiction of a tribe and make this information readily available to state agencies and courts as part of the assistance to state courts mandated by subpart H of these regulations.

Subsection 23.110(c) requires the state court to contact the tribal court to determine whether the child is a ward of the tribal court. Because there is no comprehensive list of tribal courts operating in the United States and only individual tribes and/or the BIA would have this information, we recommend that the BIA maintain a comprehensive list of tribal courts and tribal court contact information as part of the assistance to state courts mandated by subpart H of these regulations.

m) Proposed regulation §23.111: what are the notice requirements for child custody proceeding involving an Indian child?

State courts need clarity on when formal notice by registered/certified mail return receipt requested is required and when some less formal contact with the tribe is acceptable. The relationship between the notice requirements of §23.111 and other contacts with tribes such as the "investigation" and "verification" discussed in proposed regulation §23.107 is not clear.

Proposed regulation 23.107 requires an agency to ask in all proceedings whether there is reason to believe that the child is an Indian child. If there is reason to believe then the agency

> must obtain verification, in writing, from all tribes in which it is believed the child is a member of eligible for membership…

Proposed regulation 23.107 does not specify how that verification must be sought, but presumably the notice provisions of 23.111 need not be followed because this request for verification appears to be separate from the notice requirement of 23.111. Subsection 23.107(b)(2) further states that if there is "reason to believe" then

> the court must confirm that the agency used active efforts to work with all tribes of which the child may be a member to verify whether the child is in fact a member or eligible for membership in any tribe…

The regulation does not specify what these "active efforts" consist of, but again, presumably they do not require compliance with the notice requirements of 23.111.

The provisions of 23.107 suggest that there is intended to be an investigation stage that is separate and distinct from the requirements of notice under section 23.111. Presumably, notice under section 23.111 is intended to be required in a smaller subset of cases than

the investigation under section 23.107. However, both the investigation mandated by section 23.107 and the notice required by section 23.111 are triggered by a "reason to believe."

This is confusing particularly in light of the recently released guidelines (F.R. 80 No. 37 10146) in which investigation under guideline B.2 (a) is triggered by a "reason to believe" and notice under guideline B.6 is triggered by "reason to know."

The trigger for notice set out in proposed section 23.111 is also inconsistent with the statute itself. 25 U.S.C. §1912(a) mandates notice "…where the court knows or has reason to know that an Indian child is involved…"

Proposed regulation 23.109 provides that when a child may be affiliated with more than one tribe:

> (a) Agencies must notify all tribes, of which the child may be a member or eligible for membership, that the child is involved in a child custody proceeding…

Again it is not clear what this notification must look like. Must the notification sent under section 23.109 comply with all of the requirements of section 23.111 and be sent by registered mail return receipt requested?

There are a number of issues if the notification required under section 23.107 and 23.109 must comply with all of the requirements of section 23.111. As a result of the federal relocation programs of the 1950s and 60s, over half of the individuals in California who identify as American Indian/Alaska Native are affiliated with tribes outside of California. Often these individuals believe they have American Indian/Alaska Native ancestry, but do not know the specific tribe they are affiliated with and do not know whether or not they are a member or entitled to membership in a specific tribe. California courts and agencies in Los Angeles and other urban areas report that they may have to be in contact with 30 to 60 tribes in which a child "may be a member or eligible for membership." Registered mail return receipt requested is slow and expensive. Finally, section 23.111 requires that a copy of the petition or complaint accompany the notice. The petition contains detailed confidential information concerning the parents and children involved. While it is appropriate the child's tribe has access to this confidential information, it is problematic that this information be sent to multiple tribes most of which the family will have no affiliation with. Tribes have reported that the receipt of numerous notices under the formal ICWA requirements is burdensome for them as well.[3]

[3] See attached Exhibit A

Please revise 23.111 to clarify how many times notice by registered/certified mail, return receipt requested must be sent to each tribe, or provide a definition of the term "proceeding" as used in this subsection.

Proposed subsection 23.111(a) states that courts and agencies must send notice

> of each such proceeding (including but not limited to a temporary custody proceeding, any removal or foster care placement, any adoptive placement, or any termination of parental or custodial rights) by registered mail with return receipt requested….

In California, there is generally one initiating petition and one action for a child welfare matter from initial removal to reunification or other permanent plan such as adoption or tribal customary adoption. California does not have separate "proceedings" or legal actions for temporary custody, removal, foster care placement, adoptive placement and termination of parental rights. All of those are different hearings within the same proceeding. In addition to those hearings, there are also a wide variety of other hearings types that can take place within a child welfare proceeding.

It is not clear whether subsection 23.111(a) requires ICWA notice by registered/certified mail, return receipt requested only one time at the initiation of a proceeding, or whether it is required for each hearing within a proceeding or only for certain kinds of hearings within a proceeding.

n) Section 23.111(i) – Interstate Placements

This section states:

> If the child is transferred interstate, regardless of whether the Interstate Compact on the Placement of Children (ICPC) applies, both the originating state court and receiving court must provide notice to the tribe(s) and seek to verify whether the child is an Indian child.

In a child welfare case in California, the California court would have no way of implementing this requirement. As the receiving state, there would be no California state court case or file. The court would not be aware of the placement and would have no opportunity to provide notice.

o) Section 23.132: what is the procedure for petitioning to vacate an adoption?

It is not clear whether an adoption can be vacated for failure to comply with ICWA. Per subsection (a), a person can petition to vacate an adoption based upon the consent to adoption having been obtained by fraud or duress, or that the proceeding failed to comply with ICWA. However, per subsection (d), the court can only invalidate a proceeding

based on a finding that consent was obtained by fraud or duress. There is no mention of vacating for otherwise failing to comply with ICWA.

2) **Inconsistency with the ICWA Statute**

a) **§23.111 -** the trigger for notice set out in proposed 23.111 is also inconsistent with the statute itself. 25 U.S.C. §1912(a) mandates notice "…where the court knows or has reason to know that an Indian child is involved…"

b) Several of the proposed regulations require applying the substantive provisions of the ICWA to cases where the case may not involve an "Indian child". ICWA applies only to "Indian children". As discussed above, under ICWA notice is required when there is "reason to know" that the case involves an Indian child, but the substantive provisions only apply to a case involving an "Indian child". The proposed regulations change the level of knowledge from "reason to know" to "reason to believe" and then require application of the substantive provisions of the Act. This expansion may be burdensome for state agencies and courts in California:

i) Proposed regulation 23.103(d) states that if there is any reason to believe the child is an Indian child then the agency and state court must treat the child as an Indian child unless and until it is determined that the child is not a member or eligible for membership in an Indian tribe. This will be very burdensome to implement in California. Many individuals in California involved in child custody proceedings falling under ICWA claim some Indian ancestry and full inquiry and tribal notice must be done in all of these cases. However, in only a very small percentage of these cases is the child found to be eligible for tribal membership. ICWA only applies to "Indian children", requiring active efforts and particularly requiring the testimony of a qualified expert witness testimony in all cases where there is some suggestion of Indian ancestry will place a heavy cost burden on state agencies and courts and will unnecessarily delay many cases which do not ultimately fall within ICWA.

ii) Similarly proposed subsection 23.106 which would require active efforts to be carried out while investigating whether a child is an Indian child would also be very burdensome and difficult to apply in California. Active efforts require consultation with and participation of a child's tribe. If a family has only vague information concerning Indian ancestry it is not possible to work with tribes or identify culturally appropriate services until a determination has been made whether a child may in fact be affiliated with any tribe.

iii) Proposed section 23.113 would apply stringent emergency removal requirements to all cases where there is "reason to believe" that an Indian child may be involved. In particular subsection (f) states that a temporary emergency removal cannot last more than 30 days without a complete ICWA compliant hearing including testimony of a

Qualified Expert Witness. In California it is not unusual for it to take longer than 30 days to determine whether or not a child is eligible for membership in a tribe. Please amend subsection (f) to state that "[t]emporary emergency custody may be continued for more than 30 days *after it is determined that a child is an Indian child* only if:"

§23.121(a) and (b) should be revised to include reference to emotional harm to the child. Currently these subsections say that in order to make a foster care placement or termination of parental rights order, the court must have clear and convincing evidence including the testimony of qualified expert witnesses demonstrate that continued custody "is likely to result in serious physical damage or harm to the child." This is inconsistent with the statute. 25 U.S.C. § 1912(e) and (f) state that the evidence must demonstrate that continued custody "is likely to result in serious emotional or physical damage to the child."

3) Inconsistency with other federal statutes

One of the greatest challenges that state courts face is reconciling the provisions of ICWA with other federal statutes governing child welfare matters, particularly title IV-E of the Social Security Act (title IV-E). Under title IV-E, the federal government makes substantial sums available for certain child welfare proceedings, placements and related costs. However, these payments are contingent upon the states complying with various federal standards. Many of these standards are incorporated into California statutory law in compliance with title IV-E. As such, these standards and restrictions are binding upon California courts in child welfare matters. BIA and the Department of Health and Human Services need to work together to ensure that there is no conflict between the requirements of the ICWA and title IV-E. States and state courts cannot be expected to comply with contradictory and conflicting federal requirements on the subject of child welfare matters.

Per §23.131 (c)(4)a

> placement may not be considered unavailable if the placement conforms to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

It is not clear how this relates to section 471 [42 U.S.C. 671](a)(10) of title IV-E, which requires the state to maintain certain standards for foster care placements including various criminal background standards for licensing of foster care placements. The standards of title IV-E have been incorporated into California law, which prohibits courts from making foster care placements that violate these standards.

4) Problematic shift of BIA responsibility to state courts

Consistent with the role of the BIA as the primary agency through which the federal government discharges its fiduciary obligations to individual Indians and tribes, BIA is charged with a variety of obligations to assist with ICWA implementation and compliance.

The JCC believes that it is vital that BIA fulfill its responsibilities. Unfortunately, BIA is not complying with its obligations under the statute and existing regulations. The proposed regulations impermissibly attempt to shift federal responsibility to the state courts and agencies. This does a disservice to Indian children, Indian parents, tribes, and state courts and agencies as we all strive for full ICWA compliance.

a) Revise the format of the *Designated Tribal Agents for Service of Notice*

Proposed regulation 23.104 provides that state agencies and courts should rely on the list of ICWA agents for service published by the BIA in the Federal Register in order to provide notice or obtain information or verification from a tribe under the regulations. For the reasons discussed in more detail below, the list of agents for service of ICWA notice published by the BIA in the federal register provides inadequate information to permit agencies and courts to identify and notify tribes.

In California, many individuals of American Indian descent identify their American Indian affiliation in relationship to their historical tribal affiliation such as "Pomo" or "Tlingit." This is often inconsistent with the way in which tribes are identified on the list of agents for service published in the federal register. The list of agents for service of ICWA notice published in the federal register (found at http://www.bia.gov/cs/groups/public/documents/text/idc012540.pdf) contains an alphabetical list of tribes by their federally recognized names by region. It does not link the information in the federal register to the historical tribal affiliation. Thus, a state or county social worker who obtains information that a family identifies as Pomo or Tlingit cannot readily identify which tribes must receive notice or be contacted simply by consulting the list of agents for service. Previously published lists of *Designated Tribal Agents for Service of Notice* contained the historical tribal affiliation information.[4] Without warning or consultation, this information was removed when the BIA published its list on January 17, 2014 and subsequent lists.[5] Understanding tribal affiliations is something that is in the particular purview and expertise of the BIA and failure to provide historical tribal affiliation information shifts what is properly a BIA responsibility to the state courts and agencies and undermines the goal of timely notice to all of a child's potential tribes.

Another problem with the Federal Register list is that it is often incorrect or out of date. The California Department of Social Services was specifically informed by local BIA staff that the published

> lists are current only when published and tribal addresses and phone numbers can and do change without public notice. Therefore please be advised that these lists

[4] See for instance the lists published August 1, 2012 http://www.gpo.gov/fdsys/pkg/FR-2012-08-01/pdf/2012-18594.pdf, May 12, 2011 http://www.gpo.gov/fdsys/pkg/FR-2011-05-25/pdf/2011-12536.pdf and May 19, 2010 http://www.gpo.gov/fdsys/pkg/FR-2010-05-19/pdf/2010-11696.pdf

[5] See http://www.gpo.gov/fdsys/pkg/FR-2014-01-17/pdf/2014-00779.pdf

cannot be relied upon to provide up to date addresses or phone numbers for Federally Recognized Tribes in all instances.

We recommend using an electronic database that can be continuously updated. Most states (including California) have a system for registering and updating information concerning agents for service of corporations doing business within the state. This information is contained in a searchable data base maintained by the state (in California it is maintained by the Secretary of State and can be found at http://kepler.sos.ca.gov/list.html), which is continuously updated. Further, the data base could be configured so that, when only limited information on tribal affiliation is available (for instance that a grand-parent had Cherokee heritage,) an agency would be able to find up to date contact information for all of the tribes of a particular group. We suggest that it would greatly improve the efficiency and effectiveness of ICWA noticing if such a database were maintained with respect to agents for service of notice under ICWA. It seems appropriate that BIA be responsible for maintaining such a database.

BIA should redesign the list of agents for service of ICWA notice and provide greater assistance to state courts in determining which tribes need to be provided with ICWA notice.

b) Provide funding for appointment of counsel as mandated by 25 U.S.C. §1912(b) and 25 CFR §23.13

ICWA requires that counsel be appointed for an Indian parent or Indian custodian in all cases where the court determines indigency. It further requires that where state law makes no provision for payment of such counsel, the fees and expenses shall be paid out of federal funds.[6] Existing regulations at 25 CFR §23.13 further elaborate on these requirements. However, in California BIA does not pay these appointed counsel fees even when all requirements of the Act and regulations are followed.

c) Fulfill the recordkeeping and information availability requirements of 25 CFR §23.71

The proposed regulations improperly attempt to shift federal responsibility to state agencies and courts.[7] Existing regulation 25 CFR Subpart G §23.71, which is not revoked or amended by the proposed regulations, requires the BIA to maintain information on state court proceedings and finalized adoptions, and provide information to adult adoptees upon request under ICWA.

[6] 25 U.S.C. §1912(b).
[7] See in particular §§23.134 and 23.137

Proposed subsection §23.134 should be removed. It is inconsistent with and duplicative of Subpart G of the existing regulations.

The JCC supports the goal of ensuring that all adult adoptees are reconnected with their tribes. However, the proposed regulation attempts to achieve this goal in an inefficient and ineffective manner. There are more than 560 federally recognized tribes across the country, each with its own enrollment requirements. Suggesting that "agencies should communicate directly with tribe's enrollment offices" does a disservice to adult Indian adoptees seeking to establish their tribal identities and places an unfair burden on state courts and agencies.

Part G, §23.71 requires that states entering a final decree of adoption for an Indian child provide this information to the Secretary of the Interior and for the Division of Social Services. BIA is required to receive this information and maintain a central file on all state Indian adoptions. Existing §23.71(b) places the responsibility for maintaining this information and disclosing it to adoptees upon request upon the Division of Social Services, BIA. This makes sense and is consistent with the fiduciary responsibility the BIA has to individual Indians and tribes. It is inappropriate and an unfair burden on state courts and agencies for the BIA to shift this obligation to the states. It also does a disservice to Indian individuals and tribes who work closely with the BIA. It makes no sense to suggest that state agencies should work with each tribe across the country to identify a tribal designee to assist with adult adoptees. It would make much more sense and be much more economical and efficient for the BIA to identify and work with representatives of the tribes and actively facilitate enrollment of adult adoptees.

Proposed regulation §23.137 requires that the State establish a single location where all records of every voluntary or involuntary foster care, preadoptive placement and adoptive placement of Indian children by courts of that State be maintained. It also requires that the State furnish these records within seven days of a request by an Indian child's tribe or the secretary. Maintaining this information and making it available to tribes and individuals should be a BIA responsibility under Subpart G of the regulations. The attempt to shift this responsibility from BIA to the states imposes a burden and unfunded mandate on the states.

d) Provide technical assistance and resources as mandated by 25 CFR Subpart H. §§23.81 – 23.83

Subpart H. of 25 C.F.R. Part 23 contemplates that the BIA will provide assistance to the state courts in complying with ICWA requirements. Subsection 23.81 requires the BIA to provide assistance in identifying qualified expert witnesses. Subsection 23.82 requires the BIA to provide assistance identifying language interpreters. Subsection 23.83 requires the BIA to provide assistance locating biological parents when an adoption of an Indian child is terminated.

In practice and in fact, BIA provides no such assistance to state courts and agencies in California. Subpart H should be revised to require that BIA provide assistance to state courts in matters arising under the new proposed regulations including: (1) determining whether particular reservation lands are ones over which a tribe exercises exclusive child welfare jurisdiction; (2) determining whether a tribe has a tribal court exercising child welfare jurisdiction; and (3) obtaining contact information for a tribal court. It is impractical and inefficient to expect individual state courts and agencies to obtain this information especially when BIA already has the expertise and existing relationships with tribes and tribal courts.

Section 23.122(a) of the proposed regulations state that “[a] qualified expert witness should have specific knowledge of the Indian tribe’s culture and customs.” The JCC supports the requirement that a qualified expert witness be able to provide the court with meaningful insight into the child rearing practices of the child’s tribe. However, finding such experts can be a challenge in California. Largely as a result of historical federal relocation policies of the 1950s and 1960s, many areas of California such as Los Angeles and the San Francisco Bay areas are home to individuals who trace their ancestry to American Indian tribes from throughout the United States. BIA should maintain a list of available experts from each tribe as part of their assistance to state courts mandated by §23.81.

5) Failure to take advantage of technology

While the proposed regulations acknowledge and encourage the use of electronic notice and technology such as telephone and videoconferencing for remote participation in court proceeding, they do not go far enough. The proposed regulations fail to take advantage of technological advances to improve notice compliance, specifically in terms of the contact information for tribal agents for service and electronic notice to tribes.

a) Contact information: agents for service

Although a list of agents for service is to be published in the Federal Register each year, in practice, as stated above, this information is often incorrect or out of date
See our comments above on the format of the list of agents for service.

b) Electronic service

A related issue is the means of providing notice to tribes. Currently, registered mail with return receipt requested is the only method explicitly authorized by the Act. The JCC is pleased that the proposed regulations mention electronic service. However, the JCC recommends that you consider allowing electronic service in lieu of registered mail when a tribe and a state enter into an agreement to allow such alternative service. Service by registered mail return receipt requested can be as much of a burden on the tribes receiving the notices as it is on the agencies sending the notices. Parties are generally entitled to waive service in a specified manner. However, unless this is specifically

recognized in the federal regulations, agencies will fear being overturned on appeal; and there will be little incentive to invest in methods of electronic service, which could be of benefit to both agencies and tribes. While we understand the importance of ensuring that notice is actually received by the authorized tribal representative, this could be done electronically just as efficiently as by registered mail if the tribes choose to receive notice in this way. At a minimum, tribes and state and local agencies should be entitled to enter into agreements dealing with the method of notice (and other issues) and thereby opt out of the requirement of effecting notice by registered mail. Electronic service, when chosen by the tribe, could offer a number of efficiencies. Tribes and agencies would be able to communicate, in real time, to expedite determinations about tribal membership eligibility and the exchange of information relating to active efforts and placement.

6) **Unduly restricts judicial discretion**
Under federal and state child welfare laws, a judge must make decisions in the best interests of the child. The proposed regulations contradict federal and state laws by unduly restricting a judge in making an individualized, case-by-case determination of what is in the best interests of a child. Some restrictions on judicial discretion may be appropriate to prevent the kinds of abusive practices that ICWA was intended to remedy. Many of these restrictions have already been incorporated into California law. However, judges should not be prevented from considering the best interests of a child on an individualized basis.

a) **Considerations re good cause not to transfer to tribal court**
Proposed subsection 23.117, "How is a determination of "good cause" not to transfer made?" Some of what is contained in proposed regulation 23.117 is already contained in California law. Under Welfare and Institutions Code §305.5(c)(3) a court may not consider socioeconomic conditions and the perceived adequacy of tribal social services or judicial systems in determining whether there is good cause not to transfer to a case to tribal court. However, proposed subsection 23.117(c) and (d) would alter existing law and unduly restrict the discretion of the judge to make an individualized determination of the child's best interest based upon the following factors:(c) - whether the case is at an advanced stage and transfer would result in a change in the child's placement and (d) – the existing relationship between the child and the tribe and the child's prospective placement upon transfer. We would recommend changing this subsection to say except in exceptional circumstances relating to the Indian child's welfare, the court may not consider these factors. In addition the subsection could require that the exceptional circumstances be stated in writing.

b) **Considerations on placements**
Again, much of proposed regulation 23.131 is consistent with California statutory law. However, proposed subsection 23.131(c)(3), (4) and subsection (d) further restrict judicial discretion in purporting to prevent a court from considering bonding and attachment that might have occurred between a child and a foster family in determining whether or not there is good cause to deviate from the placement preferences in ICWA.

We would recommend that a judge only be precluded from considering bonding and attachment if a placement outside the placement preferences was made in violation of ICWA. We would recommend changing this subsection to say except in exceptional circumstances relating to the Indian child's welfare, the court may not consider these factors. In addition the subsection could require that the exceptional circumstances be stated in writing.

Session 7: Psychotropic Medication and Indian Children—“Drugging Our Kids”

“Drugging Our Kids”-Video Clip Descriptions

Part 1-
The video provides the audience with an introduction into the issue of children being over-medicated in the foster care system. It presents statistics, an overview of medications administered to children in foster care, and interviews with several former foster youth.

Part 2-
This segment describes the common occurrence of children in foster care having many placements, the challenge of changing schools as a result of having to move so often and the effect this has on mood or behavior. Several former foster youth describe their experiences with these issues and how newly prescribed medications or a heavy dosage of medications affected their experiences in adjusting to constantly changing environments.

Part 3-
This segment interviews psychiatrists and other professionals who describe the variety of diagnoses that are given to children in foster care. They explain how the actual need for these psychotropic medications for this population is very small as compared to the large numbers of children who are receiving them. They describe the multiple diagnoses and conflicting medications being prescribed.

Part 4-
In this segment, professionals and former foster youth, describe in detail the many side effects from the medications. While effects on the brain are unknown, some of the physiological effects are lasting. The viewer learns about the actual cost of these medications to taxpayers and how pharmaceutical companies are targeting physicians who treat foster children.

Part 5-
The final part of this documentary features former foster youth, a court appointed special advocate, and clinicians who provide insight into healing the root cause of the pain that stems from grief and loss as an alternative to medication. The featured youth describe these evidenced-based alternative therapies that promote healing and staying grounded.

Psychotropic Medications Bills

SB 238 (Mitchell D) Foster care: psychotropic medication
Location: Waiting for Assignment to Committee
Summary: Would state the intent of the Legislature to enact legislation that would improve the ability of the child welfare system to track and oversee the use of psychotropic medications for children in foster care by requiring, among other things, the development of a system that triggers an alert to medical practitioners treating children in foster care when there could be potentially dangerous interactions between psychotropic medications and other prescribed medications, or when psychotropic medications have been prescribed, or prescribed in dosages, that are unusual for a child or a child of that age.

SB 253 (Monning D) Dependent children: psychotropic medication
Location: Senate Human Services Committee
Summary: Current law authorizes only a juvenile court judicial officer to make orders regarding the administration of psychotropic medications for a dependent child who has been removed from the physical custody of his or her parent. This bill would require an order authorizing administration of psychotropic medications to only be granted on clear and convincing evidence of specified matters, and would prohibit the court from authorizing the administration of psychotropic medications for a child unless a 2nd independent medical opinion is obtained from a child psychiatrist or a psychopharmacologist if one or more specified circumstances exist.

SB 319 (Beall) Child welfare services: public health nursing.
Require a county to provide the services of a foster care public health nurse to children in foster care by contracting with the community child health and disability prevention program established in that county. The bill would require a foster care public health nurse to monitor each child in foster care who is administered one or more psychotropic medications, as specified. Authorizes the disclosure of this health care and mental health care information to a foster care public health nurse, as specified.

SB 484 (Beall D) Juveniles
Location: Waiting for Assignment to Committee
Summary: Requires increased inspections and reporting on licensed community care facilities that have a greater than average use of psychotropic medication on children in their care. Requires those homes to then submit a "corrective action plan" detailing the steps it intends to take to reduce the use of psychotropic medications.

AB 1067 (Gipson D) Child welfare
Location: Waiting for Assignment to Committee
Summary: Spot bill with the intention of reforming the way psychotropic medications are used in foster care. It is not yet determined what the specific goal of the bill will be.

California Guidelines for the Use of Psychotropic Medication with Children and Youth in Foster Care

Introduction

Children have the right to safety, respect, justice, education, health and well-being. As a society we have the obligation to protect these values for all of our children. When children and youth have been removed from their primary homes due to abuse and/or neglect, the State of California and its counties assume the primary responsibility to safeguard these rights for the children in their care. The state also assumes the responsibility of addressing the trauma (defined below) as experienced by the child who is removed from the home and placed into care.

The California Department of Health Care Services (DHCS) and Department of Social Services (CDSS) have the shared responsibility for the oversight of mental health services provided to children and youth involved with county child welfare and probation agencies. The *California Guidelines for the Use of Psychotropic Medication with Children and Youth in Foster Care* is specific to those children and youth who are: (a) involved with child welfare services and/or probation services, and (b) are placed in foster care. Foster care is defined as 24-hour substitute care for children placed away from their parents or guardians and for whom the State and/or county agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. Consistent with research over the past twenty years that has described the effects of abuse and neglect (Brown et al 1990, Lansford 2002)[1] the State is committed to utilizing formal and informal mental health services to ameliorate the negative effects of abuse and/or neglect and the potential negative effects and consequences following removal from the primary home. Together, these negative effects and potential consequences are defined as *trauma*, defined by the Substance Abuse and Mental Health Services Administration (SAMHSA 2014) [2]as "The Three E's": The Event, The Experience, and The Effect:

> *"Individual trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or threatening and that has lasting adverse effects on the individual's functioning and physical, social, emotional, or spiritual well-being."*

Additionally, the State recognizes that the potential for trauma can be mitigated via child and youth *resilience:* protective factors that reduce poor outcomes under conditions of adversity and risk (Greenberg, 2006)[3]. Resilience is comprised of three interactive influences: *(a)* individual differences in temperament and cognitive abilities;

(b) quality of social relationships (e.g., the relationship with the primary caregiver or another supportive other); and (c) quality of the broader environment, such as school and neighborhood (Greenberg, 2006) Understanding that social relationships and the social environment can promote resilience means that the provision of informal services and access to resources that are resilience-building mitigate the effects of potential trauma (i.e., they are trauma-informed interventions) and promote optimal psychosocial functioning. Thus, the State and counties provide these resilience-building environments and activities as part of a broader array of informal mental health services for children and youth placed in out of home care. *Informal mental health services* are activities deliberately introduced to provide the child or youth opportunities for learning self-discipline, appropriate peer interactions, tolerance for frustration, enhanced self-esteem (self-affirmation), and mastery (learned control). These activities include coached team sports such as basketball, football, soccer, and baseball; art, gardening, dance, and caring for animals. Special attention should be paid to opportunities for children and youth to participate in formal training in singing (choirs, vocal groups,) and learning to play a musical instrument because data suggest these particular activities may enhance executive functioning (Kraus 2009)[4]. Additionally, coaches and teachers involved in these activities are potential sources of social support and mentoring in the child's natural environment. Thus, they are potential members of the child or youth's support network or Child and Family Team (as indicated).

Children and youth with emotional, cognitive, and/or behavioral dysregulation secondary to abuse and/or neglect are vulnerable to developing emotional patterns and behaviors that meet criteria for mental disorders as per the current *Diagnostic and Statistical Manual* (DSM –V)[5] published by the American Psychiatric Association (APA 2014) or with mental and behavioral disorders as per the current International Classification of Diseases (ICD) published by the World Health Organization[6]. These California State Guidelines reflect the understanding that these diagnostic criteria are not always consistent with current research related to the psychosocial presentations of, and best practices related to, children and youth for whom these Guidelines were developed. For this reason, these Guidelines do not always reference specific diagnoses when making treatment recommendations.

Children and youth with emotional, cognitive, and/or behavioral dysregulation have the same right to treatment as children and youth with any other health care need. Respect for the dignity of the child and the family is a prerequisite for treatment. Recognition that the child or youth with emotional, cognitive, or behavioral dysregulation may encounter social stigma and/or sub-optimal treatment is a historical concern of importance to the CDSS and DHCS. One goal of these *Guidelines* is to increase the visibility of the strengths and needs of these children and youth to promote careful and respectful attention to individualized, optimal care. Educational efforts directed toward child welfare social workers, probation officers, family members, caregivers, attorneys, court appointed special advocates (CASAs), and health providers also are designed to address and eliminate social stigma while promoting best practices in the provision of formal and informal mental health services.

The *California Guidelines for the Use of Psychotropic Medication with Children and Youth in Foster Care,* jointly released by the CDSS and DHCS, is a statement of best practice for the treatment of children and youth in out of home care. These children and youth may require psychotropic medications. Depending on the nature, severity and persistence of their symptoms, medication may be indicated as part of an initial treatment plan (as with ADHD, major depression, psychosis and disabling anxiety); may be considered only after appropriate psychosocial interventions are employed (as with moderate anxiety/depression); or may not be indicated at all (as with learned defiance and "predatory" aggression). When psychotropic medication is indicated, it should be used in conjunction with psychosocial interventions. The exception is when psychosocial interventions have been effective and are therefore terminated but continued use of medication is necessary to prevent the recurrence of symptoms.

These *Guidelines* outline:

- Basic principles and values;
- Expectations regarding the development and monitoring of treatment plans; Principles for emotional and behavioral health care, psychosocial services, and non-pharmacological treatments;
- Principles for informed consent to medications; and
- Principles governing medication safety.

These *Guidelines* are to be used in conjunction with California State regulations related to the provision of Medi-Cal funded mental health services and community care licensing (CCL) regulations related to foster homes, group homes, and residential treatment centers (CA Code of Regulations 2014)[7]. These Guidelines are intended to be consistent with, and promote, the values and goals of other State initiatives including the Core Practice Manual CDHCS/CDDS (2014)[8] adopted in response to the Katie A. lawsuit (CA Gov 2014)[9], the Medi-Cal Performance Outcomes System CA DHCS 2013)[10], and the Continuum of Care Reform initiative CDHCS 2014b[11].

These *Guidelines* represent the first comprehensive effort at the State level to address the use of psychotropic medication children and youth in out of home care being served by the child welfare and/or probation system. It is expected that the *Guidelines* will evolve over time in response to updated research and the evolution of best practices, and in response to feedback from youth, families, prescribers, other providers, and additional community stakeholders. For these reasons, these guidelines will be reviewed annually. In developing these G*uidelines*, the CDSS and DHCS reviewed the work of the American Academy of Child and Adolescent Psychiatry (AACAP 2008)[12], the American Academy of Pediatrics (AAP 2008)[13], California county child welfare and behavioral health policies and practices[14], and the policies of child welfare and mental health agencies in other states (NJ office of Child Health Policy 2011, MMDLN & Rutgers 2010. Crystal, Ofson, Huange et al 2009.[15]. The work products of these organizations have been incorporated throughout this document. The CDSS and DHCS acknowledge the efforts of these organizations.

Basic Principles

These *Guidelines* are grounded in the following principles and values:

- **Safety**[16]: Child safety and health are paramount in our work, and children are, first and foremost, protected from abuse and neglect.

- **Permanency:** Children do best when they have strong families, preferably their own. When that is not possible, a stable, long-term placement with a relative, non-related extended family member, tribal family, foster family, or adoptive family who can meet their physical, emotional, and therapeutic needs is preferred.

- **Well-Being:** The State and its counties are committed to offering relevant services to children and families to meet their identified needs, build on their strengths, and promote children's development, education, physical and mental health, and general well-being.
  - Most families have the capacity to change with the support of individualized service responses.

  - Children should be placed in the least restrictive setting at which they can be safely treated. Whenever possible, this setting should be within their own community.

- **Government cannot do the job alone:** Real partnerships with people and agencies involved in a child's life–for example, families, tribes, medical providers, teachers, child care providers, community partners and mentors, including informal and formal mentors, community spiritual and clergy –are essential to ensure child safety, permanency, and well-being, and to build strong families.

- **Child-centered Care:** Care should be provided in a manner sensitive to the child's strengths and needs. When developmentally appropriate, children and adolescents should be a part of their health care planning, as described in the Core Practice Model developed in response to the Katie A. lawsuit.

- **Continuity of care for children and youth is important:** Consistent with the Core Practice Model, these *Guidelines* strive to strengthen coordination across systems of care to minimize the number of unnecessary transitions for children and youth and to support transitions that are necessary when coming into care, during care, and transitioning to permanency.

  - These *Guidelines* are consistent with, and support the goals of, Continuum of Care Reform: The treatment needs of children and youth are best met when services are provided at the lowest level of care at which the client can be safely treated.
  - Critical to the success of these *Guidelines* and inter-related State initiatives is access to providers who have the capacity and specialized competencies to

serve our children and youth, as well as access to these providers within timeframes that meet the needs of children and youth.

- **Quality:** The State and its counties expect our children to receive high quality healthcare, inclusive of physical, emotional/behavioral, and dental health.

- **Integration:** These inclusive health care needs of a child/youth are expected to be integrated into a health care services plan that provides integrated, coordinated services that are individualized and tailored to the strengths and needs of each child and their family.

- **Collaboration:** The State and its counties recognize the importance of collaboration with treatment providers, particularly prescribing providers, to ensure the success of these *Guidelines* and psychotropic medication management reform for children and youth in out of home care served by child welfare and/or probation.

- **Limitations:** Psychotropic medication is never the sole intervention but should be part of an overall treatment strategy ([17]T-May 2010). Medication also carries the risk of adverse (side) effects, so careful monitoring by the prescriber is essential.

Treatment Plan

Children who have emotional, cognitive, and/or behavioral dysregulation require a variety of interventions to alleviate their symptoms and to promote optimal psychosocial functioning and development[18]. If the child or youth meets Katie A. class or sub-class criteria, then the Treatment Plan[19] is a product of the Child and Family Team (Katie A Manual)[20]. The CFT is a required component of the Core Practice Model developed in response to the Katie A. lawsuit. The CFT ensures that the child and family voices always are included in treatment and placement decisions. Whether or not a CFT is a required element of the child or youth's case plan, development of the Treatment Plan should include the child and family unless their participation is contra-indicated due to age, developmental status, or protective issues in the case. Treatment Plan elements include identified socio-emotional and behavioral concerns, immediate and longer term treatment goals, and interventions that are realistic for the child and family. It represents an agreement to work together toward a mutually agreed upon set of goals. The Treatment Plan should be reviewed and re-assessed by the treatment team, child, family, and supportive collaterals (as described below) as needed or as indicated by Katie A. status to ensure it remains current and appropriate based on the child and family's progress in services.

The Treatment Plan is developed in collaboration with the child and family. The child or youth who is the focus of treatment is expected to be an active partner in the treatment planning process as developmentally appropriate. The unique abilities, strengths, and needs of the child and the family are considered in developing a plan that will work. Consideration also must be given to the range of settings within which the child is involved–home, school, work, sports and clubs–to ensure that all potential

supports and interventions are maximized to create a treatment plan that is individualized, flexible, and robust.

The Treatment Plan is guided by the principle that interventions should be strength-based, child focused, and family centered. The interventions that are selected are chosen based on the child's emotional, cognitive, and/or behavioral dysregulation, the strengths and needs of the child and family, and the resources of the community.

A Treatment Plan includes appropriate treatments and interventions to address root causes contributing to the child's emotional, cognitive, and/or behavioral dysregulation, as well as how (and by whom) symptoms and psychosocial functioning will be monitored to evaluate treatment and intervention effectiveness. If psychotropic medication is prescribed, medication effectiveness and side-effects should be closely monitored according to the monitoring guidelines provided in these *Guidelines* (LAC DMH)[21]. It is expected that there will be ongoing communication between the prescriber and the child, parents, child's caregiver, therapists, social worker, pediatrician, public health nurse, probation officer, care coordinator, school staff, case manager, CASA, attorney, and other members of the child and family's support network, as indicated. This network constitutes the Child and Family Team, if the Team is a required component for the child or youth.

Prior to prescribing, a thoughtful benefit/risk analysis [22]is necessary, comparing the risks and expected benefits of an overall treatment plan that does *not* include medication with the risks and expected benefits of a treatment plan that does include medication (AACAP 2009, AACAP 2001)[23]. Among other considerations, one must consider the likely benefit of psychosocial interventions and of medication, the risk of adverse (side) effects from medication, and the risk of continued symptoms impacting the youth's psychosocial development and placement if medication is withheld.

Judicial approval (JV220 2008)[24] is mandated by California law Rules of Court 2014)[25] prior to the administration of psychotropic medications to children and youth in foster care. The Psychotropic Medication Protocol, also referred to as the JV220 process, initiates the court authorization of psychotropic medications for dependents of the court. The JV220 documentation specifies the dosage and medication plan, ideally including targeted goals. This is undertaken, to the extent possible, in collaboration with the child, family, caregiver, and other supportive collaterals. The prescriber should discuss the JV220 with the child, family, and caregiver. Additional supportive collaterals also are included in this discussion if requested by the family or as indicated by State requirement (e.g., Child and Family Teams for Katie A. class and sub-class members).

Psychotropic medications should not be used for the purpose of discipline or chemical restraint, except as acutely necessary in true psychiatric emergencies (Title 22, CCR, Section 22 51056)[26]. Youth are not to be coerced into taking medication as a condition of placement.

Components of a Treatment Plan

The development, implementation, and execution of a Treatment Plan includes, but is not limited to, the following individuals: the child; the child's parents (when appropriate), the child's caregiver, the prescriber, care coordinator, therapist, school staff, CWS social worker, pediatrician, attorney, public health nurse, probation officer, case manager, CASA, and other members of the child's support network or CFT (as indicated).

A best practice (Malone Localio, Huang et al 2012, Radley Finkelstein & Stafford 2006)[27], treatment plan includes the following:

a. The child's diagnosis (if indicated) and a conceptualization of the child's emotional, cognitive, and/or behavioral dysregulation based on the child's history of abuse, neglect, and/or removal from the home.

b. The child's baseline strengths and needs.

c. Target symptoms: stated in practical and everyday language as agreed to by the child, family, and their support network or CFT.

d. Client-driven short and long term treatment goals: stated in ways that can be observed and measured on a regular basis by specified means.

e. Treatment interventions: evidence-supported treatments; additional psychosocial interventions such as substance abuse prevention or treatment, case management, informal mental health services, educational or behavioral services, and/or extra-curricular and recreational activities. All identified treatments and interventions should have start dates. Psychotropic medications (if part of the Treatment Plan) also should include a re-assessment date. If medications are utilized, the dosage and medication monitoring schedule must be specified.

f. Treatment and intervention periodic review and reassessment: formal treatments, e.g. (HHS 1996) evidence-supported psychotherapeutic treatments as well as psychotropic medications, are periodically reviewed by the child, family, and additional supportive collaterals (e.g., the Child and Family Team) as indicated.

g. Updated medication treatment plans must be communicated as an attachment to the JV220, as well as shared with the child/youth, family, caregiver, and child welfare social worker and/or probation officer for distribution to all necessary parties in accordance with HIPAA (HHS 1996)[28].

Psychotropic Medication

For the purposes of this document, "psychotropic medication" is defined[29], per Welfare & Institutions Code, Section 369.5(d), as "those medications prescribed to

affect the central nervous system to treat psychiatric disorders or illnesses. They may include, but are not limited to, anxiolytic agents, antidepressants, mood stabilizers, antipsychotic medications, anti-Parkinson agents, hypnotics, medications for dementia, and psychostimulants."

Psychotropic medication should only be prescribed to the children and youth in California's care as part of a comprehensive Treatment Plan, except under emergent conditions or as described above in this *Plan.* Such a comprehensive Treatment Plan includes evidence-based or best practice non-pharmacological interventions that are linguistically, culturally, and developmentally appropriate for the child or youth's needs and symptoms.

Authorized Prescribers of Psychotropic Medication[30]: Because of the complex medical and psychiatric needs of children in out of home placements (which include foster, kinship, NREFM care; group homes; and the juvenile justice systems), it is recommended that psychotropic medications for children be prescribed by board certified or board eligible specialists in one of the following areas of expertise:

- Psychiatry (specialization in child and adolescent psychiatry recommended),
- Neuro-developmental pediatrics
- Developmental-Behavioral pediatrics
- Pediatric neurology
- Pediatrics or family practice with specialized training in children who are at high risk or who had in utero exposure to illicit drugs or alcohol

However, if a California dependent is placed out of state, the prescriber must meet credentialing criteria for the state in which they are licensed.

Psychiatric Evaluation and Diagnosis

Evaluation Components: The psychiatric evaluation includes a thorough mental status exam, complete review of current emotional and behavioral symptoms, and the assessment for potential psychosocial precipitants for the current presentation[31]. It also should include the review of collateral documents[32] provided by CWS, when available, as described below. These records provide critical history and context for appropriate case formulation. A physical examination also is conducted or a recent physical examination is documented, as indicated. Consultation with other professionals who are treating the child, including therapists, primary care physicians, or medical specialists, is an important component to complete this information.

A. Review of Collateral Documents: The prescriber's access to available historical information is critical for the provision of optimal care. The following documents represent optimal psychosocial history to share with the prescriber when available. Prior to the child's appointment, the prescriber is expected to review the collateral documentation when provided by the CWS social worker. Reports should ideally be

received at least 5 business days prior to the appointment to allow ample time for review. These documents should include:

1. The Detention Hearing Report which describes what happened to the child and why the child was removed from the home. These conditions typically are the 'root cause' of the child or youth's emotional, cognitive, and/or behavioral dysregulation.

2. The Jurisdiction/Disposition Report which includes additional information regarding the abuse and/or neglect experienced by the child in the current referral, history of prior referrals and cases (if applicable) which provides context for the current case, and provides more details regarding why out of home care was necessary.

3. Copies of significant additional court reports, i.e., those that document major changes in the family's situation.

4. Copies of all prior psychological evaluations and Initial Treatment Plans/Updates for the client.

5. All prior mental health, physical health, and developmental records.

6. Copies of psychiatrist's Admission and Discharge summaries and the medical H & P (History and Physical) report from all psychiatric hospitalizations for the client.

7. Order Authorizing Health Assessments, Routine Health Care, And Release Of Information (Blanket Court Order) or case-specific forms signed by the Court, as per county process).

8. History of Child Placement report.

9. Current Health and Education Passport (HEP).

10. Individualized Education Plan (IEP) and IEP Triennial evaluation (Psychoeducational Assessment Report conducted by school staff once every three years as a condition of initiating and continuing an IEP), if applicable.

11. Medication log to be attached to JV 220, if available.

B. Physical Examination: As part of the decision to initiate a medication trial, the results of the most recent physical examination, conducted within the past year, are reviewed. If no documentation is available or an examination was not completed, a brief physical examination is indicated. Including at minimum, weight, body mass index, and vital signs. When indicated by history, physical examination or psychiatric

evaluation, the child may require medical specialty consultation and testing. Cardiac, endocrinological, neurological or other consultations might be indicated.

1. Baseline laboratory assessment may be advisable both to rule out medical conditions which may be contributing to or causing the symptoms, and is indicated to establish a baseline for monitoring possible medication side-effects. Refer to tables in Appendix B.

2. Consider a pregnancy test, depending on case-specific circumstances, before initiating medication for a female of child-bearing age.

3. Consider a baseline screen for other substance use by the child and youth as indicated. Review of records from child welfare or probation services also can alert the prescriber to the need for substance use screening. The prescriber also may conduct a verbal screen and discuss substance use history with the child/youth.

C. Mental Status Examination: The mental status evaluation of a child must be sensitive to the age, developmental stage, and current status of the individual child. Case conceptualization and appropriate trauma-informed diagnosis often requires multiple sessions to gain the trust of the child and to allow for a clear picture of the youngster's mental status. When indicated, the child is interviewed both with and without parents or caregivers present.

D. Diagnosis: In developing a case conceptualization/formulation and trauma-informed diagnosis[33], the prescriber considers the child's complete presentation (strengths and challenges), developmental history, medical history, family history, past history of abuse, neglect, and/or removals, current functioning in all settings, and current mental status. If the prescriber's diagnosis is inconsistent with the diagnosis of other current treating professionals (i.e. therapists), the prescriber will discuss and reconcile these diagnostic issues with the other treating professionals to ensure that all members of the treatment team are working from the same diagnoses and case conceptualization/formulation. The diagnosis is supported by sufficient documentation to ensure that other likely potential diagnoses have been ruled out[34]. Additionally, the psychiatric evaluation addresses why the child's presentation no longer meets diagnostic criteria for prior diagnoses of record, if applicable.

E. Goals and Target Symptoms: Specific symptoms to be targeted by the medication, based on the child's presentation and the case conceptualization/formulation, are identified. These should be documented and shared with the child, family, caregiver, and the child and family's support network (e.g., the Child and Family Team, as indicated). The prescriber documents in the record why that particular medication is the most appropriate medication at that time; estimates how soon the child, family, and other members of their support network should observe improved emotional and cognitive regulation and other signs of medication effectiveness; and estimated length of time the child will be maintained on the medication.

1. The targeted symptoms often are the behavioral manifestations of the child's emotional and/or cognitive dysregulation. Caution is urged to refrain from focusing on these behavioral manifestations as the sole focus of treatment, rather than treating the underlying emotional distress as the primary target of treatment.

2. Regular assessment and re-assessment of medication effectiveness and side effects is expected. This is conducted via child/youth self-report in interview, collateral (e.g., teacher, coach, caregiver, social worker) reports, and (ideally) by completion of validated brief symptom screening instruments. Re-assessment also is expected to include review of meaningful measures of psychosocial functioning (e.g., improved grades, improved peer relationships at school) in the child/youth's natural environment.

F. **Choice of Medication:** The prescriber considers the underlying dysregulation and/or additional mental health concerns in addition to the more obvious behavioral manifestations of the child's presentation when considering the most appropriate psychotropic medication for the child at that particular time. 'Root cause' issues, as described in the Detention and Jurisdiction/Disposition Court reports as the basis for removal from the home, and possible subsequent adverse events experienced after coming into the dependency and/or delinquency systems, are critical considerations when conceptualizing targets of treatment. Thus, medication decisions are driven by case conceptualization, diagnosis, potential target symptoms, research, likely effectiveness, potential side effects, the youth's medication history, insurance formularies and available forms of medication (liquid, long-acting formulations, etc.) When there is more than one clinically sound option, the prescriber should explain the pros and cons to the youth and family and they should make the decision together. Medication is prescribed as part of a comprehensive treatment strategy that includes other non-pharmacological interventions, and is not prescribed in lieu of instituting non-pharmacological treatments that the individual child needs.

G. **Informed Consent:** Respect for the independence and autonomy of the child and family is implicit in the requirement for informed consent and assent. Children are included in the consent and assent process to the extent feasible and appropriate based on their developmental stage. This means that the prescriber informs the child, family, and caregiver of the risks and benefits of the proposed treatment and the risks and benefits of alternative treatments, including absence of treatment. The prescriber explains the proposed treatment in terms that are understandable and adequate for that child, family, and additional support persons (as indicated) so that they are able to make an informed choice about whether to consent to medication. This includes information about the anticipated benefits of the medication, possible risks and side effects, the range of doses, initial effects to anticipate, and what would constitute a reasonable trial. This information also should be supplied in written form when available and in the primary language of the family. Information about serious adverse effects to watch for and when and how to contact the prescriber is discussed and provided in written form. Children, families, and caregivers should be

provided ample time for questions and discussion before consent and assent are requested.

1. The prescriber is expected to provide a telephone number at which the child, family, and/or caregiver can reach the prescriber or prescriber's designee if they have questions or concerns about the medications. The prescriber or designee is expected to return telephone calls within twenty-four (24) hours.

2. The prescriber obtains appropriate consent to treat and authorization for the release of records by consulting with the referring child welfare social worker or probation officer to determine who can provide legal consent to treat (the biological parent or the Court) and who holds the privilege for authorizing release of protected health information (PHI)–the biological parent or the Court.

The *California Guidelines for the Use of Psychotropic Medication with Children and Youth in Foster Care* will be reviewed annually.

Challenges in Diagnosis and Prescribing of Psychotropic Medication

To address common challenges that occur in psychiatric diagnosis and prescribing, the guidelines provide additional recommendations that are categorized into three main topics: a) diagnosis clarity and substantiation, b) medication starts, and c) concurrent use of multiple medications (polypharmacy). Information can be found in Appendix C.

Guidelines for Prescribers of Psychotropic Medications[35],[36]

The following questions and concerns may be helpful for prescribers to review before a decision to prescribe psychotropic medication is reached. Appendix D is a checklist for prescribers to facilitate such review.

A. Before prescribing, have the following concerns been considered:

1. Might the existing treatment be exacerbating the child's behavior?

2. Weigh the potential benefits and risks of psychotropic medication use against the risks of untreated illness.

3. Caution is recommended in prescribing psychotropic medications to children and adolescents especially those for which long term consequences are not completely understood.

4. Are there evidence-supported non-pharmacological treatments appropriate for this child/youth available in the community?

5. Have non-pharmacological treatments been offered by an appropriately trained provider? If so, was the length of treatment adequate to evaluate treatment effectiveness, as evidenced by written documentation provided by the therapist?

6. If there are no evidence-supported psychotherapeutic treatments appropriate for this child/youth available in the community, could other mental health interventions could be tried?

7. Are there environmental factors, e.g., in the placement or school setting, that could or should be addressed first?

8. A consult with a psychiatric specialist is indicated if there is a question of neurological or medical conditions contributing to the child's symptoms or if medication is a possible component of treatment.

9. Medication adherence is an important component of the treatment plan. As part of the informed consent process, the prescriber discusses medication adherence with the youth and family, including the physical and behavioral consequences of abrupt withdrawal. Adverse effects should routinely be discussed as part of informed consent.

10. If there is concurrent substance abuse and prescription of psychotropic medication is being considered, the prescriber considers need for concurrent dual diagnosis (mental health and substance abuse) treatment to ensure concerns in both domains are addressed. Medications should be considered with care during events or situations which may be stressful or traumatic for a youth, such as the initial removal from the home, or a change of placement.

11. When indicated, psychotropic medications are to be prescribed as part of a documented comprehensive treatment plan and not as the sole intervention. They are not prescribed in lieu of instituting available non-pharmacological treatments that are evidence-supported and that target the individual child's needs.

B. When prescribing, consider the following:

1. Preference is given to FDA approved medications.

2. "Off-label"[37] use of medications lack FDA scrutiny regarding their efficacy and safety. Widespread use in practice does not mean that "off-label" uses of medications are effective and safe.

3. Is there a generic equivalent of medication available?

4. Where ever possible prescribing decisions should be based on benefits that have been substantiated in high quality clinical studies.

5. Different classes of psychotropic medications differ in their risk versus benefit profiles. Those classes with the greatest chance of adverse effects, particularly antipsychotic medications, should be used cautiously and reserved for clinical situations where there is a high level of confidence, based on published evidence, that potential benefits outweigh potential harms.

6. Medication dosages should be kept within FDA guidelines for children when these are available. Any deviation from FDA guidelines is to be documented with the underlying rationale in the child's treatment records.

7. Treatment with a single medication for a single symptom or disorder should be tried before treatment with multiple medications is considered.

8. The use of two or more medications for the same symptom or disorder requires specific documentation from the prescribing clinician in the child's health record.

9. In most circumstances, only one medication should be changed at one time.

10. Medications should be initiated at a low dose and increase gradually only if there is a lack of response to medication. The clinical wisdom, "start low and go slow" is particularly relevant when treating children in order to minimize side effects and to observe for therapeutic effects.

11. The decision to treat a child with more than one medication from the same class should be supported by written documentation in the child's health record from the prescribing clinician and may warrant a second review by a Child and Adolescent Psychiatrist.

12. A clinician prescribing more than one psychotropic medication to one child should refer to Appendix A[38] for guidance.

C. If this is not the first prescription for psychotropic medication for this child, periodic evaluation of treatment efficacy and tolerability should occur, as described above. At each subsequent appointment for medication management, this evaluation includes review of the following:

1. Is there amelioration of symptoms of behavioral dyscontrol or emotional distress as assessed by clinical interview, collateral reports, validated assessment instruments (e.g., Beck Youth Inventories, Trauma Symptom Checklist for Children), and improved psychosocial functioning?

2. Are target symptoms well controlled in at least one of the child's natural environments (excludes group homes and Residential Treatment Centers)?

3. Are the medication dose and duration adequate?

4. Has the child/youth (or care environment as a whole) received appropriate evidence-supported psychotherapeutic treatments (if indicated)?

5. Has the child/youth received informal psychosocial supportive interventions that promote development of resilience and learned control?

6. What is the child/youth's perspective regarding the medication? Does the child/youth state that the medication is helpful?

7. Do the observed therapeutic benefits to date outweigh the potential risks?

8. Are there any medication adverse effects that indicate a need for tapering dosage and/or discontinuation?

9. Efforts have been made to adjust medication dose to the minimum at which it remains effective and side effects are minimized. These efforts, or reasons why adjustments could not be considered, are documented in the youth's Treatment Plan and have been discussed with the youth and family.

10. Periodic attempts at taking the child off medication have been tried or were determined to not be appropriate at this time. Efforts to discontinue the medication(s), or the rationale for continuing the medication, are documented in the child's Treatment Plan.

11. The child/adolescent should be monitored for adverse effects, such as movement disorders, extreme weight gain or loss, and documentation should be present in the child's medical/psychiatric record.

12. If adverse effects occur, tapering off the medication may be indicated, and identification of another clinically appropriate intervention is encouraged. These side (adverse) effects and efforts to taper and identify another clinically appropriate intervention are documented in the youth's Treatment Plan.

13. The youth and family are consulted in discussions regarding tapering or discontinuing medication and identification of potential alternatives.

14. Caution and pause should be used before treating side effects with the addition of medication. If used, the rationale is documented in the youth's Treatment Plan. The rationale also has been discussed with the youth and family; this discussion also is documented in the youth's Treatment Plan.

D. Prescribing in Emergency Situations

In emergency situations a child should be stabilized before a long-term medication plan is considered. During emergency situations to stabilize a child, consider the following:

1. Careful consideration should be placed on medication selection even during a psychiatric emergency.

2. One time or short term medication orders should state “no refills” as a safeguard and to prompt a re-evaluation before continuation occurs.

3. Before medications are started, a specific plan for tapering or consolidating the regimen should be developed. This plan should be clearly communicated to the follow-up provider or outpatient team.

4. In residential settings, the medication log should clearly indicate the medications used during the emergency with the doses, frequencies, and start/stop dates.

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Questions to Ask about Medications
Prepared by Dr. Art Martinez

(Adapted from: Psychiatric Medications for Children and Adolescents Part III: Questions to Ask & http://www.ohiomindsmatter.org/Parents.html)

When a child or youth does not feel well, sometimes medications can help. First, a complete assessment of the child or youth's mental and physical health must be done to make sure it is not just a one-time occurrence and that other things may not help such as getting better sleep, making changes at school or home, or talking with a therapist.

Medications to help children or youth with their feelings, behavior, or how they are doing at school are most effective when children or youth also have a therapist involved. Additionally, the caregiver(s) and youth should know the following about the medications:

- reason for the medication including target symptoms and mental health diagnoses
- alternative treatments in lieu of medication
- risks of the medications
- benefits of the medications
- possible drug interactions with the medications
- who to call in an emergency about the medications

The medication prescriber for mental health medications must obtain informed consent. Informed consent means that the youth and caregiver understand the benefits and risks of treatment and that the youth and caregiver give consent to treatment. Informed consent means the patient (youth) has the right to refuse treatment. Often, a medication consent form is used to obtain the youth's and caregiver's signatures for informed consent.

Medication prescribers may include the child or youth's primary care provider (pediatrician), psychiatrist, nurse practitioner or physician assistant. A therapist such as a psychologist, social worker, or school counselor does not prescribe medications but often works with the prescriber to help describe how the youth may need help.

Treatment with psychiatric medications is a serious matter for children and youth. Consider asking the following questions before taking psychiatric medications. It is important to be fully informed about the psychotropic medication you are prescribed. If, after asking these questions, you still have questions or doubts about medication treatment, ask for a second opinion.

If you need assistance or have questions about this process, you should consider calling your social worker, probation officer, attorney, public health nurse, or a CASA worker.

By asking and writing down the answers to the following questions, children, youth, and care givers will gain a better understanding of psychiatric medications:

Talking to the Prescriber:

Review the following with the medication handout, prescription label and answer form

About the medication:

1. Why am I taking this medication?
2. What are the names of the medication (generic and brand names)?

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Questions to Ask about Medications
Prepared by Dr. Art Martinez

(Adapted from: Psychiatric Medications for Children and Adolescents Part III: Questions to Ask & http://www.ohiomindsmatter.org/Parents.html)

3. What is the safest daily dosage for me to take considering my age, height, weight, and other important lifestyle factors? How will I need to take the medication?
4. What is known about its degree of helpfulness with other children who have a similar condition? How might the medication help? What is unknown about this medication? Is it approved for children or adolescents?
5. How long before it works? How will I know it is working?
6. What is the cost of the medication (generic vs. brand name, compared to other drugs that could be indicated for use)? Will it be covered by Medi-Cal or insurance?

Side effects, risks and monitoring:

1. What are the common side effects for this medication? If I experience these side effects, what is normal and when is it not?
2. What monitoring (e.g. heart tests, blood work, etc.) need to be done before starting the medication? What monitoring need to be done while I continue to take the medication? What is my status regarding monitoring?
3. What are the long-term health risks of the medication?
4. Is this medication addictive? Can it be abused?
5. What happens if this medication is combined with alcohol or other drugs?
6. What do I do if a problem develops – I feel ill, I miss doses, if side effects develop? When should I be concerned? Who should I call with concerns?
7. Who will check on me to see the medication is working or to check for any negative effects? How will progress be checked and by whom? Are they qualified to do so?
8. Who else in my life **needs** to be informed about this medication?
9. Whom should I contact with questions? In an emergency? If you are not there, whom should I talk to? What about after hours?

Length of treatment, alternatives and long-term use planning:

1. How long will I need to take this medication? How will the decision be made to stop this medication?
2. What happens when I turn 18, 21, and 26?
3. Are there treatments besides medication that might help?
4. What can I do at home or school to help with mental health besides medication?
5. Would you feel comfortable giving this medication to your own child or relative? Would you take this yourself?

Talking to the Pharmacist:

Review the following with the medication handout, prescription label & answer form

1. Can you review the list of medications I am currently taking or may take (include over the counter medications such as allergy medication, pain relievers, etc.)? Are there possible interactions between these medications and the new medications I am being prescribed?
2. What are the common side effects for this medication? If I experience these side effects, what is normal and when is it not?
3. Are there any other medications or foods to avoid while taking the medication? Should I eat food with the medication?

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Questions to Ask about Medications
Prepared by Dr. Art Martinez

(Adapted from: Psychiatric Medications for Children and Adolescents Part III: Questions to Ask & http://www.ohiomindsmatter.org/Parents.html)

4. Are there any activities to avoid while taking the medication? Are any precautions recommended for other activities? Are there any weather conditions to avoid while taking this medication?
5. Can I stop taking the medication right away if I don't like how it makes me feel? If I do, is here anything I have to watch out for?
6. What happens if I miss a dose of this medication? Should I take it right away or wait until the next dosage?
7. What's the most important thing about this medication?
8. What happens if I take too much or take the wrong amount of this medication?
9. What happens if this medication is combined with alcohol or other drugs?
10. How long does the drug have its effect? How long does it take to wear off? How long will it be effective in my body?
11. (If relevant) Are there any special concerns about this medication and pregnancy?
12. What should I discuss with my prescriber before I take this medication?
13. How should the medication be stored or kept?

Talking to the Social Worker, Probation Officer and/or Public Health Nurse:

At your check-ins, your social worker or probation officer should have these conversations with you.

- *You can always say, "I'd like to talk to you about my medications and treatment plan."*
- *Review the following with the medication handout, prescription label & answer form*

1. Social Worker: Is the medication helping? How?
   Your Response: (The medication helps with… The medication does not help with…)
2. Social Worker: How do you feel on the medication?
   Your Response: (I feel ______, ______, ______ when I take the medication)
3. Social Worker: Have any side effects developed? If so, can you describe them?
   Your Response: (I've noticed that…)
4. Social Worker: Has someone checked your weight, height, labs, or anything else since our last check-in?
   Your Response: (Yes/No/Not sure)
5. Social Worker: Are you taking any other medications or drugs that may have harmful effects while taking your current prescription?
   Your Response: (I take … {name other medications, supplements, or drugs})
6. Social Worker: What other support or information might help with what you are experiencing?
   Your Response: (I would like/I need)
7. Social Worker: Have you tried other treatments besides medication that seem to help? Is there anything you would like to try?
   Your Response: (______ really helps me, I'd like to do that. I'd like to try ______ to help with _____)
8. Social Worker: What are people at home or school doing to help with mental health besides medication?
   Your Response: (At home ______ is happening. At school __________ is happening.)

Talking to the attorney or judge:

You can always say, "I'd like to talk to you about my medications and treatment plan."
Review the following with the JV220a and JV222 forms, the medication handout, prescription label & answer form

1. What rights do I have?
2. Are my rights being upheld?

DRAFT

Judicial Council
Tribal Court – State Court Forum
June 11,2015

Masking Traumatic Experiences
The Use and Oversight
of Psychotropic Medications
in the Treatment of Trauma and Abuse

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- GAO Study Of Five States Regarding Medication Of Foster Children
- a large percentage of foster children were receiving psychotropic medications at much higher levels than FDA approved for the use of such medications
    - A significant percentage of these children were on five medications or more
    - Foster children on psychiatric medications was 5% higher than non-Foster care
    - In some states foster children were 57% more likely to be on five medications or more
    - Foster children less than one year old were twice as likely to be on psychiatric medications

What Do We Know About Increased Experience Of Native Children

- A much higher rate are in the foster care system, possibly 25% or higher
- Tribal systems are less equipped to have strong input into the medication decision process
- Tribal courts are typically less equipped by budget, tribal authority and process
- Tribal courts and families typically feel less empowered in the decision making process

- The Responsibility is Ours
    - What will guide prescriptive decisions
        - Traditions
        - Tribal Cultural Process
        - System of care
        - Tribal Authority
- Behavioral Responses Are A Part Of A Child's Response To Abuse And Neglect
    - Aggressive behavior
    - Acting out in an effort to return to the known, or their family
    - Unconscious or driven acting out
    - Dissociation, spiritually checking out
    - Behavioral upheaval
- What Should We Expect?
    - Response sets to abuse survivorship
    - Response sets to placement adjustment

  - Response sets to issues of attachment
- Response Sets To Abuse And Neglect
  - Anxiety
  - Increased vigilance
  - Problems of activity level
  - Anger
  - Powerlessness
  - Dissociation, loss of spirit
  - Substance abuse
- Behavioral Responses Are A Part Of A Child's Response To Abuse And Neglect
  - Aggressive behavior
  - Acting out in an effort to return to the known, or their family
  - Unconscious or driven acting out
  - Dissociation, spiritually checking out
  - Behavioral upheaval
- Response Sets to Placement
  - Anxiety multiplied by absence of safety
  - Powerlessness of helplessness
  - Anger displaced
  - Lack of internal safety
  - Learning problems
  - Problems in accepting care
- Response Sets To Issues Of Attachment
  - Unconscious lashing out
  - Behavioral regression,
  - Over compliant behavior
  - Problems of learning
- What Is The Systemic Response To The Child's Issues Or Behaviors?
  - Case Management
  - Hope in the providers of care
  - Medically manage the behaviors
  - Hope for healing
- The Role of the Court
  - Protect the child from abuse
  - Primary: protect from an abusive home
  - Secondary: Protect from systemic abuse
  - Tertiary: protect from misguided services response
- Family Service Role is to?
  - Have a process to guide services
  - Develop a process to thoughtfully inform the court
  - To carry the responsibility of culturally informed response
  - To speak for the child
- The Role of Tribal Structure is to:
  - Insure culturally appropriate responses to abuse
  - Insure a competent system of care
  - Strengthen families and cultural resources
- Considerations in Psychotropic Drug Protocol development
  - Develop a thoughtful process for consideration and advisement
  - Develop and insure a process of court consideration
  - Inform the court process on how to develop local competence and consultation

AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY

FACTS for FAMILIES

No. 51 November 2004

Psychiatric Medications for Children and Adolescents Part III: Questions to Ask

Medication can be an important part of treatment for some psychiatric disorders in children and adolescents. Psychiatric medication should only be used as one part of a comprehensive treatment plan. Ongoing evaluation and monitoring by a physician is essential. Parents and guardians should be provided with complete information when psychiatric medication is recommended as part of their child's treatment plan. Children and adolescents should be included in the discussion about medications, using words they understand. By asking the following questions, children, adolescents, and their parents will gain a better understanding of psychiatric medications:

1. What is the name of the medication? Is it known by other names?
2. What is known about its helpfulness with other children who have a similar condition to my child?
3. How will the medication help my child? How long before I see improvement? When will it work?
4. What are the side effects which commonly occur with this medication?
5. Is this medication addictive? Can it be abused?
6. What is the recommended dosage? How often will the medication be taken?
7. Are there any laboratory tests (e.g. heart tests, blood test, etc.) which need to be done before my child begins taking the medication? Will any tests need to be done while my child is taking the medication?
8. Will a child and adolescent psychiatrist be monitoring my child's response to medication and make dosage changes if necessary? How often will progress be checked and by whom?
9. Are there any other medications or foods which my child should avoid while taking the medication?
10. Are there interactions between this medication and other medications (prescription and/or over-the-counter) my child is taking?
11. Are there any activities that my child should avoid while taking the medication? Are any precautions recommended for other activities?
12. How long will my child need to take this medication? How will the decision be made to stop this medication?
13. What do I do if a problem develops (e.g. if my child becomes ill, doses are missed, or side effects develop)?
14. What is the cost of the medication (generic vs. brand name)?
15. Does my child's school nurse need to be informed about this medication?

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Treatment with psychiatric medications is a serious matter for parents, children and adolescents. Parents should ask these questions **before** their child or adolescent starts taking psychiatric medications. Parents and children/adolescents need to be fully informed about medications. If, after asking these questions, parents still have serious questions or doubts about medication treatment, they should feel free to ask for a second opinion by a child and adolescent psychiatrist.

For additional information see *Facts for Families*:
#21 Psychiatric Medication for Children and Adolescents Part I-How Medications Are Used
#29 Psychiatric Medication for Children and Adolescents Part II- Types of Medications
#52 Comprehensive Psychiatric Evaluation

If you find ***Facts for Families***© helpful and would like to make good mental health a reality, consider donating to the **Campaign for America's Kids**. Your support will help us continue to produce and distribute Facts for Families, as well as other vital mental health information, free of charge.

You may also mail in your contribution. Please make checks payable to the AACAP and send to *Campaign for America's Kids*, P.O. Box 96106, Washington, DC 20090.

The American Academy of Child and Adolescent Psychiatry (AACAP) represents over 8,500 child and adolescent psychiatrists who are physicians with at least five years of additional training beyond medical school in general (adult) and child and adolescent psychiatry.

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Biographies

Biographies for Forum Meeting

Hon. Abby Abinanti is an enrolled Yurok tribal member and the first California tribal woman to be admitted to the California Bar. She was a Superior Court Commissioner in San Francisco for over 17 years where she was assigned to the Unified Family Court. She has been a Yurok Tribal Court Judge since 1997, and was appointed Chief Judge in 2007 where she currently serves. Judge Abinanti was in private practice from 1976–1992 and was the legal director and director of Lesbians of Color Project, National Center for Lesbian Rights from 1992–1994. She also served as directing attorney for California Indian Legal Services in Eureka. Chief Judge Abinanti received her Doctorate of Jurisprudence from the University of New Mexico School of Law in 1973 and has worked extensively with vulnerable populations particularly in the area of juvenile dependency and delinquency. She has a vast speaking and training experience on topics such as the Indian Child Welfare Act, child maltreatment, and addressing the needs of at- risk adolescents.

In conjunction with the Tribal Council, Chief Judge Abinanti was instrumental in developing the Yurok Children's Code, Yurok Family Code, and Judicial Ordinance, significantly expanding the Yurok tribal jurisprudence. She is currently leading the effort to expand the Tribe's concurrent jurisdictional capacity and enhance services for Yurok tribal members, families, and children.

Amber Blaha is an Assistant Section Chief in the Law and Policy Section of the Environment and Natural Resources Division at the U.S. Department of Justice, where she supervises policy, legislative, and litigation matters relating to Indian law, environmental and wildlife crimes, and public lands and natural resource statutes. Prior to joining ENRD, Amber was a senior associate at Steptoe & Johnson in Washington, D.C., where she focused on trial court and appellate litigation in the areas of administrative, environmental, and Indian law. Amber received her J.D. and B.A. from the University of Virginia.

Hon. Richard C. Blake is a member and Chief Judge of the Hoopa Valley Tribe, Judge Richard C. Blake was first elected by his membership in June 2002 and was re-elected in June 2010 for an additional four year term. Judge Blake is also the contractual Judge for the Smith River Rancheria and appointed Chief Judge for Redding Rancheria on July 27, 2010. Prior to election as Chief Judge, Judge Blake was employed with the County of Solano for 17 years.

Judge Blake serves as 1st Vice President of the National American Indian Court Judges Association and Region 2 Board Member, representing Tribal Court Judges located in California, Nevada and Hawaii, and a member of the California Juvenile Court Judges Association.

Judge Blake was also appointed to the California Blue Ribbon Commission addressing issues of youth in foster care in California, being appointed by Chief Justice Ronald George. Additionally in October of 2009, Judge Blake drafted a letter to California Chief Justice Ronald George asking for a face to face meeting between the Chief Justice and California Tribal Court Judges,

this historic meeting took place on December 21, 2009 and further meetings are scheduled. The idea of a "Teague Protocol" mirroring the agreement in the State of Wisconsin and Wisconsin Tribes, is the focus of this group.

In April of 2010, Judge Blake was appointed to the 9th Circuit Court of Appeals Commission Federal/Tribal Commission.

Judge Blake also works with the National Center for State Courts as staff in the development of State-Tribal Court Domestic Violence issues, arising from Project Passport and participates in trainings around the United States.

Judge Blake is also the founder of the Northern California Tribal Court Coalition, consisting of developed or developing Tribal Courts in the Northern California region. A vision of such an organization is now a non-profit organization Directed by Attorney Stephanie Dolan.
Judge Blake is alum of University of Southern California and the National Judicial College at the University of Nevada Reno.

Vida Castaneda was born and raised in Santa Barbara County, California. She descends from the Chumash, Ohlone and Zapotec Nations, as well as having European heritage. Ms. Castaneda completed her bachelor's degree at San Diego State University with a major in Sociology and a minor in American Indian studies. In 2000, Ms. Castaneda obtained a Masters in Social Welfare, with a specialty in Public Child Welfare (Title IV-E stipend recipient) from UC Berkeley. She began working as a child protective services worker for the City & County of San Francisco on the sub-acute (mental health) caseload until 2005. In December of 2005, Ms. Castaneda became a court services analyst in the Tribal/State Programs Unit at the Judicial Council of California, Center for Families, Children & the Courts. Ms. Castaneda routinely provides educational and technical assistance to state court systems throughout California on the Indian Child Welfare Act (ICWA) and family violence issues in California tribal communities.

Bill Denke has served the Sycuan Band of the Kumeyaay Nation as their Chief of Police for the past ten years. Bill has served as a subject matter expert for California's Commission on Peace Officer Standards and Training in developing new training curriculums, "Policing Indian Lands" and "Responding to Domestic Violence and Sexual Assault Calls on Tribal Lands". Bill was appointed to the National Indian Law and Order Commission's Advisory Committee in 2012. He is the current chairman of both the California Tribal Police Chiefs' Association and the Indian Country Section of the International Association of Chiefs of Police (IACP), and a member of IACP's executive committee. In 2014, he was appointed by the director of the FBI to sit on the FBI's Criminal Justice Information Systems (CJIS) Advisory Policy Board and also chairs that board's tribal task force. Bill received his formal law enforcement training at the San Diego Regional Law Enforcement Training Center and advanced training through the Federal Law Enforcement Training Center. He also has a Bachelor's of Science in Liberal Studies.

Karen de Sá is an investigative reporter for the *San Jose Mercury News,* where she has worked for 16 years. Her 21-year journalism career has also included reporting positions at a number of newspapers in the San Francisco Bay Area, including the *Oakland Tribune,* the *San Mateo County Times,* and the *Fremont Argus,* where she covered city government and social welfare issues. Her projects have documented (1) inhumane conditions in California's youth prisons and children's shelters, (2) systemic struggles in the state's foster-care courts, (3) the role of lobbyists in lawmaking, and (4) financial abuse of the elderly and disabled by court-appointed fiduciaries. Her most recent project, "Drugging Our Kids," launched on Aug. 25, 2014. This series of five articles and a documentary film reports on the prescription of psychotropic medications to California foster youth. The newspaper series has won seven top journalism awards and the documentary has won two awards, including "Best Documentary Multimedia Package" in the National Press Photographers Association's *Best of Photojournalism: Multimedia 2015* awards; and the "Judges' Special Recognition" in the Documentary Project of the Year category at the Missouri School of Journalism's *Pictures of the Year International* competition. Ms. de Sá was a 2006 Knight Fellow at Stanford University and has won numerous journalism honors over her career, including a Goldsmith Award for Investigative Reporting, the American Bar Association's Silver Gavel Award, the National Headliners Award, a Best of the West award, and an Investigative Reporters and Editors award. Ms. de Sá was born in Stanford, California, and earned a bachelor's degree in women's studies from San Francisco State University.

Hon. Leonard Edwards (Ret.) is a retired Superior Court Judge now working as a consultant and teacher. In his work he provides technical assistance to the courts of California and courts across the country, particularly in areas involving children and families. Judge Edwards served for 26 years as a Superior Court Judge in Santa Clara County, California. He sat as a domestic relations judge and as a juvenile court judge. He also served for six years as Judge-in-Residence with the Center for Families, Children & the Courts, a division of the California Administrative Office of the Courts.

During his judicial career, Judge Edwards founded and was the first president of the Juvenile Court Judges of California, was founder of the Santa Clara County Domestic Violence Council, was founder of Kids In Common, and founder of the Child Advocates of Santa Clara County. Judge Edwards was the President of the National Council of Juvenile and Family Court Judges in 2002-2003. Judge Edwards has taught at the University of Santa Clara Law School, Stanford Law School, and the California Judicial College. He has provided judicial trainings in over 47 states and 11 foreign countries. Judge Edwards has written widely including a recent book entitled The Role of the Juvenile Court Judge: Practice and Ethics. Judge Edwards has received many awards. He was the recipient of the 2004 William H. Rehnquist Award for Judicial Excellence.

Hon. Anita Fineday (White Earth Band of Ojibwe) currently works for the Casey Family Foundation. From 1997 through 2011, she served as Chief Judge of the White Earth Tribal Court (White Earth Band of Ojibwe), where she played an instrumental role in the Band's expansion of the jurisdiction and capacity of the Court, which now hears a broad spectrum of both criminal

and civil cases. During her illustrious career, she has worked in Indian Country throughout the State of Minnesota, including as a staff attorney with Anishinabe Legal Services, the Executive Director of the Indian Child Welfare Law Center, the Solicitor General of the Mille Lacs Band of Ojibwe, and as a tribal attorney and associate judge for the Leech Lake Band of Ojibwe. She holds a B.A. in English from Indiana University at Bloomington, a J.D. from the University of Colorado Law School (Boulder), and a Master's of Public Administration from Harvard University's Kennedy School of Government. In addition to being the first Native American woman to argue in the Minnesota Supreme Court, she serves as board chair of the Regional Native Public Defense Corporation and as board secretary of Anishinabe Legal Services.

Ann Gilmour is an attorney with the Judicial Council of California, Center for Families, Children and the Courts, working with the Tribal/State Programs Unit. The work of the Tribal Projects Unit includes the Indian Child Welfare Act initiative. Ms. Gilmour has close to twenty years experience in the field of Indian law practicing first in British Columbia where she did aboriginal rights and title litigation. Since moving to California in 1999 she has continued to work in the field of Indian law, focusing primarily on the Indian Child Welfare Act.

Hon. Cynthia Gomez is Governor Jerry Brown's Tribal Advisor and Native American Heritage Commission Executive Secretary. She advises Governor Brown and Cabinet colleagues on topics related to Tribal governments and the implementation of effective government-to-government consultation between the Governor's Administration and California Tribes on policies that affect California Tribal communities. Tribal Advisor Gomez serves as a direct link between the Tribes and the Governor of the State of California and facilitates communication and consultations between the Office of the Governor, the Tribes, state agencies, and agency tribal liaisons. Tribal Advisor Gomez also reviews state legislation and regulations affecting Tribes and makes recommendations on these proposals.

Tribal Advisor Gomez has more than 30 years advocating on behalf of Tribal people and other sensitive populations.

Prior her appointment within the Governor's Office, Judge Gomez served as Chief Justice of the Shingle Springs Band of Miwok Indians' Tribal Court since 2010. Judge Gomez is a member of the Tribal and State Court Forum for the California Administrative Office of the Courts.
Judge Gomez was the California Environmental Protection Agency's Assistant Secretary of Environmental Justice and Tribal Governmental Policy from 2008 to 2010, were she facilitated the progress of Agency Secretary's finalization and adoption of the first in the state agency-level tribal communications policy. From 1999-2008, Ms. Gomez was Chief of the Native American Liaison Branch of the California Department of Transportation were she facilitated the progress of the Department Director's adoption of the first state department tribal communications policy, one of the first in the nation for State Transportation Departments. In this capacity, Judge Gomez authored the first "Transportation Guide for Native Americans," which provided transportation information, training, and facilitation services to the Native American Community. During this time, she also served as Chairwoman of the California Transportation Research Board's Native

American Transportation Issues Committee. The TRB is a high-level international transportation policy forum for discussing environmental justice, climate change, energy and Tribal government issues. Judge Gomez was also Indian Housing Specialist Housing and Community Development Representative for the California Indian Assistance Program Department of Housing and Community Development from 1989 to 1999.

Judge Gomez began her career managing programs for the Tule River Tribal Council from 1985-1989, where she oversaw the departments of Natural Resources, Environmental, Planning, Public Works, and Economic Development. She served as a Board member to the Tule River Housing Program. She prosecuted tribal cases at the Federal Magistrate's Court on behalf of the Tribe. Judge Gomez is Native American from the Tule River Yokut Tribe from the Tule River Indian Reservation in central California. When not busy working, Judge Gomez enjoys spending time with her family and reading books.

Hon. Suzanne Kingsbury was elected the Presiding Judge of the El Dorado County Superior Court in 1999, an assignment that will continue until at least December of 2016. She sits in Department Three of the court, which is located in South Lake Tahoe, where she presides over civil, criminal, juvenile, family, appellate and probate matters. She is the first woman to serve in the position of Superior Court judge in the county's history, as well as being its first female presiding judge.

Judge Kingsbury has been instrumental in the creation and expansion of innovative programs in El Dorado County. Through her efforts, a variety of services have been made available to self represented litigants to provide them with the information that they need to successfully navigate the court system. She was part of the team that obtained approval for the funding and construction of the El Dorado County Juvenile Hall in South Lake Tahoe. She expanded the civil alternative dispute resolution program to include full services in South Lake Tahoe, which provides litigants with a no cost means to resolve their cases without going to trial. Judge Kingsbury also initiated a family law dispute resolution program, which allows families going through a marital dissolution the ability to settle their cases in an amicable fashion. Through collaboration with other justice system partners, Judge Kingsbury also brought El Dorado County its first juvenile and adult drug courts, mental health court and dependency mediation and drug courts and is collaborating with the Chief Judge of the Shingle Springs Band of Miwok Indians to create California's first joint jurisdictional court.

In June of 2004, Chief Justice Ronald M. George appointed Judge Kingsbury to a three year term on the Judicial Council, the policy making body of California's state court system. She is the first judge from El Dorado County to serve in that capacity. From 2005 to 2007, she served as the chair of the Council's internal Rules and Projects Committee (RUPRO). In 2011, Chief Justice Tani Cantil-Sakauye appointed Judge Kingsbury to serve as a member of the Strategic Evaluation Committee. In 2012, that committee produced and published an exhaustive report assessing the transparency, efficiency and accountability of the Administrative Office of the Courts. She has also been appointed by both Chief Justice George and Cantil-Sakauye to the

California Supreme Court Committee on Judicial Ethics Opinions and the Tribal Court/State Court Forum.

Since assuming the bench, Judge Kingsbury has served as a member of CJER's Continuing Judicial Studies, Rural Courts and Presiding Judge and Court Executive Education Committees and the Continuing Judicial Studies, Cow Counties and California Judicial Administration Conference Planning Committees. Since 1999, she has served on the Trial Court Presiding Judges' Advisory Committee, serving as a member of the Executive Committee, and as vice chair. She was appointed by the Chief Justice to serve as a member of the Task Force on Self Represented Litigants, the Task Force on Judicial Ethics Issues, the Task Force on Mental Health Issues and the Criminal Law Advisory Committee. She also has been a member of several Judicial Council Working Groups relating to judicial administration issues. Judge Kingsbury is also actively involved in judicial education, serving as a frequent faculty member and facilitator, particularly in the area of judicial administration.

Judge Kingsbury graduated in 1981 from California State University in Sacramento after receiving a Bachelor of Arts degree in Criminal Justice. She received her Juris Doctorate degree from McGeorge School of Law in Sacramento in 1982. While working her way through school, she served as an intern with the California Department of Corrections, the California District Attorney's Association, and the United States Attorney for the Eastern District of California and the Sacramento County District Attorney's Office. After being admitted to the bar in 1982, she worked in private civil practice in Sacramento County for approximately three years before moving to El Dorado County in 1985 to accept a position with the El Dorado County District Attorney's office.

Judge Kingsbury served as a deputy district attorney for over five years. During her tenure with the office, she helped found the South Lake/El Dorado County Narcotics Task Force (SLEDNET) and began a vertical prosecution program for sexual assault and child abuse cases. In 1990, she moved to the El Dorado County Public Defender's office, serving as a deputy public defender representing juvenile and adult offenders. It was at the urging of her supervisor at the Public Defender's office that she ran for judicial office.

Judge Kingsbury was an adjunct instructor in the Criminal Justice program at Lake Tahoe Community College for over a decade. She has been active in community affairs, including serving as a member, officer and president of the Board of Directors for the South Lake Tahoe Women's Center and a member of the Board of Directors of the Sierra Recovery Center, Lake Tahoe Educational Foundation, and Hospice of the Lake.

Judge Kingsbury has been married for over thirty years to her husband Jim Ammons, a retired law enforcement officer.

Chance Landreneaux, Humboldt County Sheriff's Office, assigned to the Federal Drug Enforcement Administration as a Task Force Officer. He has been a Peace Officer for 13 years and has held many specialty assignments during that time. During the past four years, he has been assigned to narcotics investigations to enforce both state and federal narcotics laws. He has organized and executed over 100 search warrant operations, and conducted undercover purchases of narcotics. He has investigated several major multi-state Organized Crime Drug Enforcement Task Force Investigations. Those investigations lead to Federal arrest of suspects, seizures of millions of dollars in currency and assets, and hundreds of pounds of narcotics. He has served as a Field Training Officer, a Special Weapons and Tactics Team member, and is a Use of Force Instructor and Expert.

Tom Lidot, Chilkat Tlingit, is actively involved with local, regional, and national tribal issues related to health, child welfare, and self-determination. He currently serves as the Program Manager (2004) for Tribal STAR (Successful Transitions for Adult Readiness), a program of the Academy for Professional Excellence San Diego State University School of Social Work and is lead faculty for the American Indian Enhancement Project of California. Since 1990, his work experience is built on direct service expansion for healthcare and education programs. He also leads Pacific Mountain Philanthropy (2000), a team of experienced executives with a track record of improving outcomes for American Indians/Alaska Natives. Recent efforts include the Toolkit to Reduce Disproportionality of American Indian children in Child Welfare for California (2009). Some of his recent publications include: *Continuum of Readiness for Collaboration, ICWA Compliance, and Reducing Disproportionality; Social Work Practice Tips for Inquiry and Noticing;* and *Following the Spirit of ICWA*. His experience in mediation/alternative dispute resolution serves as the foundation for his approach to cross-cultural training and facilitation. He walks in two worlds: as a tribal member who strives to maintain culture and tradition and as an active advocate for the advancement of science and education.

Hon. Anne K. McKeig is a 1989 graduate of the College of St. Catherine in St. Paul, Minnesota. After receiving her B.S., she went on to law school at Hamline University School of Law in St. Paul, where she received her J.D. in 1992. Ms. McKeig began work as an Assistant Hennepin County Attorney in 1992 in the Child Protection Division where she specialized in Indian Child Welfare cases. She held that position until March 2008 when she was appointed by Governor Pawlenty to the 4th Judicial District bench. Judge McKeig has also been a part-time staff attorney for the American Prosecutors Research Institute and is currently a trainer for the Minnesota Department of Human Services. She has spoken at many conferences including national conferences on the issue of Indian Child Welfare. She is currently an adjunct professor at Hamline University School of Law and William Mitchell College of Law. Find more complete bio http://www.mncourts.gov/default.aspx?page=JudgeBio_v2&ID=30500

Dr. Art Martinez, PhD, a member of the Chumash Nation, brings a strong melding of professional and traditional knowledge. He received his Doctoral degree in Clinical Psychology from International College in Los Angeles, CA and a Master's Degree, Bachelor's degree and a special emphasis credential in Native Studies from the CA State Universities Humboldt and

Sonoma. Dr. Martinez has over 35 years of experience in focused delivery of clinical and forensic services to children/families surviving the effects of child abuse and other forms of trauma. As a national consultant to DHHS, Dr. Martinez served as a technical expert for the regulation, development, evaluation and education to tribal services needs. He aided in the development of initiatives for child sexual abuse treatment, substance abuse prevention and treatment, adolescent treatment centers, and 638 tribal contracting processes. Dr. Martinez served as a Clinton administration appointee on the National Advisory Councils for SAMHSA and the Centers for Mental Health Services. Dr. Martinez has served in a technical expert capacity to assist governmental agencies and localities in bringing definition, process and fruition to the overall mission to raise the physical, mental, social, and spiritual health of diverse families and children.

Rose-Margaret Orrantia, Yaqui, and Tribal STAR Team Elder, completed her Bachelor and Master degrees at San Diego State University. She served in the Peace Corps in Peru from 1962-64. She worked at the Institute of American Indian Arts in Santa Fe, N.M. for 18 years. Returning to San Diego, she served as the Executive Director of Indian Child and Family Services (ICFS), a State Licensed Foster Family and Adoption Agency serving the Tribal community in San Diego and Riverside Counties. Leaving ICFS she served as a consultant and grant writer to Indian Tribes and non-profit agencies for eight years and as the Director of Foster Family and Adoption Agencies in the non-Indian world. Currently she works part-time as a member of the Tribal STAR training team. She also serves as an Advisory Board member for the Capacity Building Resource Center for Tribes (CBRC4T's) and is a senior consultant for them.

Hon. Amy M. Pellman was appointed by Governor Arnold Schwarzenegger to the Los Angeles Superior Court in 2008. At the time of her appointment, she was sitting as a Court Commissioner since 2005. Judge Pellman has dedicated her legal and judicial career to bettering the lives of children and their families. Prior to her election as Commissioner, she served as the legal director for The Alliance for Children's Rights, a non-profit organization proving free legal services to children in poverty. She was also a senior and appellate attorney for Children's Law Center of Los Angeles. Judge Pellman received the Child Advocacy Law Award in 2003 from the American Bar Association and is a regular contributor to a treatise on Juvenile Dependency Law, "California Juvenile Dependency Practice," published by the CEB (California Educational Bar). Judge Pellman speaks and writes regularly on juvenile and family law issues. Judge Pellman is an adjunct Professor and has taught for over eleven years at Southwestern University Law School. She was awarded the Adjunct Excellence in Teaching Award in 2005.
Judge Pellman is currently sitting at Edelman's Children's court where she is hears a variety of cases including dependency, ICWA, termination of parental rights for private adoptions, adoption finalizations, surrogacy, and emancipation petitions. Judge Pellman also sits on numerous local, state and national committees related to juvenile and family law issues.
She has a B.A. in Political Science from Mount Holyoke College, and a J.D. from the City University of New York Law School.

Hon. Dennis M. Perluss has served as Presiding Justice of the Court of Appeal, Second Appellate District, Division Seven, since January 2003. He was appointed an Associate Justice of the Court of Appeal (also in Division Seven of the Second Appellate District) in October 2001 after serving for two years as a Judge of the Los Angeles Superior Court, sitting in juvenile (dependency), misdemeanor and felony trial courts.

While a member of the trial and appellate courts, Justice Perluss has chaired the Judicial Council's Civil and Small Claims Advisory Committee, served as co-chair of the Tribal Court-State Court Forum and participated on several Supreme Court Advisory Task Forces charged with developing new rules of professional conduct for attorneys. Justice Perluss has lectured to, and written for, other appellate and trial judges, practicing attorneys and law students on a wide range of legal topics. He has been a member of the American Law Institute since 1995.
Prior to his appointment to the bench, Justice Perluss actively practiced trial and appellate law for more than 24 years. He was a partner in the Los Angeles office of Morrison & Foerster, an international law firm, and Hufstedler & Kaus, a boutique litigation firm, emphasizing securities and other complex financial matters, as well as issues of constitutional law. He served as a Visiting Professor (Business Associations) at the UCLA School of Law and a Lecturer in Law (Law and the Family) at the USC Law Center. Prior to entering private practice, Justice Perluss was a law clerk to United States Supreme Court Justice Potter Stewart and to Judge Shirley M. Hufstedler of the United States Court of Appeals for the Ninth Circuit.

Active in professional and community affairs throughout his legal career, Justice Perluss was Deputy General Counsel of the Independent ("Christopher") Commission on the Los Angeles Police Department, President of the Barristers (Young Lawyers) of the Los Angeles County Bar Association and a member of the Board of Directors of the Association of Business Trial Lawyers, Public Counsel and the Los Angeles County Bar Foundation.

Elizabeth A. Sandoval is a Senior Staff Attorney with the Legal Division of the California Department of Social Services (CDSS). She began her employ with CDSS in 1995 as a licensing enforcement attorney. In 1999, Ms. Sandoval was tasked with evaluating complex program and fiscal audits performed by department auditors and representing the Department on appeals from those audits. These appeals often involved millions of dollars of Aid to Families of Dependent Children-Foster Care (AFDC-FC) funds paid to corporate foster care providers. From 2003 until 2014 she was a Supervising Staff Attorney with the Legal Division responsible directly, and in supervision of staff, for policy drafting, implementation, interpretation and clarification of statutes, regulations, and published policy related to the licensing of children's residential facilities and a myriad of children's issues. Since 2003 Ms. Sandoval has been providing policy support to the Department's Children and Family Services Division on federal and state areas of law involving foster children including Title IV-E, and Title IV-B, with primary emphasis as specialist attorney assigned to the Indian Child Welfare Act. As a specialist, Ms. Sandoval was successful in the negotiation of the State's first Title IV-E agreements with the Karuk and Yurok tribes; she has provided counsel on ICWA related legislation including SB 678 (2006) incorporating ICWA into California codes, AB 1325 (2009) Tribal Customary Adoptions and

SB 1460 (2014) Tribal Child Welfare Agency access to background check information. A principal component of her responsibilities has been to provide support on ICWA county-compliance issues, which most recently has involved work on proposed Division 31 regulations that are applicable to county social workers. Prior to her employ with the Department, Ms. Sandoval was counsel for the State Department of Fair Employment and Housing. Elizabeth is a 1979 graduate from Hastings College of Law, and received a 1976 undergraduate degree in Government from St. Mary's College of Moraga.

Jennifer Walter is supervising attorney of the Tribal/State Programs for the Center for Families, Children & the Courts at Judicial Council of California. Before joining the AOC in 1995, she was directing attorney of Legal Advocates for Children and Youth, a nonprofit law office in San Jose. There she provided direct legal services to children and youth in a variety of legal proceedings. After graduating from the University of San Francisco School of Law in 1988, Ms. Walter became staff attorney at Legal Services for Children in San Francisco. Ms. Walter is the cochair of the San Mateo County LGBTQ Commission. Ms. Walter was admitted to the California State Bar in 1988 and received her bachelor's degree in linguistics from the University of California at Berkeley in 1982. Ms. Walter lives with her spouse/domestic partner and their daughter in Half Moon Bay.

Hon. Christine Williams, a member of the Yurok Tribe, earned her law degree and Indian Law Certificate from Arizona State University in 2000 and was admitted to practice law in California the same year. Judge Williams' legal career has focused on representing Tribes in a broad spectrum of tribal legal matters primarily Indian child welfare, tribal court development and cultural resource protection. She currently serves as the Chief Judge for the Shingle Springs Band of Miwok Indians. Additionally, Judge Williams provides training and education on various areas of Indian law and history.

Hon. Christopher G. Wilson was elected to the Humboldt County Superior Court in November of 1998. His tenure on the bench he has been divided between Criminal and Family Law assignments. He is a graduate of the University of Oregon School of Law and California State Polytechnic University – San Luis Obispo. Judge Wilson also studied at Uppsala University in Uppsala Sweden. He is a member of the Oregon State Bar, and a former member of California State and Federal Bars prior to taking the bench. Judge Wilson has received numerous awards and recognition for youth mentoring and the teen court in which he participates. He was appointed to the California State and Tribal Court Forum at its inception by Chief Justice Ronald George and reappointed in 2012 by Chief Justice Tani Cantil-Sakauye. Five Tribal Courts exercise their jurisdiction within his county's geographical boundaries. He was named to the faculty of the National Judicial College in 2012.