



CALIFORNIA TRIBAL FAMILIES COALITION

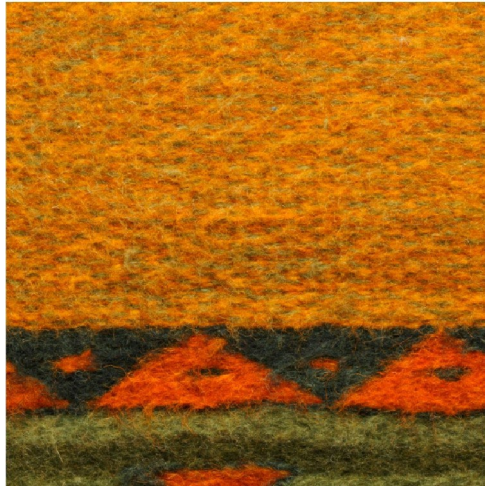
PERFORMANCE STANDARDS

For Attorneys who Represent Tribal
Governments in State ICWA Proceedings

2023

SUPPORTED BY CASEY FAMILY PROGRAMS





How these Standards Were Created

The workgroup, convened by the California Tribal Families Coalition, supported by Casey Family Programs, and coordinated by consultant Adrian (Addie) Smith met over the course of six months to draft and review these performance standards which build upon those national standards set forth by the American Bar Association for Children, Parent, and Agency Attorneys in State Child Welfare Proceedings. Members spent countless hours reviewing drafts, discussing areas of disagreement, and improving the readability of this document. Their time and expertise was invaluable.

The object of these standards is to alert attorneys who represent tribal governments to possible courses of action that may be necessary, advisable, or appropriate, thereby assisting the attorney in deciding upon the particular actions that must be taken in a case to ensure that the client receives the best representation possible.

These standards are not rules or requirements of practice and are not intended, nor should they be used, to establish a legal standard of care. Some of the standards incorporate existing standards, such as the Rules of Professional Conduct, however, which are mandatory. Questions as to whether a particular decision or course of action meets a legal standard of care must be answered in light of all the circumstances presented.

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Introduction

The Indian Child Welfare Act of 1978 (ICWA) protects a tribe's right to intervene as a party in state child welfare cases. Although tribal intervention does not require representation by an attorney, as state child welfare cases become legally complex, more tribes are hiring or contracting with attorneys and new organizations are forming to provide intertribal representation in state child welfare proceedings.

The purpose of these standards is to provide guidance for quality tribal representation in child welfare cases in state courts through the country while recognizing the difference in practice across states and the unique role of representing a sovereign tribe.¹ Many Tribal Attorneys who read these standards will recognize their practice in this document. The standards are meant to improve practice, but also to be realistic and attainable. The standards were written with the help of a committee of practicing Tribal Attorneys and child welfare professionals from different tribes and stakeholder agencies across the country. With their help, the standards were written with the difficulties of day-to-day practice in mind, but also with the goal of providing guidance on best practices for representation when possible. While local adjustments may be necessary to incorporate these standards into practice, Tribal Attorneys should strive to meet the fundamental principles and spirit of the standards.

The standards are divided into the following five categories:

- A. Definitions
- B. Role of the Tribal Attorney, including a list of the Basic Obligations
- C. Fulfilling the Obligations
- D. Ethical and Practice Considerations
- E. Administrative Responsibilities

Section A includes key definitions for the purpose of this document. Section B contains a list of the standards for Tribal Attorneys for quick reference. These standards are explained in more detail in the rest of the document. Within sections C, D, and E there are “black letter” standards, or requirements, written in bold. Following the black letter standards are “actions.” These actions provide additional discussion on how to fulfill each standard. After the actions section is “commentary” —a discussion of why the standard is necessary and how it should be applied. In some instances, a standard did not need further explanation, so there are no actions or commentary attached. A number of the standards relate to specific sections of the Model Rules of Professional Conduct, and the Model Rules are referenced in those standards.

¹ The drafting committee recognizes that there is often a parallel or complementary role that Tribal Attorneys play in tribal court child welfare proceedings. While this role is equally, if not more, important than the role Tribal Attorneys play in state court child welfare proceedings, these standards do not directly address practice in tribal court.

Representing a tribe is a challenging yet important job. There are many, sometimes conflicting, responsibilities. These standards are intended to help Tribal Attorneys prioritize their duties and Tribal Attorney Managers to supervise and manage offices in a manner that will benefit tribes, support their children² and families, and promote compliance with ICWA and the inherent sovereign authority of tribes, tribal statutes, and tribal policies.

A. Definitions

Client - There are several different models of tribal government representation. Under these models, tribal leadership, the Tribal Child Welfare Agency, or the tribal community at-large is the represented entity. For the purposes of these standards, the term “client” is used throughout to signify when the Tribal Attorney should be consulting, preparing, or collaborating with the appropriate tribal entity, as applicable, regardless of the model of representation the Tribe uses.

Child Custody Proceeding - Child Custody Proceeding is defined by ICWA. These standards use the same definition: “Child custody proceeding” includes any action, other than an emergency proceeding, that may culminate in one of the following outcomes: a foster care placement, durable or permanent guardianship, the termination of parental rights, a pre-adoptive placement, or an adoptive placement.

Child Welfare Case - States use a variety of terms to refer to child welfare court cases, including but not limited to Child in Need of Aid (CINA), Child Abuse and Neglect (CAN), Dependency Proceedings, Dependency Neglect (DN) Cases, and Child Protection cases. Further, child welfare cases frequently turn into termination of parental rights proceedings or guardianship proceedings. In order to avoid confusion due to this range in terminology, these standards use the terms “child welfare case” or “child welfare proceeding” to refer to the legal case or cases that occur from when a petition for removal or court supervision of a child is filed to when permanency is legally attained.

Designated Tribal Representative - Depending on the attorney-client relationship and representation model, some tribes will designate one individual who is the Tribal Attorney’s point of contact. Although this individual is not the Tribal Attorney’s client, they are the individual who represents the perspective, views, and decisions of the client.

Indian - Defined by ICWA as 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 section 1606 of title 43.

² These standards use the term “child” as a blanket term for all minors—children and youth—who may come under the jurisdiction of a child welfare system.

Indian Child - Indian child is defined by ICWA as any unmarried person who is under age eighteen and is either (1) a member of an Indian tribe or (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. State Indian child protection and welfare laws may define Indian child differently and those definition should be followed in those jurisdictions.

Indian Custodian - Indian Custodian is defined by ICWA as 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.

Indian Tribe - Indian tribe is defined by ICWA as 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 of the Interior because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43.

Indian Child's Tribe - Indian Child's Tribe is defined by ICWA as (a) the Indian Tribe in which an Indian child is a member or eligible for membership or (b), 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 the more significant contacts. When a child is affiliated with multiple tribes, state courts should defer to those tribes to determine which Tribe will be the Indian Child's Tribe for the purpose of the child custody proceeding. Only when those tribes do not respond or cannot agree should the state court designate the Indian Child's Tribe. In both scenarios, the Tribal Attorney may need to be ready to negotiate, respond, or advocate on this issue.

Member or membership - Sometimes referred to as "citizenship" or "enrollment", this is a determination solely made by the Indian Tribe that a person is a member of, or eligible for membership or citizenship in, that Indian Tribe. It is never appropriate for a state court or state child welfare agency to make this determination.

Parent - Parent is defined by the ICWA as any biological parent 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 the unwed father where paternity has not been acknowledged or established. Acknowledgement or establishment of paternity may occur under state or tribal standards.

State Child Welfare Agency - Some states have unified child welfare agencies, while others have county systems or even contracts with private entities who perform the functions of the state child welfare agency. These standards use the term "state child welfare agency" as representative of the entity who is removing, placing, and planning for the safety and permanency of the child and family.

State Court - Some states have unified court systems, while others have county systems. These standards use the term “state court” as representative of the court who presides over child welfare cases in that state.

Tribal Attorney or Attorney for the Tribe - Attorneys who represent tribes on any number of issues in state, tribal, or federal courts may be called the Tribal Attorney or Attorney for the Tribe. With regard to child welfare hearings, there is often a parallel or complementary role that Tribal Attorneys play in tribal court child welfare proceedings in addition to their role representing the Tribe in state court child welfare proceedings. For the purposes of these standards, the terms “Tribal Attorney” and Attorney for the Tribe refer to the individual who represents the Tribe in state child welfare proceedings. An attorney may be in-house counsel to the Tribal Child Welfare Agency, general counsel to the Tribe either as an employee or on contract, retained to specifically represent the Tribe for child welfare cases or a child welfare case, or any other unique representative relationship. Notably, the Tribe may use a different term to describe this individual.

Tribal Child Welfare Agency - Tribes handle the social work aspects of child welfare cases in numerous ways. This may include everything from an individual part-time caseworker who handles just ICWA cases to a large social services agency with dozens of employees, departments, and management and supervisory positions. These standards use the term “Tribal Child Welfare Agency” as representative of whatever entity within the Tribe responds to, monitors, and participates in the case management of state child welfare cases involving Indian children.

Tribal Child Welfare Caseworker (or Social Worker or Advocate) - This term refers to the individual from the Tribal Child Welfare Agency who provides social work or case management support on ICWA cases in state court.

Tribal Court - Tribal Court is defined by ICWA as a court with jurisdiction over child custody proceedings and which is either 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 the Tribe which is vested with authority over child custody proceedings.

B. Role

B-1 Role of Tribal Attorney:

Tribal Attorneys represent the Tribe’s position in state child welfare proceedings. Tribal ordinances, policies, or contracts, or even Tribal capacity, and whether or not the Tribe has a child welfare agency or ICW caseworker, may dictate the manner in which the Tribal Attorney represents the Tribe. Depending on the Tribe, this may mean that the attorney works with the Tribal social services or child welfare agency, department, or unit (including when the “department” is simply one ICW caseworker), in house counsel, or Tribal leadership. It may also

mean that the individual is tasked with representing the Tribe as “the people” or the public at large of the Tribal jurisdiction.

The drafting committee respects the sovereign authority of each Tribe to determine how it chooses to work with and be represented by its Tribal Attorney.

The Tribal Attorney, Tribal leadership, and the Tribal Child Welfare Agency should understand the Tribal Attorney’s role and responsibilities, including understanding who directs the Tribal Attorney and what communications are confidential. It is essential that the Tribal Attorney, Tribal Leadership, and the Tribal Child Welfare Agency communicate clearly, understand who makes the ultimate decisions in different circumstances, and follow a standard process for conflict resolution. There will be times when decision-making roles are unclear and open communication is essential. The most important issues include safeguarding tribal interests in the care and protection of its children, ensuring that children are safe and properly placed and their needs are met, and ensuring that parents who are tribal members are treated fairly.

The Tribal Attorney may be a contract attorney, a legal aid or tribal non-profit attorney, tribal general counsel, or a Tribal Attorney hired specifically for ICWA cases. This, however, has little bearing on the role of the Tribal Attorney, although it can have practical implications.

***Commentary:** It may be helpful to review or craft policies and procedures for state child welfare cases that clearly delineate the roles of the Tribal Attorney, Tribal Child Welfare Agency and Tribal leadership, provide guidance for decision making processes (i.e., when to intervene/transfer, how to decide when to support a placement or adoption, etc.) and include thoughtful conflict-resolution strategies well before conflicts between the attorney and client arise. Similarly, it may be helpful for a Tribe to identify a “designated tribal representative.” This person can serve as a point of contact for the Tribal Attorney on any given case; increasing timely and effective communication.*

The standards herein apply to all Tribal Attorneys, no matter what model they use for representation. Where special considerations based on any given model of representation are necessary, they are noted throughout.

B-2 Basic Obligations

The Tribal Attorney shall:

General

- Acquire and maintain a working knowledge of all relevant federal, state, and tribal laws, regulations, policies, and rules;

- Promote timely hearings and avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit for the Tribe;
- Protect and promote the Tribe's validity as a party and general credibility; cooperate and communicate on a regular basis with other professionals and parties in a case and ensure the Tribal Child Welfare Agency, if any, is included in/is not excluded from these conversations;
- Know the laws that protect tribal interests in tribal child welfare cases, including but not limited to ICWA;
- Understand the roles of appointed professionals, like Court Appointed Special Advocates (CASAs) and *Guardians Ad Litem* (GALs).

Advice and Counsel

- Be very clear about the representation model employed and who the Tribal Attorney's client is;
- Counsel the client about all legal matters related to individual cases as well as policy issues;
- Regularly monitor cases;
- Advocate for the client's goals and empower them to make informed decisions throughout the case;
- Ensure, where appropriate, the client is invited to all case-related meetings and, when appropriate, attend those meeting with the client;
- Adhere to all state and tribal laws and ethical obligations concerning confidentiality.

Information Gathering/Informal Discovery

- Review the child welfare agency case file;
- To the extent allowed under the law, seek information informally from other parties and stakeholders that is directly related to the case;
- Obtain all necessary documents, including copies of pleadings, relevant notices filed by other parties, and information from the state caseworker and service providers.

Formal Discovery

- Request and review ongoing discovery as it is received;
- When necessary, use formal discovery methods to obtain information.

Alternative Dispute Resolution

- Be versed in alternative dispute resolution options available in the jurisdiction;
- Engage in collaborative, problem-solving lawyering by working with the client and counsel for parents, children, and/or the state on collaborative or mediated solutions whenever possible.

Court Preparation

- Assist the Tribe with decisions, filings, and internal processes related to intervention in state court and transfer of state cases to tribal court;
- If necessary, obtain *pro hac vice* counsel or local counsel in the jurisdiction;
- Independently investigate the case and/or review the Tribal Child Welfare Agency 's investigation of the case;
- Develop a case theory and strategy to follow at hearings and negotiations and adjust as necessary;
- Timely file all motions and briefs;
- Participate in all depositions, negotiations, discovery, pretrial conferences, mediation sessions (when appropriate), and hearings;
- Participate in settlement negotiations;
- Subpoena and prepare all witnesses;
- Plan for the trial in collaboration with the tribal agency/client and, when necessary, for testimony;
- When appropriate, work with the state and tribal child welfare agencies to identify and prepare a Qualified Expert Witness (QEW);
- Ensure proper notice is provided to all parties.

Hearings

- Understand the purpose and burden of proof for each type of appearance: removal, adjudication, disposition, review hearings, permanency planning hearing, termination of parental rights, guardianship, and adoption³;
- Prepare for and attend all hearings;
- Prepare and make all appropriate motions and evidentiary objections;
- Present and cross-examine witnesses;
- Prepare and present exhibits;
- In jurisdictions in which a jury trial may occur, participate in jury selection and draft jury instructions;
- Request the opportunity to make opening and closing arguments when appropriate;
- Prepare, help prepare, or review and offer alternative language to proposed findings of fact, conclusions of law and orders when they will be used in the Court's decision.

Post Hearings/Appeals

- Review court orders to ensure accuracy and clarity, and review with the Tribe;

³ These hearings have different names across jurisdictions. The listed names are meant to represent standard court hearings in child welfare cases across the country.

- Take reasonable steps to monitor whether the agency, parents, or Indian custodians⁴ comply with court orders and to determine whether the case needs to be brought back to court;
- Consider and discuss with the Tribe the possibility of appeal, where appropriate;
- If a decision is made to appeal, timely file the necessary post-hearing motions and the notice of appeal paperwork;
- Inform other parties of their obligation to serve the Tribe with a notice of appeal;
- If others appeal, discuss with client whether or not to participate and file necessary paperwork to do so;
- Communicate the results of the appeal and its implications to the client.

Obligations of Attorney Managers

- Clarify Tribal Attorney roles and expectations;
- Determine and set reasonable caseloads for Tribal Attorneys;
- Develop a system for the continuity of representation;
- Provide Tribal Attorneys with training and education opportunities;
- Create a brief and forms bank;
- Ensure the office has quality technical and support staff;
- Develop and follow a hiring practice focused on hiring highly-qualified candidates;
- Develop and implement an attorney evaluation process;
- Advocate for competitive salaries for staff attorneys;
- Act as advisor, counselor, and trainer for the Tribe;
- Work actively with external entities to improve the child welfare system.

***Commentary:** This list is not comprehensive, but includes key aspects of the Tribal Attorney's role. The Tribal Attorney has many tasks to perform.*

C. Fulfillment of Obligations

C-1 General.

- 1. Acquire and maintain a working knowledge of relevant federal, state, and tribal laws, regulations, policies, and rules, and track child welfare legal and research trends.**

⁴ Throughout this document, whenever we refer to parent or parent's counsel these terms should be taken to include Indian custodian and Indian custodian's counsel.

Action: Tribal Attorneys may come to the practice with competency in the various aspects of child abuse and neglect practice, or they may need to be trained on them. The Tribal Attorney must be well-versed in the following laws, including related case law, prior to independently taking an ICWA case:

- Indian Child Welfare Act (ICWA) 25 U.S.C. §§1901-1963, the ICWA Regulations, 25 C.F.R. Part 23, and the 2016 BIA Guidelines for Implementing the Indian Child Welfare Act;
- Foundational Federal Indian Law;
- Tribal laws, regulations, policies, and procedures regarding:
 - child abuse and neglect,
 - guardianships,
 - termination of parental rights,
 - adoption and customary adoption,
 - paternity,
 - jurisdiction, and
 - full faith and credit;
- Tribal rules of professional responsibility or other relevant ethics standards;
- For the state(s) where the Tribe most commonly intervenes:
 - Laws, regulations, policies, and procedures regarding:
 - child abuse and neglect,
 - guardianships,
 - termination of parental rights,
 - adoption and customary adoption,
 - paternity,
 - Indian child welfare,
 - jurisdiction,
 - full faith and credit, and
 - tribal-state consultation;
 - Any tribal-state agreements related to child welfare cases;
 - Rules of professional responsibility or other relevant ethics standards.

The Tribal Attorney should also be familiar with the following laws, including related case law, in order to recognize when they are relevant to a case and should be prepared to research them when they are applicable:

- State rules for *pro hac vice*;
- State laws concerning privilege and confidentiality, public benefits, education, domestic violence, domestic relations/family law, delinquency, and disabilities;

- State laws regarding using immunity and the relationship of child welfare and criminal proceedings;
- State laws and rules of evidence and civil procedure;
- State and local court rules;
- State Child Welfare Agency regulations, policies, procedures, and/or memoranda;
- Tribal sovereign immunity;
- Tribal laws concerning privilege and confidentiality, public benefits, education, and disabilities;
- Relevant Federal law, including:
 - Constitutional protections for parents and children, including but not limited to substantive and procedural due process and the right to association,
 - Titles IV-B and IV-E of the Social Security Act, including the Adoption and Safe Families Act (ASFA), 42 U.S.C. §§ 620-679 and the ASFA Regulations, 45 C.F.R. Parts 1355, 1356, 1357,
 - Child Abuse Prevention Treatment Act (CAPTA), 42 U.S.C. §5101,
 - Multi-Ethnic Placement Act (MEPA), as amended by the Inter-Ethnic Adoption Provisions of 1996 (MEPA-IEP) 42 U.S.C. § 622 (b)(9) (1998) 42 U.S.C. § 671(a)(18) (1998), 42 U.S.C. §1996b (1998),
 - Interstate Compact on Placement of Children (ICPC),
 - Foster Care Independence Act of 1999, P.L. 106-169,
 - Individuals with Disabilities Education Act (IDEA), P.L. 91-230,
 - Family Education Rights Privacy Act (FERPA), 20 U.S.C. §1232g,
 - Health Insurance Portability and Accountability Act of 1996 (HIPPA), P. L., 104-192 §264, 42 U.S.C. § 1320d-2 (in relevant part),
 - Violence Against Women Act, Pub. L. 103-322 (1994); Public Law 117-103 (2023),
 - Americans with Disabilities Act (42 U.S.C. §§ 12101–12213) and section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. § 794),
 - Public Health Service Act (42 U.S.C. § 290dd-2) and 42 C.F.R. part 2 (pertaining to confidentiality of individual information), and
 - Immigration laws relating to child welfare and child custody;
- International Laws:
 - The International Parental Kidnapping Crime Act of 1993 (IPKCA), Pub. L. No. 103- 173, 107 Stat. 1998 (codified as amended at 18 U.S.C § 1204) 32,
 - The Hague Convention on the International Aspects of Child Abduction, implemented by ICARA, 22 U.S.C. § 9001–9011 33,

- Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361 34,
- Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 32 I.L.M. 1134 35, a, and
- Vienna Convention on Consular Relations, art 36, April 24, 1963, 21 U.S.T. 77 (regarding foreign nationals in the United States and the rights of consular officials to assist them, implemented at ORS 419B.851(3) and 8 C.F.R. § 236.1).

***Commentary:** The burden of proof is almost always on the child welfare agency; the Tribe may or may not agree with the state's position and may align itself with the agency, child, or parents in any given proceeding based on the circumstances of the case. The Tribal Attorney, in most instances, participates in child welfare, termination of parental rights, and guardianship cases in states across the country. This requires the attorney to familiarize themselves with numerous different statutory schemes. Further, although tribal law does not generally apply in state courts, it offers the Tribal Attorney a framework for the Tribe's official position on many issues related to child welfare and the treatment of children and families. Additionally, the Tribal Attorney must advise the Tribe on legality of actions and policies. To best perform these functions, the Tribal Attorney should be an expert in all relevant laws.*

In addition to understanding the law, it is necessary for Tribal Attorneys to stay up to date on changing research and how it influences policy trends. For example, in the last decade, research has highlighted the trauma and harm of removal which has informed a corresponding policy movement to promote prevention and better clarify standards of removal.

2. Promote timely hearings and avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit.

Action: The Tribal Attorney must be thoroughly prepared for all hearings and prepared to move forward in a timely manner to avoid unnecessary continuance requests. The Tribal Attorney should carefully consider all circumstances when requesting or responding to a motion for a continuance. The Tribal Attorney should not request continuances unless there are extenuating circumstances, an emergency, concerns with statutory or rule compliance, or where it benefits the client's case. If continuances are necessary, the Tribal Attorney should request the continuance in writing, as far as possible in advance of the hearing, and should request the shortest delay possible, consistent with the client's interests. The attorney must notify all counsel of the request. The Tribal Attorney should object to repeated or prolonged continuance requests by other parties if the continuance would harm the client.

Commentary: *Delays in cases affect families. Appearing in court often motivates parties to comply with orders and cooperate with services. When a judge actively monitors a case, services are often put in place more quickly, visitation may be increased, and other requests or motions by the Tribe may be granted to ensure meaningful work toward reunification or other forms of permanency occur. Requesting or agreeing to case continuances should be unusual rather than routine practice, but may be necessary if, for example, information has been withheld from the Tribal Attorney, or settlement conferences have been held without the Tribal Attorney.*

3. Protect and promote the Tribe's validity as a party and general credibility.

Action: The Tribal Attorney should work with their client to formally intervene in all appropriate cases. The Tribal Attorney should use every possible opportunity to educate the court and parties about the party status of the Tribe, the Tribe's sovereign status, the Tribe's role as *parens patriae* to the child, and, when appropriate, the tribal child welfare program and court.

The Tribal Attorney should participate in court proceedings in a professional, knowledgeable manner. The Tribal Attorney should not file frivolous motions or appeals and should counsel their client concerning the legitimacy of its positions. The Tribal Attorney should ensure accurate testimony and correct any misstatements in the courtroom.

The Tribal Attorney should present a positive image of the Tribe at community functions and meetings. The Tribal Attorney should be respectful of the Tribe, its leadership, and its agencies in the courtroom, and in the presence of other professionals, community partners, the court, and parties in a case. The Tribal Attorney should also avoid getting involved in tribal politics, such as endorsing or appearing to endorse candidates for tribal office.

Commentary: *The role of Tribes in child welfare cases is frequently misunderstood. It is the role of the Tribal Attorney to assert the Tribe's party status and ensure the Tribe's right to be present and participate in proceedings is protected. Similarly, Tribes, their sovereign status, and their role in protecting member children and parents is frequently misunderstood. It is the role of the Tribal Attorney to educate the court on the Tribe and its government and honor the Tribe's right to protect its members and to address bias and prejudice in court proceedings.*

The Tribal Attorney's role includes supporting the Tribe in the courtroom and other forums. The Tribal Attorney should guide the client to avoid steps that will make it look bad in court and they should protect the Tribe, its staff, and the community from indignity inflicted by the judge or other attorneys. They should also safeguard and protect tribal representatives in court

proceedings by reminding the judge that the tribal representative is a represented party if the judge asks them questions directly, and preparing them when they will serve as a witness.

The Tribal Attorney may also find it necessary to educate the court on the culture of the Tribe they represent and/or the importance of the child's cultural and traditional connections (particularly when the child is placed in a non-Native home). Part of the Tribal Attorney's role may be to advocate for the child to attend cultural events, while also protecting the sanctity and confidentiality of those cultural events and the right of parents to also attend. This may require the Tribal Attorney, in conjunction with the Tribal Child Welfare Agency, to consider and promote ways to respectfully ensure the child's protection at those events in-line with cultural practices and remind all parties of the importance of cultural humility.

Further, the client might take unpopular positions regarding the Tribe's position and/or what is in the best interests of the child that may differ from other parties in a state proceeding. The Tribal Attorney should do everything in their power, without divulging confidential information, to persuasively present the Tribe's position. Tribal Attorneys should be prepared to challenge assumptions underlying the best interest analysis of other parties and the court, or other assumptions adverse to the Tribe's position.

4. Cooperate and communicate on a regular basis with other professionals and parties in a case, including the client.

Action: The Tribal Attorney should have regularly scheduled opportunities to meet with caseworkers or other Tribal leadership and, as necessary, tribal staff. After intervening in a case, Tribal Attorneys should reach out to all parties to provide their contact information, discuss any scheduling considerations (e.g., time zones, days in tribal court, etc.), request discovery, and ask to be included in all case-related communication. The Tribal Attorney should communicate with other parties' attorneys, including court-appointed special advocates (CASAs), *guardians ad litem* (GALs), and children's, parents', and other intervenor's attorneys. Similarly, the Tribal Attorney should communicate with the caseworker, foster parents, and service providers, as allowed, to learn about their views of the case, parents' progress, and the children's status. The Tribal Attorney should treat everyone involved in a case with professional courtesy and should work with everyone to resolve conflict. The Tribal Attorney should be aware of collateral matters that may impact the child welfare case—such as any criminal, protection from abuse, domestic relations/custody, or administrative proceedings, to ensure that any orders or determinations from these proceedings are considered in the child welfare case proceedings.

Commentary: *The Tribal Attorney must have all the relevant information to effectively represent the client. This requires open and ongoing communication with other attorneys, the state child*

welfare agency, and service providers working with the client and family. The Tribal Attorney should present themselves in a professional manner when before the judge or meeting with other individuals involved in a case. The Tribal Attorney should share relevant information from the tribal agency with other parties in the case, when appropriate. It is also the Tribal Attorney's role to, within the bounds of confidentiality, help other parties understand the concerns, positions, and recommendations of their client and, when possible, find allies and work in partnership with other parties.

The Tribal Attorney should also consider and discuss with their client in advance how these communications will occur, how they will be shared with their client, when and how their client will be included in the communications, where they will be stored, and who will have access to this storage.

Rules of professional ethics govern contact with represented and unrepresented parties. In some states, for instance, attorneys may not speak with child welfare caseworkers without the permission of agency counsel. The Tribal Attorney must be aware of local rules on this issue and seek permission to speak with represented parties when that would further the Tribe's interests.

5. Protect and promote the Indian Child Welfare Act (ICWA) and any state Indian child protection or welfare laws in the jurisdiction.

Action: The Tribal Attorney should be an expert in ICWA, the corresponding Federal Regulations, the BIA Guidelines for Implementing ICWA, and any state Indian child protection or welfare laws and policies. The Tribal Attorney should provide guidance on the law to all parties and advise the agency/client of legal strategies that assert the interests of their client in the case while also protecting the longevity of the Tribe and its families by protecting ICWA and any state laws that are specific to Indian child protection or welfare.

Commentary: Tribal Attorneys are often seen as the ICWA experts in the courtroom—expected to both guide the court and parties in its application while simultaneously ensuring compliance. For this reason, Tribal Attorneys must be experts in ICWA and related state laws. Although it is the role of the attorney to represent the interests of their client, it is important for the Tribal Attorney to counsel clients on the immediate impacts of different advocacy strategies or legal arguments with regard to ICWA, as well as the long-term effect different advocacy strategies may have on their interests. Ensuring integrity of the process is an essential role for a Tribal Attorney.

One important role of the Tribal Attorney is to ensure that state agencies and courts comply with their obligations under ICWA and related state laws, while also representing the needs of their client. Tribal Attorneys must protect their clients from improper attempts to shift state agency

responsibilities to tribes and tribal ICWA caseworkers. For example, although the regulations require the state to collaborate with the Tribe to provide active efforts and locate placements in line with the placement preferences whenever the Tribe is willing to engage with the state, it is ultimately the responsibility of the state to provide active efforts, not tribes. Similarly, it is the state's responsibility to find a placement within ICWA's placement preferences. Tribal Attorneys must challenge improper or inadequate actions by the state while simultaneously safeguarding against any effort to "shift the burden" for these responsibilities to tribes. It is important to work with other parties' counsel when positions align, but it is also essential to understand and explain who carries the burden in an ICWA case and to safeguard tribal resources.

C-2 Advice and Counsel.

1. Counsel the client/agency about all legal matters related to individual cases as well as legal issues, and periodically monitor cases.

Action: The Tribal Attorney must spend time with tribal caseworkers and/or tribal leadership to prepare for individual cases and answer questions. The attorney should explain to the caseworker or leadership, in clear language, what is expected to happen before, during, and after each hearing. The Tribal Attorney should be available for in-person meetings, telephone calls, and, when appropriate, to periodically review and discuss (or "staff") cases. The Tribal Attorney is not the caseworker's supervisor, but rather should monitor case progress to ensure that legal barriers are removed and the pathways to the Tribe's goals are viable. The attorney should be aware of other barriers such as notice, parentage, and case plan participation (i.e., illiteracy, language barriers, transportation issues, and/or disabilities). Once identified, the attorney should work with all parties to address these accordingly. The attorney should also be available to tribal child welfare administrative staff to advise on legal concerns or general issues facing the agency from the court or community.

Commentary: *The Tribal Attorney's job extends far beyond the courtroom. The attorney should be a counselor as well as litigator. There are two important aspects of this work: 1) helping agency workers understand the legal framework that impacts their decision-making; and 2) developing communication and decision protocols so that the client knows when and how to get help around important case decision points.*

The Tribal Attorney should be available to communicate effectively with caseworkers from the Tribal Child Welfare Agency and/or leadership to prepare cases, provide advice about ongoing concerns, and provide information about legal issues. Open lines of communication between attorneys and caseworkers help ensure caseworkers get timely answers to questions and attorneys get the information they need.

In advance of the representation, the attorney and Tribal Child Welfare Agency or leadership may wish to develop a representation plan or communication and decision policy addressing which internal meetings the Tribal Attorney should routinely attend, such as: meetings to discuss the decision to intervene or transfer; when to support a termination of parental rights (TPR), adoption, or guardianship; and/or when another major change in a case is planned and when and how caseworkers can receive emergency advice.

2. Consider alternative dispute resolution, including mediation options, available in the jurisdiction, and their role in the client's strategy.

Action: The Tribal Attorney should familiarize themselves with alternative dispute resolution processes available in a jurisdiction, advise their client on the benefits and challenges of alternative dispute resolution in child welfare cases, and advocate for the use of these processes at appropriate points throughout the child welfare case. Tribal Attorneys should be trained in negotiation skills and be comfortable resolving cases outside a courtroom setting.

***Commentary:** Over the last few decades, alternative dispute resolution has emerged as an effective strategy for resolving child welfare cases in state systems. Studies of alternative dispute resolution demonstrate impressive settlement rates, quick resolution of problems, and high rates of case plan compliance. Mediation in child welfare cases is used across the country and many state courts refer cases to mediation for all or any portion of a matter throughout the life of a child welfare case. There are many reasons that a Tribe and Tribal Attorney may request or support mediation in state child welfare cases.*

Alternative dispute resolution infuses neutrality into situations that are fraught with conflict and power imbalances, and counters the adversarial system, which can create hostility, divisiveness, and rigidity among parties. It offers a collaborative, problem-solving approach that centers on rehabilitation and family well-being, may be more in-line with traditional values and customs, and the Tribe's child welfare philosophy and processes.

Further, the Tribe's unique situation in state child welfare cases as a government protecting the interest of its members in another government's proceeding can play an important role in suggesting mediation and advocating for compromise during the mediation itself. Tribal Attorneys should ensure that all relevant individuals and their representatives are invited to the alternative dispute resolution table, that all parties are comfortable with the designated neutral arbiter, and that the terms and protections of the mediation are clear. During the mediation, the Tribal Attorney should ensure that their client's views are represented and that their strategy is protected; this may mean requesting breaks to consult with the client or designated tribal

representative on potential compromises, or ending the mediation if an agreeable resolution is not possible.

If mediation is not available or paid for by a jurisdiction, the Tribe may wish to offer to find and pay for a neutral mediation in appropriate cases if resources allow. The Tribal Attorney should also inquire with the Tribe about whether there is a tribal resource for dispute resolution, through a tribal court or other services, and when appropriate advocate for the use of this resource.

3. Advocate for the agency/client's goals and empower the client to direct the representation and make informed decisions based on thorough counsel.

Action: Tribal Attorneys must understand the client's goals and pursue them zealously. The attorney should regularly inquire as to the client's goals, including ultimate case goals and interim goals. The attorney should explain all legal aspects of the case and provide comprehensive counsel on the advantages and disadvantages of different options. At the same time, the attorney should be careful not to usurp the client's authority to decide the case goals.

Commentary: *After centuries of colonization and assimilation tactics, many tribes, tribal agency caseworkers, and tribal leaders distrust the state and county child welfare system. The Tribal Attorney should be mindful that tribes often feel misunderstood and disempowered in child welfare proceedings and should take steps to help the client express goals and concerns. The attorney should clearly explain the pending legal issues and the process and outcomes of court proceedings to the client. The attorney has the responsibility to provide expertise, and to make strategic decisions about the best ways to achieve the Tribe's goals, but the client is in charge of deciding the case goals and the attorney must act accordingly.*

C-3 Court Preparation.

1. Oversee the processes for receiving, processing, and responding to notice.

Action: If necessary, the Tribal Attorney should help the Tribe create and implement a process to receive state court notices required under ICWA, process them in a timely manner, and respond to them appropriately. The Tribal Attorney should object to lack of proper notice and reject any suggestion of accepting informal notice in lieu of the notice required by ICWA. The Tribal Attorney should also engage in affirmative advocacy with states to correct problematic notice practices.

Commentary: *The federal regulations and guidelines also suggest that state child welfare agencies should perform informal outreach (email, phone, fax) to better partner with tribes in the child welfare process and ensure families receive active efforts. These measures are commendable and are encouraged, but they are **not a substitution** for formal notice of child welfare proceedings as required by law. If a state suggests that the Tribe accept these forms of notice, and it is best for the family to move forward, it is imperative that the attorney make it clear that these must be provided in addition to, but not in lieu of, ICWA's requirements.*

2. If necessary, obtain *pro hac vice* counsel in the state of jurisdiction or consider hiring local counsel.

Action: The Tribal Attorney should, when required, follow all relevant rules and file all appropriate filings to obtain *pro hac vice* status in the state of jurisdiction.

Commentary: *Some states waive the requirement for pro hac vice counsel in ICWA proceedings, other states follow standard pro hac vice practice. The Tribal Attorney should be familiar with the state's rules and ensure that they are followed to allow for full tribal participation in relevant child welfare proceedings. If resources allow, it might be helpful to consider hiring a local attorney to navigate the local practices and build relationships with local practitioners, while the Tribal Attorney can support them on issues related to ICWA and the tribe's position.*

3. **Assist the Tribe with decisions and filings related to intervention or transfer to tribal jurisdiction.**

Action: The Tribal Attorney should play a lead role in drafting a motion to intervene or notice of intervention or at least editing and reviewing the draft before it is filed with the court. Similarly, the attorney should review any affidavits or supporting documentation that will be filed with the motion or notice to intervene.

Action: The Tribal Attorney should work with all relevant stakeholders and follow all relevant policies to help the Tribe determine whether to transfer a case. If the determination is made to transfer the case, the Tribal Attorney should take a lead role in drafting necessary motions for both the state and tribal court, or at least editing and reviewing the drafts before they are filed in each court. Similarly, the Tribal Attorney should review any affidavits or supporting documentation that will be filed with the motion to intervene. The Tribal Attorney should also ensure that the tribal court and agencies receive all necessary documentation.

Notably, some states consider the Tribe to be a party to the proceeding regardless of whether they formally intervene, while others allow the Tribe to participate in

proceedings in some manner even when they have not formally intervened. Further, some states allow more than one tribe to participate in a proceeding as a party, or in an advisory (*amicus*) capacity. Finally, many states allow tribal caseworkers to participate in court proceedings as the tribal representative or advocate. The Tribal Attorney should review the laws and court rules of each jurisdiction when discussing intervention with the client.

Commentary: *Many factors play into a Tribe's decision to intervene in a state child welfare case. The attorney should counsel the agency/client about this decision and remind them of any ordinances or policies that direct or influence it. The Tribal Attorney should also ensure that the tribal court is aware of decisions to transfer and willing to accept jurisdiction, and if filings are necessary in tribal court, that those filings are made. The question of intervention and transfer may arise throughout the life of a child welfare case; the Tribal Attorney should ensure that at key decision points in the case this decision is reconsidered, and any necessary motions and notices are timely filed with the state court, and where necessary, tribal court.*

The Tribal Attorney may also wish to consider filing an "Appearance of Counsel," as some clerks' offices use that document to include the Tribe's attorney in the list of counsel in a case.

4. Independently investigate the case and/or review the Tribal Child Welfare Agency's investigation of the case.

Action: The Tribal Attorney must take all necessary steps to prepare each case. A thorough investigation is an essential element of preparation. When preparing a case, the Tribal Attorney should not rely solely on what the agency caseworker reports about the family. Rather, the Tribal Attorney should work with the tribal caseworker to contact service providers who work with the family, relatives who can discuss each parent's care of the child, the child's teacher, or other people who can clarify information relevant to the case including the parents and children.

Commentary: *Many tribes have a child welfare agency or caseworker who will independently investigate the wellbeing of the family and the actions of the state as well as provide services and support to the family. It is important to work with this individual to determine what evidence is needed or persuasive to the state court case and client's position. Where there is no tribal caseworker, the Tribal Attorney should take necessary actions, which may include hiring an investigator or performing independent outreach, to review and supplement the state's investigation and independently assess the circumstances. Jurisdictions may vary as to whether the Tribal Attorney or their representative may speak to state caseworkers without a state attorney present, or to what extent or when a release of information is necessary to speak with various service providers. These nuances should be respected but do not relieve the Tribal Attorney of the obligation to gather information on and independently assess the circumstances of the case.*

Tribal Attorneys should be comfortable with this interdisciplinary practice. Challenges can emerge between the Tribal Attorney and caseworker when integrating different professional perspectives, training, and ethics. It is important for Tribal Attorneys to help caseworkers understand their obligations to independently investigate, provide contact information for various service providers and relevant “most knowledgeable” individuals, to assist the Tribal Attorney’s investigation and fact-gathering in order to best prepare the case.

Accessing information from service providers may require the execution of Releases of Information (“ROIs”). The Tribal Attorney should review, edit as needed, and sign or have client sign any necessary ROIs. If the attorney is not working with an individual or agency, the attorney is still responsible for gaining all pertinent case information to prepare the case, including an independent investigation.

5. Develop a case theory and strategy to follow at hearings and negotiations.

Action: At the beginning of the case, the Tribal Attorney should try to project the future of the case and think through the steps that the caseworker and attorney will need to take to ensure the desired outcomes. The theory of the case should inform the attorney’s preparation for filings, hearings, and arguments to the court throughout the case. It should also help the attorney decide what evidence to develop for hearings and the steps to take to move the case toward the Tribe’s ultimate goals. It may also help the Tribe determine which parties are natural allies and how to partner with them when possible during the case.

***Commentary:** Each case has its own facts, and more importantly, concerns an individual child, perhaps sibling group, and family. The Tribal Attorney should give each case their full attention. By creating a case theory and strategy, the attorney will ensure that they analyze the case thoroughly and think through its intricacies to increase the chance that the Tribe will be well represented, and the result will be the best possible outcome for the Tribe, child, and family. Further, child welfare cases often last months if not years, so it is important for the Tribal Attorney to periodically revisit their case theory and strategy to ensure that it is still relevant, accurate, and the best path forward for the Tribe, child, and family.*

6. Timely file all petitions, motions, and briefs. Research applicable legal issues and advance legal arguments when appropriate.

Action: The Tribal Attorney must timely file notices, petitions, motions, requests for discovery, and responses and answers to pleadings filed by other parties. These pleadings must be thorough, accurate, and timely. When a case presents a complicated or new legal issue, the Tribal Attorney should conduct the appropriate research before appearing in court. The attorney must have a solid understanding of the relevant law and be able to present it to the judge in a compelling and persuasive way. The attorney should be

prepared to distinguish case law that appears to be unfavorable. If the judge asks for memoranda of law, the attorney will already have done the research and will be able to use it to argue the case well.

Commentary: *Actively filing notices, motions, pleadings, and briefs puts important issues before the court and builds credibility for the Tribal Attorney. In addition to filing responsive papers and discovery requests, the attorney should proactively seek court orders that benefit the client. When an issue arises, it is often appropriate to attempt to resolve it informally with other parties. When out-of-court advocacy is not successful, the Tribal Attorney should not wait to bring the issue to the court's attention if that would serve the client's goals.*

Attorneys in child welfare cases often make fact-based arguments. The most effective attorneys, however, ground their arguments in statutory, regulatory, common, and case law. These sources of law exist in each jurisdiction, as well as in federal law. Additionally, law from other jurisdictions can be used to sway a court in the client's favor—particularly when ICWA is involved. An attorney who has a firm grasp of the law, and who is willing to do legal research, will have more credibility before the court. At times, competent representation requires advancing legal arguments that are not yet accepted in the jurisdiction. Attorneys should take care to preserve issues for appellate review by making a record even if the argument is unlikely to prevail at the trial level.

Information Gathering/Informal Discovery

7. Review the state child welfare agency case file.

Action: The Tribal Attorney should ask for and review the agency case file as early during the course of representation as possible. The file contains useful documents that the attorney may not yet have and will instruct the attorney on the state agency's case theory. If the agency case file is incomplete or inaccurate, the attorney should seek to correct it. The attorney must ensure that all parties are receiving updated information and should continue to read the case file periodically as needed.

Commentary: *While an independent investigation is essential, it is also important that the Tribal Attorney understands what information the state child welfare agency is relying on to further its case. This can be found in the state child welfare agency's case file. Typically, the complete state child welfare case file is not provided through the discovery process. Unless the attorney has the information the agency has, the Tribal Attorney will walk into court at a disadvantage and the state will have failed its obligation to work effectively with the Tribe as part of the requirement to provide active efforts. The state child welfare agency case file may contain a history about the family that may not have been shared and/or important reports and information about both the*

child and parent that will be necessary for the Tribe's attorney to understand for hearings as well as settlement conferences.

A tribal child welfare caseworker should have access to and review the state child welfare agency case file so that the attorney and caseworker can work as a team. The tribal caseworker's review is important because the caseworker may be better situated to identify factual inaccuracies in the file and may identify state agency decisions that should be challenged as informed by the tribal caseworker's professional judgment. Where the attorney is working with leadership, they should advise leadership on the contents of the file while respecting confidentiality rules to help them make any necessary decisions. The tribal lawyer should provide the tribal caseworker and/or leadership with clear information about state and tribal confidentiality rules governing the release of any information contained in the agency file.

In some states, the tribal child welfare agency may have access to the state's child welfare case management system, while in other states the Tribal Attorney may only be able to access this information via discovery request. The Tribal Attorney should familiarize themselves with the local practices and assist the client as necessary to access information.

8. Obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and information from the state caseworker and providers.

Action: As part of the discovery phase, the Tribal Attorney should gather all relevant documentation regarding the case that might shed light on the allegations, the service plan, and the parents and family's strengths. The Tribal Attorney should work with the tribal caseworker to review the following kinds of documents:

- social service records, especially of past cases and/or sibling cases, such as delivered service logs, contact logs or service plans/updated service plans,
- birth certificates,
- parentage records,
- court reports and court records,
- medical and dental records,
- mental health treatment records,
- substance abuse treatment records,
- education records,
- assessments/evaluations of all types, including but not limited to any risk and safety assessments, structured decision making, home assessments, home studies, relative searches, and/or placement denials, and
- police reports.

The attorney should be sure to obtain reports and records from service providers. Discovery is not limited and may include records related to the parents, stepparents, children, relatives, and non-relative caregivers.

***Commentary:** In preparing their case, the Tribal Attorney and Tribal Child Welfare Agency must try to learn as much about the family as possible. Various records may contradict or supplement the agency's account of events. Gathering documentation to verify the family's reports about what occurred before the child came into care and the progress the parents are making during the case are also necessary, in addition to reviewing the agency's reports. Informal discovery may also include phone calls and meetings to gather additional information or access necessary documents.*

Documentation may alert the attorney to issues the family is experiencing that the agency has not shared with the Tribe. The attorney may be able to work with the tribal child welfare caseworker to intercede and assist the family with service providers, agency caseworkers, and others.

To access this information, Releases of Information ("ROIs") may be required under state and federal law. The Tribal Attorney should review, edit as needed, and sign or have client sign any necessary ROIs.

Formal Discovery

9. When needed, use formal discovery methods to obtain information.

Action: Tribal Attorneys should know what information is needed to prepare for the case and understand the best methods of obtaining that information. The Tribal Attorney should become familiar with the pretrial requests and actions used in the jurisdiction and use whatever tools are available to obtain necessary information. The Tribal Attorney should consider the following types of formal discovery and whether they are commonly used in the jurisdiction of the case: depositions, interrogatories (including expert interrogatories), requests for production of documents, requests for admission, and motions for mental or physical examination of a party. The attorney should file timely motions for discovery and renew these motions as needed to obtain the most recent records.

When disclosing information would be inconsistent with the client's interests and goals, oppose discovery requests of other parties.

***Commentary:** State child welfare agencies may fail to provide tribes with discovery (or the full extent of discovery) in child welfare proceedings. It is the role of the attorney to ensure that they*

and the Tribal Child Welfare Agency have complete records. Notably, the tribal agency might receive records outside of the formal discovery process and it is important to reconcile all records received, regardless of the source, to ensure a complete set of documents. Further, it is the role of the Tribal Attorney to protect the tribal client's records to the fullest extent possible. Tribal Attorneys should know about any tribal laws/policies protecting tribal records, whether a tribal citizen has access and how access is given, and whether a tribal citizen can obtain tribal records to use in a child welfare proceeding.

10. Participate in all depositions, negotiations, discovery, pretrial conferences, mediation sessions (when appropriate), and hearings.

Commentary: Jurisdictions vary concerning pre-hearing activity. A great deal of information can be shared during the pretrial stage of a case which may help reduce conflict and save court time and resources. Therefore, the Tribal Attorney should be actively involved in this stage. The Tribal Attorney may need to educate parties to the case about the need to invite the Tribe and Tribal Attorney to these meetings.

11. Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.

Action: The Tribal Attorney must advocate both in and out of court. The Tribal Attorney should regularly consult with the Tribal Child Welfare Agency and know about the social, mental health, substance abuse treatment, and other services that are available to parents and families through the Tribe so they can advocate effectively for the use of those services. The Tribal Attorney should also know about, or seek information on, other culturally appropriate services that may be offered by Native-run programs in the location of their cases.

The attorney should work closely with the tribal social service agency to make direct contact and collaborate with service providers and other witnesses who are serving the family. The attorney should also attend major case meetings where attorneys are permitted to ensure the accurate barriers to reunification are identified and that the Tribe's position on these barriers is reflected in the case plan designed for the family.

When necessary, the Tribal Attorney should seek court orders or sanctions to force the child welfare agency to provide services and/or visitation to the family. The attorney may need to ask the court to enforce previously-entered orders with which the agency did not comply within a reasonable period. The attorney should consider whether the child's representative (lawyer, GAL, or CASA) or parent's attorney might be an ally on service and visitation issues or, in jurisdictions with multidisciplinary representation, whether these individuals may be able to assist with service access. If so, the attorney should

partner with these individuals when making requests to the agency and the court and/or collaborate with them on service plan development.

***Commentary:** For a family to succeed in a child welfare case, supportive services are typically necessary. For the good of the tribal family and community, it is therefore necessary that the Tribal Attorney ensure that case plans include services the Tribe believes are necessary for the family. Examples of services common to child welfare cases include:*

- *Assessments/Evaluations;*
- *Family preservation or reunification services;*
- *Medical and mental health care;*
- *Drug and alcohol treatment;*
- *Domestic violence prevention, intervention, or treatment;*
- *Anger Management and Batterer's Intervention treatment and services;*
- *Family Sex Abuse Team/Non-Offending Parenting services;*
- *Parenting education, including hands-on parent training;*
- *Education and job training;*
- *Housing;*
- *Childcare;*
- *Funds for public transportation or gas cards so the client can attend services;*
- *Access to a cellphone;*
- *Extra-curricular activities such as sports, music, theater and cultural programs or camps; and*
- *Transportation.*

A Tribal Attorney may also need to work with their client to object to court ordered services that are not culturally responsive or are not targeted to support the tribal member in reunifying with their children and to make sure service records are not creating an inaccurate picture of the family's needs (e.g., exaggerating the child's needs or making racially or culturally biased assessments of parents' behavior).

Participation outside the courtroom is key to this provision—particularly at major case meetings. A major case meeting is one in which the attorney or agency/leadership believes the attorney will be needed to provide advice, or in which a major decision on legal steps, such as a change in the child's permanency goal, will be made.

12. Participate in settlement negotiations and attempt speedy resolution of the case, when appropriate.

Action: The Tribal Attorney should request and participate in settlement negotiations to promptly resolve the case, whenever appropriate, keeping in mind the effect of

continuances and delays on the family. Tribal Attorneys should be trained in negotiation skills and be comfortable resolving cases outside a courtroom setting. However, the attorney must keep the Tribe's position in mind while negotiating. The Tribal Attorney must communicate all settlement offers to their tribal client, as it is the client's decision whether to settle. The Tribal Attorney must be willing to try the case and not compromise on every point to avoid the hearing. The Tribal Attorney must also consider where stipulations may be helpful to the case strategy and progress, and advise the client accordingly.

***Commentary:** Some jurisdictions require mandatory settlement conferences, while others leave them to the discretion of the parties. Settlement negotiations often result in a detailed agreement among parties of actions that must be taken by all participants. Generally, when agreements have been thoroughly discussed and negotiated, all parties feel like they had a say in the decision and are, therefore, more willing to adhere to the plan. Negotiated settlements generally happen more quickly than full hearings and therefore assist in moving the case forward within a reasonable time.*

Another advantage to settlement conferences is that all parties must participate. After this participation, attorneys are more informed about the case and are better able to perform in court. Further, contested hearings often create an adversarial atmosphere and prevent a cooperative relationship between parties. The process of working together to address misunderstandings, correct misperceptions, and devise solutions can be a powerful one for all parties that promotes case plan alignment and engagement.

As discussed above in the context of mediation, there are many reasons that a Tribe and Tribal Attorney may request or support alternative dispute resolution strategies such as settlement conferences in state child welfare cases. The Tribe's unique situation in state child welfare cases as a government protecting the interest of its members in another government's proceeding can play an important role in suggesting mediation and advocating for compromise during the mediation itself.

13. Identify, locate, and prepare all witnesses.

Action: The Tribal Attorney, in consultation with the client, should develop a witness list and subpoena witnesses well before a hearing. The attorney should not assume the agency will call a witness, even if the witness is named on the agency's witness list. The attorney should, when possible, contact the potential witnesses to determine if they can provide helpful testimony.

When appropriate, witnesses should be informed that a subpoena is on its way. The attorney should also ensure the subpoena is properly served and any applicable subpoena

deadlines have been met. The attorney should set aside time to fully prepare all witnesses in person before the hearing. The attorney should remind the witnesses about the court date.

Often a case requires multiple experts in different roles, such as experts in medicine, mental health treatment, drug and alcohol treatment, or social work. Experts may be needed for ongoing case consultation in addition to providing testimony at trial. The attorney should consider whether an opposing party is calling expert witnesses and determine whether the Tribe needs to call any experts.

When opposing counsel plans to call expert witnesses, the Tribal Attorney should interview the witnesses in advance or, depending on local practice, schedule a deposition or send interrogatories. The attorney should do whatever is necessary to learn what the opposing expert witnesses' testimony will be and about their background and qualifications.

***Commentary:** Preparation is the key to successfully resolving a case, either in negotiation or trial. The attorney should plan as early as possible for the case and make arrangements accordingly. Witnesses may have direct knowledge of the allegations, information the Tribe independently discovered, or may know the family, its history, its issues, and available resources.*

When appropriate, the Tribal Attorney should consider working with other parties who share the Tribe's position when creating a witness list, issuing subpoenas, and preparing witnesses. Doctors, nurses, teachers, therapists, and other potential professional witnesses have busy schedules and need advance warning about the date and time of the hearing. If it is not possible to bring in a witness, the Tribal Attorney may want to speak with other counsel about presenting stipulated testimony.

The Tribal Attorney must evaluate whether to utilize the tribal child welfare caseworker as a witness and be prepared if another party plans to call the Tribe's caseworker. Often these professionals have insight on issues that no other professionals have; for example, tribal norms and practices in extended family involvement. However, the Tribal Attorney must be aware of the burden trial preparation may put on often overburdened tribal representatives and work around their schedules to adequately prepare.

Resource limitations may sometimes play a role in the Tribal Attorney's decisions about expert witnesses and the attorney may need to prioritize what issues are most important in deciding how to proceed in those circumstances.

Witnesses are often nervous about testifying in court; attorneys should prepare them thoroughly so they feel comfortable with the process. Preparation will generally include rehearsing the

specific questions and answers expected on direct and anticipating the questions and answers that might arise on cross-examination. Attorneys should provide written questions for those witnesses who need them. The attorney should remind the witness of the obligation to provide accurate and truthful testimony.

The attorney should follow the rules of the jurisdiction as they pertain to contacting opposing counsel's expert witnesses in advance, filing expert interrogatories, deposing witnesses, and interviewing witnesses. Preparing for witness testimony will help the Tribal Attorney predict what evidence will likely be presented against the client and whether the expert has any favorable information that might be elicited on cross-examination. The attorney will be able to discuss the issues with the Tribe, prepare a defense, and call other experts, if appropriate. Conversely, if the attorney does not talk to the opposing expert in advance, the attorney could be surprised by the evidence and unable to represent the client competently.

14. When appropriate, work with the state or county and tribal child welfare agencies to identify and prepare an ICWA Qualified Expert Witness (QEW).

Action: The Tribal Attorney should assess whether the Tribe agrees with foster care placement, termination of parental rights, guardianship, or other available permanency plans. If the Tribe agrees, the attorney and tribal caseworker should work with the state to identify a QEW or to prepare a tribal member or other person with relevant expertise and experience as a QEW on behalf of the state. If the Tribe does not support the foster care placement, termination, or guardianship, the Tribe should identify its own qualified expert to present in opposition to the state's QEW. Regardless of the Tribe's position, the Tribal Attorney should notify the state of the Tribe's position as soon as possible.

Commentary: *The QEW requirement in ICWA is perhaps one of its most confusing and misunderstood requirements. These witnesses are the state's witness, but must be familiar with the prevailing social and cultural standards of the Indian child's tribe. The intention of this role is to ensure that relevant cultural information is provided to the state child welfare agency and court before a child is placed in foster care, a guardianship is established, or a parent's rights are terminated. For this reason, the state court may not issue an order for foster care, guardianship, or termination unless the court has made a finding, based on the appropriate evidentiary standard including the testimony of QEWs, that the continued custody of the child by the parent(s) or Indian custodian is likely to result in serious emotional or physical damage to the child.*

Although the QEW is the state's witness, the Tribal Attorney may need to provide advice and counsel about who may serve as a tribally-approved QEW, what qualifications they should have, and how they can or should be prepared for court.

If the Tribe's position is not aligned with the state, the state may not be interested in using the Tribe's designated QEW or the Tribe may not be willing to designate a QEW. When this occurs, the Tribal Attorney should consider challenging the state's expert's qualifications and/or offering a Tribal expert to counter the state's assertions.

If the Tribe's position is aligned with the state, the Tribe may wish to designate or provide a QEW. When this occurs, the Tribal Attorney should ensure that the state is aware of the Tribe's position and willingness to provide a QEW. The Tribe should also help prepare the expert to testify. In some instances, it may even be appropriate for the tribal child welfare caseworker to serve as the QEW. This is the case, for example, when the Tribe's position aligns with the states', the caseworker has the requisite knowledge of and expertise in tribal culture and child-rearing practices, and the Tribe does not feel that it would be a conflict for the caseworker to serve in this role. The Tribal Attorney should assist their client in determining whether the tribal caseworker is an appropriate QEW. When it is appropriate, the Tribal Attorney should assist in preparing the QEW for testimony, and should protect the legal position of the Tribe while the QEW is testifying. Notably, some tribes prefer not to provide QEWs even when their position aligns with the state. This decision should always be respected and communicated to the state.

Tribal Attorneys should familiarize themselves with any tribal policies or procedures in place for designating a QEW. If no policy or procedure exists, the Tribal Attorney may wish to work with the client to develop one.

15. Check and confirm that proper notice is provided to all parties, including Indian custodians.

Action: The Tribal Attorney should review whether proper notice has been sent to parties and parents—including Indian custodians.

Commentary: *ASFA requires that foster parents and relative caretakers receive notification of all review and permanency hearings. Parties to the case—including the Tribe and any Indian custodians—must receive notice of court child custody proceedings when there is “reason to know a child is an Indian child” per ICWA. The Tribal Attorney should check and confirm that the state is providing the necessary notice and, when this has not occurred, bring it to the attention of the court. Obviously, this can be difficult, as notice is often how the Tribe and Tribal Attorney become aware of a case. If there are consistent problems with regard to notice, the Tribal Attorney may wish to build a relationship with the state to address any concerns with state policy and procedure and/or to offer to provide training on when there is “reason to know a child is an Indian child” and notice is necessary.*

Notably, some states require inquiry or notification in addition to notice in ICWA cases. The Tribal Attorney should research jurisdictional requirements and check and confirm that these additional requirements are met.

C-4 Hearings.

1. Attend and prepare for all hearings.

Action: The Tribal Attorney should familiarize themselves with local court rules. The Tribal Attorney should also prepare for and attend all hearings and participate in all telephone or other conferences with the court.

***Commentary:** If the Tribe is to be well-represented, the Tribal Attorney must be prepared and present in court. The Tribal Attorney must be active in all stages of the court process to protect the Tribe, its position, and the welfare of its members. In some jurisdictions, a non-attorney representative from the Tribal Child Welfare Agency regularly appears in state court on uncontested matters. In such a jurisdiction, there should be a system in place for a tribal caseworker to request legal assistance before court, and the Tribal Attorney should be available if the case becomes complicated.*

2. Request the opportunity to make opening and closing arguments.

Action: When permitted by the judge, the Tribal Attorney should make opening and closing arguments to best present the Tribe's position and the Tribal Attorney's theory of the case.

***Commentary:** In many child welfare proceedings, attorneys waive the opportunity to make opening statements and closing arguments. However, these arguments can help shape the way the judge views the case, and therefore can help the client. Argument may be especially critical, for example, in complicated cases when the legal issues are complex, information from expert witnesses should be highlighted for the judge, hearings take place over several days, or when there are several children and the agency is requesting different services or permanency goals for each of them. It can also be important in cases where the judge may not be familiar with ICWA, its requirements, and the unique evidentiary burden it requires. Making opening and closing arguments is particularly important if the case is being heard by a jury.*

3. Prepare and make all appropriate motions and evidentiary objections.

Action: The Tribal Attorney should make appropriate motions and evidentiary objections to advance the Tribe's position during the hearing. If necessary, the Tribal Attorney

should file briefs in support of the Tribe's position on evidentiary issues. The Tribal Attorney should preserve legal issues for appeal.

Commentary: *It is essential that Tribal Attorneys understand the state's rules of evidence and all court rules and procedures. While there are many circumstances in which cases settle through alternative dispute resolution or during the pretrial phase of the case, Tribal Attorneys must be comfortable zealously trying a case in court. To do so, the attorney must be willing and able to make appropriate motions, objections, and arguments. Tribal Attorneys may also wish to familiarize themselves with state and local practice rules, as they may differ from general civil practice rules. For example, some jurisdictions permit hearsay at certain child welfare proceedings. It is important for counsel to know these nuances and use them to advocate for their client.*

4. Present and cross-examine witnesses; prepare and present exhibits.

Action: The Tribal Attorney must be able to present witnesses effectively to advance the client's position. Witnesses must be prepared in advance and the attorney should know what evidence will be presented through the witnesses. The attorney must also be skilled at cross-examining opposing parties' witnesses. The attorney must know how to offer documents, photos, videos, and physical objects into evidence.

At each hearing, the attorney should keep the case theory in mind, advocate for the application of ICWA and its elements and for appropriate services, request that the court state its expectations of all parties, and ensure that the court makes all appropriate state and ICWA findings.

Commentary: *Becoming a strong courtroom attorney takes practice and attention to detail. The attorney must be sure to learn the rules about presenting witnesses, impeaching testimony, and entering evidence. The Tribal Attorney should seek out training in trial skills and observe more experienced Tribal Attorneys to learn from them. Even if the Tribal Attorney is more seasoned, effective direct and cross-examination require careful preparation. The attorney must know the relevant records well enough to be able to impeach adverse witnesses and bring out in both direct and cross examinations any information that would support the Tribe's position. Seasoned attorneys may wish to consult with other experienced attorneys about complex cases. The Tribal Attorney must be comfortable with the skills of presenting and cross-examining witnesses. The attorney must also advise the client on how to draft effective reports and present testimony or other evidence for presentation to the court.*

5. In jurisdictions in which a jury trial is possible, participate in jury selection and draft jury instructions.

***Commentary:** Several jurisdictions around the country afford parties in child welfare cases the right to a jury trial at the adjudicatory or termination of parental rights stages. Tribal Attorneys with cases in these jurisdictions who are not yet skilled at choosing an appropriate jury, drafting jury instructions that are favorable to the client's position, and trying the case before individuals who may not be familiar with child abuse and neglect issues should seek training or co-counsel for the trial phase of these cases to best protect the Tribe's position.*

6. Request closed proceedings (or a cleared courtroom) in appropriate cases.

Action: The Tribal Attorney should be aware of local court rules regarding open and closed proceedings. They should also be aware of who is in the courtroom during a hearing and should request the courtroom be cleared of individuals not related to the case, when appropriate and allowed. The attorney should be attuned to the unique nature of the tribal community and tribal families and discuss, as appropriate, whether people outside of the case should be in the courtroom. The attorney should also be aware of whether the case is receiving media attention and follow any tribal policies related to media engagement.

***Commentary:** In many courts, even if they have a "closed court" policy, attorneys, caseworkers, and witnesses on other cases listed that day may be waiting in the courtroom. For a variety of reasons, the Tribal Attorney may wish to request that the judge remove them from the courtroom. Even in an "open court" jurisdiction, there may be cases, or portions of cases, that outsiders should not be permitted to hear. Similarly, if a tribal member or client wants other community members to be present for support, the Tribal Attorney may want to request permission for those persons to be in the courtroom. The Tribal Attorney must be attuned to this issue, the unique nature of tribal communities (both urban and rural), and the unique structure of tribal families, and make requests of the judge accordingly.*

Where hearings are held via videoconference call, the attorney should familiarize themselves with local protocols and ensure their client is aware of appropriate behavior for these calls (e.g., the court asking parties to be certain no others are listening in, minimizing external noise, remaining on mute when others are speaking, etc.).

If a case is being covered by the media, the Tribal Attorney may want to talk to their client about exploring support for media advocacy. This may require leadership approval and spokespersons may need to be vetted. In some circumstances, media advocacy may be important to the Tribe.

7. Prepare or help prepare proposed findings of fact, conclusions of law, and orders when they will be used in the court's decision.

Action: Proposed findings of fact, conclusions of law, and orders can be prepared before a hearing. When the judge is prepared to enter his or her ruling, the judge can use the proposed findings or amend them as appropriate.

***Commentary:** The Tribal Attorney must be familiar with the requisite findings of fact and conclusions of law the court must make in each type of hearing. By preparing the proposed findings of fact and conclusions of law, the Tribal Attorney has the opportunity to frame the case and ruling for the judge. This may include ensuring that accurate orders are entered that meet ICWA's requirements, such as active efforts findings, placement preferences and evidentiary burdens. It may also result in orders that favor the Tribe, preserve appellate issues, and help the Tribal Attorney clarify desired outcomes before a hearing begins. If an opposing party prepared the order, the Tribal Attorney should review it for accuracy before the order is submitted for the judge's signature.*

C-5 Post Hearings/Appeals.

1. Review court orders to ensure accuracy and clarity, and review with client.

Action: After the hearing, the Tribal Attorney and tribal caseworker should review the written order to ensure it reflects the court's verbal order. If the order is incorrect, the attorney should take whatever steps are necessary to correct it. Once the order is final, the Tribal Attorney should review the order with the client. If the tribal client is unhappy with the order, the attorney should counsel the client about any options to appeal or request rehearing on the order, but should explain that the order is in effect unless a stay or other relief is secured.

***Commentary:** If the order is correct but controversial, or if the client is unhappy with it or has trouble understanding what is required, the Tribal Attorney should review it with the client and potentially engage any conflict resolution systems designed for these types of concerns.*

2. Take reasonable steps to monitor compliance with the court orders and determine whether the case needs to return to court.

Action: The Tribal Attorney, along with the tribal child welfare caseworker, should monitor the parties' efforts to comply with the order and, when appropriate, request a review or show cause hearing to promote compliance.

***Commentary:** If the parent is attempting to comply with the order but other parties, such as the child welfare agency, are not meeting their responsibilities, the Tribal Attorney should approach the agency's counsel to advocate on behalf of the parent, child, or family, to offer alternatives or*

offer to assist. Similarly, if a parent is failing to comply, the Tribal Attorney with the tribal child welfare caseworker should approach the parent, through parent's counsel, to remind them of the importance of compliance, offer alternatives, or offer to assist them in following the court order. If necessary, the Tribal Attorney should bring the case back to court to review the order and any party's noncompliance or take other steps to ensure that appropriate social services are available to the parent, child, or family.

3. Consider and discuss with the Tribe the possibility of appeal.

Action: The Tribal Attorney should consider and discuss with the tribal client the possibility of appeal when a court's ruling is contrary to the Tribe's position or interests. The decision to appeal should be a joint one between the attorney and client and must have an appropriate legal basis.

Commentary: *When discussing the possibility of an appeal, the attorney should explain the appellate process, as well as the positive and negative effects of an appeal. This should include the impact the appeal could have on the case timeline, the child's best interests, the Tribe's goals in the case, and the protections of ICWA for the Tribe and other tribal families in the future.*

4. If a decision is made to appeal, timely file the necessary post-hearing motions and the notice of appeal paperwork.

Action: The Tribal Attorney should carefully review the obligations in the state's rules of appellate procedure. The attorney should timely file all paperwork, including a notice of appeal, a request for stay of the trial court order, transcript, and case file. The appellate brief should be clear, concise, and comprehensive, and also timely filed. If arguments are scheduled, the attorney should be prepared, organized, and direct. If the Tribe retains separate appellate counsel, the Tribal Attorney should identify issues that are appropriate for appeal and work with the appellate attorney on the appeal. As the attorney who handled the trial, the Tribal Attorney may have insight beyond what the new attorney could get by reading the record.

Commentary: *Appellate skills differ from the skills most Tribal Attorneys use day-to-day. The Tribal Attorney may wish to seek guidance from an experienced appellate advocate when drafting the brief and preparing for argument. An appeal can have a great deal of impact on the family, the court, and in trial courts throughout the state.*

5. If another party appeals, discuss with the Tribe whether to participate in the appeal.

Action: When another party appeals, the Tribal Attorney should consider and discuss with the tribal caseworker and/or leadership whether or not to participate in the appeal. The decision to participate should be a joint one between the attorney and client and must have an appropriate legal basis.

***Commentary:** When discussing the possibility of an appeal, the Tribal Attorney should explain both the positive and negative effects of bringing an appeal or participating in the appeal, and the perspective the Tribe may be able to bring, the importance of the Tribe's voice in the decision-making process, and any ICWA issues on which the Tribe may be best situated to educate the court.*

Tribes are rarely served notices of appeal by parties to state child welfare proceedings. At the conclusion of contested child welfare proceedings, the Tribal Attorney should remind parties to the case of their obligation to provide notices of appeal to the Tribe. The Tribal Attorney may wish to work with the state appellate bar to ensure that filing modalities (e.g., e-filing) and state rules of appellate procedure reflect this requirement to ensure that tribes are not overlooked and are able to participate in these important proceedings.

6. Request an expedited appellate remedy, when feasible, and file all necessary paperwork while the appeal is pending.

Action: If the state court allows, the Tribal Attorney in a child welfare matter should always consider requesting an expedited appeal. In this request, the attorney should provide information about why the case should be expedited, such as any special characteristics about the family and child and why delay would harm the relationship between the parent and child, the child's relationship with the Tribe, and/or the importance of a child's connection to culture.

7. Communicate the results of the appeal and its implications to the client/agency.

Action: The Tribal Attorney should communicate the results of the appeal and the implications to the tribal child welfare caseworker and/or leadership. If, as a result of the appeal, the Tribe needs to take action in the case, the Tribal Attorney should instruct or advise the Tribe on these actions. If, as a result of the appeal, the attorney needs to file any motions with the trial court, the attorney should do so.

D. Ethical and Practice Considerations

D-1 Ensure there is a communication protocol that includes a conflict resolution system.

Action: The Tribal Attorney and Tribal Child Welfare Agency should jointly develop a communication protocol that includes a conflict resolution system to address attorney-client conflicts and conflicts among caseworkers or other decision-makers. The protocol should incorporate timeframes for resolution so as not to delay a case. The Tribal Attorney should prepare a client before court so that conflicts do not surface in front of the judge or parties.

Commentary: *A communication protocol and conflict resolution system should be in place before conflict occurs. The attorneys, caseworkers and other decision-makers should work as a team to reach the best outcomes. Key principles of the system might include: 1) the attorney and caseworker (or two caseworkers) should start with a one-on-one meeting, in person whenever possible, to try to resolve the conflict; 2) if there is no resolution, the system should delineate how each should go up their respective chains of command; and 3) the system should set out examples of issues that are legal and those that are social work decisions, understanding that most issues will need to be resolved jointly for children and families. This type of system may also be helpful for when the attorney and leadership cannot resolve a legal issue relevant to the state child welfare case, although a different system may be necessary. Tribal Attorneys should also be attentive to cases where different tribal entities disagree about how to proceed in a case and seek to resolve these conflicts internally. For example, where tribal leadership may be the Tribal Attorney's client or client representative and the Tribal Child Welfare Agency disagrees with their decision, the attorney may wish to facilitate a meeting with the Tribal Child Welfare Agency to discuss the Tribe's decision-making protocol before going into court or meeting with opposing counsel to ensure that the Tribe can present a unified position.*

D-2 Understand and comply with tribal, state, and federal privacy and confidentiality laws.

Action: The Tribal Attorney must understand and comply with tribal, state, and federal privacy and confidentiality laws, including ROIs and protective orders. The Tribal Attorney should also develop protocols with the agency to help the Tribal Child Welfare Agency or leadership access confidential information from external sources when needed for the case. Such methods might include obtaining ROIs or court orders to access the necessary information.

***Commentary:** Since the child welfare system directly impacts the lives of children and families, there are numerous aspects of the system that are regulated by confidentiality laws and procedures. For example, the identity of the child, parents, and reporters, as well as treatment records and HIV status of any of the parties, must all be kept confidential. Additionally, the Tribal Attorney should be aware of any HIPAA (medical records) or FERPA (education records) issues that arise. The Tribal Attorney should thoroughly understand these laws to help the agency develop procedures to access necessary information.*

D-3 Initiate and maintain positive working relationships with other professionals in the child welfare system.

Action: Due to the misunderstood role the Tribe plays in the child welfare system, the Tribal Attorney should build relationships with the professionals in the jurisdictions where they most frequently practice. These include, but are not limited to:

- Judges;
- Court staff;
- Opposing counsel;
- State child welfare agency staff and supervisors;
- Local juvenile court improvement programs;
- Child advocates, both attorney and non-attorney;
- Criminal prosecutors;
- Court Appointed Special Advocates (CASAs) or Guardians Ad Litem (GALs);
- Child advocacy centers;
- Citizen's review panels or boards;
- Administrative offices of the court;
- Relevant department or divisions of Indian affairs;
- Multidisciplinary teams/child fatality review teams;
- Key service providers;
- Medical and mental health professionals;
- School staff; and
- Other local child-centered organizations.

***Commentary:** Maintaining positive relationships with other professionals will benefit the Tribe in individual cases as well as during times of reform. When these community members believe their opinion is valued and they are an integral part of the child welfare system as a whole, they will lend their support in different ways, such as when the agency seeks legislative support or buy-in for new projects.*

Where there are multiple tribes connected to a child or family, the Tribal Attorney must reach out to the attorneys, or when not represented, the caseworkers from other tribes, to facilitate discussions to determine which multiple tribes will be “the Tribe” for the purposes of ICWA, the role of each tribe in the case, and how to coordinate on the legal issues and services for the family.

E. Administrative Responsibilities

E-1 Obligations of Tribal Attorney Managers.

1. Clarify attorney roles and expectations;
2. Determine and set reasonable caseloads for Tribal Attorneys;
3. Develop a system for the continuity of representation;
4. Provide Tribal Attorneys with periodic, scheduled training and education opportunities through a reviewed training curriculum;
5. Create a brief and forms bank;
6. Ensure the office has quality technical and support staff;
7. Develop and follow a hiring practice focused on hiring highly qualified candidates;
8. Develop and implement an attorney evaluation process;
9. Advocate for competitive salaries for Tribal Attorneys;
10. Act as advisor, counselor, and trainer for the Tribe and Tribal Child Welfare Agency; and
11. Work actively with external entities to improve the child welfare system.

***Commentary:** In general, this section applies to attorneys in an organized office setting with multiple attorneys providing representation in state ICWA proceedings, either as tribal in-house counsel or a firm. It will not apply to one-attorney tribal law offices or solo practitioners with whom the Tribe has contracted.*

E-2 Fulfilling Tribal Attorney Manager obligations.

1. Clarify attorney roles and expectations.

Action: The Tribal Attorney Manager, with the Tribal Child Welfare Agency administration and/or leadership, should clearly set expectations for Tribal Attorneys. This may include:

- written job descriptions, including caseload expectations,
- expectations for professional development/continued learning,
- responsibilities concerning work with the caseworkers, and
- protocols for assigning tasks and delineating timeframes.

The Tribal Attorney Manager should ensure the Tribal Attorneys perform their required tasks and that the agency understands and performs its roles.

***Commentary:** For Tribal Attorneys to provide the best possible representation, both the attorneys and Tribal Child Welfare Agency must understand their roles and responsibilities. There should be a collaborative approach. The Tribal Attorney Manager plays a key role in*

fostering this teamwork and clarifying each participant's obligations, as well as working with leadership to delineate and communicate these roles.

2. Determine and set reasonable caseloads for Tribal Attorneys.

Action: A Tribal Attorney Manager should determine reasonable caseload levels for the Tribal Attorneys and then monitor the attorneys to ensure the maximum is not exceeded. Consider a caseload/workload study, review written materials about such studies, or look into caseload sizes in similar state and tribal governments to accurately determine the ideal caseload for attorneys in the office.

Be sure to have a consistent definition of what a “case” is—a family or a child. When assessing the appropriate number of cases, remember to account for all Tribal Attorney obligations, case complexity, the time required to thoroughly prepare a case, tribal social worker case support, administrative support staff and law clerk assistance, travel time, level of experience of attorneys, and available time (excluding vacation, holidays, sick leave, training, and other non-case-related activity). If the Tribal Attorney Manager carries a caseload, the number of cases should reflect the time the individual spends on management duties.

Commentary: *High caseload is considered one of the major barriers to quality representation and a source of high attorney turnover. It is essential to decide what a reasonable caseload is in your jurisdiction and given availability of case support. How attorneys define cases and attorney obligations vary from place to place, but having a manageable caseload is crucial. National experts have found that a caseload of 40-50 active child welfare cases is reasonable, and that a caseload of over 60 child welfare cases is unmanageable from the perspective of Government Attorneys and a caseload of over 80 child welfare cases is unmanageable for parent and/or children's attorneys.*

These determinations are based on full-time child welfare caseloads carried in the same state following the same laws. Because of that, these determinations don't take into account the unique circumstances of Tribal Attorneys, including the consideration that Tribal Attorneys often carry caseloads that include non-child welfare cases, their child welfare caseloads may span numerous states all of which have unique laws and court practices, they may serve as the presenting officer in child welfare cases in tribal court in addition to their role in ICWA cases, and/or they may work at a firm or agency where they have multiple clients and various case types.

The standards drafting committee recommends that attorneys have reasonable caseloads based on:

- *The Tribal Attorney's experience;*
- *The availability and quality of supervision;*
- *The workload and complications of the cases carried;*
- *The number of states the cases carried span; and*
- *The number and complexity of non-child welfare cases carried.*

3. Develop a system for the continuity of representation.

Action: The Tribal Attorney Manager should develop a case assignment system that fosters ownership and involvement in the case by the Tribal Attorney. The office can have a one-attorney: one-case (vertical representation) policy in which an attorney follows the case from initial filing through permanency and handles all aspects of the case. Alternatively, the cases may be assigned to a group of attorneys who handle all aspects of a case as a team and are all assigned to one judge or one group of caseworkers.

***Commentary:** Tribal Attorneys can provide the best representation for the Tribe, and therefore get the best results for tribal families, when they know a case and are invested in its outcome. Having attorneys who are assigned to particular cases decreases delays because the attorney does not need to learn the case each time it is scheduled for court. Rather, the Tribal Attorney has the opportunity to monitor action on the case between court hearings. This system also makes it easier for the Tribal Attorney Manager to track how cases are handled. Lastly, tribal social workers and even tribal leaders may more easily track who is handling a case and support case needs if they know which attorney is responsible for a particular case.*

The standards drafting committee recommends that, whenever possible, the same attorney carry an ICWA case from intervention to permanency. In offices where the firm represents multiple tribes, the committee recommends that, whenever possible, the same attorney represents the tribe on all open child welfare cases in which the tribe has sought legal counsel. This consistency on cases and for tribal clients can help promote seamless representation, stronger attorney-client relationships, and better decision-making processes.

4. Provide Tribal Attorneys with training and education opportunities.

Action: The Tribal Attorney Manager must ensure that each Tribal Attorney has the opportunity to participate in training and education programs. When a new Tribal Attorney is hired, the Tribal Attorney Manager should assess that attorney's level of experience, strengths, and readiness to handle cases. The Tribal Attorney Manager should develop and regularly update an internal training program during which the new Tribal Attorney will be paired with an experienced "attorney mentor" who will work with the new Tribal Attorney. The new Tribal Attorney should be required to:

- 1) observe each type of court proceeding (and mediation if available in the jurisdiction);
- 2) second-chair each type of proceeding;
- 3) try each type of case with the mentor second-chairing;
- 4) submit multiple written motions and responses for review by the mentor; and
- 5) try each type of proceeding on their own, with the mentor available to assist; before the attorney can begin handling cases alone.

Training should include general legal topics, such as evidence and trial skills, and child welfare-specific topics, such as:

- Relevant state, federal and case law, procedures, and rules;
- Tribal, county, and state agency policies and procedures;
- Available community resources;
- Pre-petition representation;
- Child Welfare diversion programs/services or alternative responses;
- ICWA;
- Trauma, Adverse Childhood Experiences (ACEs);
- Legal permanency options;
- Termination of parental rights law;
- Adoption subsidies;
- Stages of child development;
- Child-centered communication;
- Legal ethics as it relates to agency representation;
- Negotiation strategies and techniques;
- How domestic violence impacts children in the child welfare system;
- Appellate advocacy;
- Immigration law as it relates to child welfare cases;
- Education law as it relates to child welfare cases;
- State and federal benefit programs affecting children in foster care and agency funding resources (e.g., SSI, SSA, Medicaid, adoption assistance, guardianship assistance, and temporary assistance for needy families);
- Understanding mental illness;
- Use of psychotropic medication for children;
- Understanding developmental disabilities;
- Issues arising from substance abuse and available treatment for substance abuse disorders;
- Understanding the impact of out-of-home placement on children;
- Basic principles of attachment theory and limitations on the research;
- Options for presenting children's testimony;

- Sexual abuse/Commercially Sexually Exploited Children;
- Dynamics of physical abuse and neglect;
- Sexual orientation and Gender Identity Expression;
- Transition plans and independent-living programs for teens; and
- Using and challenging expert witnesses.

***Commentary:** Tribal Attorneys should be encouraged to learn as much as possible and participate in conferences and trainings to expand their understanding of developments in the child welfare field. While Tribal Attorneys are often overworked and do not have extra time to attend conferences and trainings, the knowledge they gain will be invaluable. The philosophy of the office should stress the need for ongoing learning and professional growth. The Tribal Attorney Manager should require the attorneys to attend an achievable number of hours of training that will match the training needs of the attorneys. The Tribal Attorney Manager should reach out to the state and local bar associations, tribal service providers, area law schools, local child law institutes, and national organizations to learn about available education opportunities. Further, the Tribal Attorney Manager should ensure the Tribal Attorneys have access to professional publications to stay current on the law and promising practices in child welfare.*

The standards drafting committee recommends that Tribal Attorneys be required to successfully complete a basic training on ICWA before providing representation in a state ICWA case. Tribal Attorneys should also endeavor to seek continuing education on ICWA and other relevant child welfare topics each year the Tribal Attorney continues representation of a tribe in ICWA cases.

5. Create a brief and forms bank.

Action: Develop standard briefs, memoranda of law, and forms that attorneys can use so they do not “reinvent the wheel” for each new project. For example, there could be sample notices of intervention, motions to invalidate, discovery request forms, motions, notices of appeal, and even petitions. Similarly, memoranda of law and appellate briefs follow certain patterns that the attorney could copy and only have to fill in the specific facts of a case. These forms and briefs should be available digitally and in hard copy and should be maintained in a central location. Staff attorneys should be oriented to them and encouraged to add to the brief and forms bank.

***Commentary:** Tribal Attorneys may wish to maintain relationships with their sister tribes in various counties and states and share templates and forms based on that jurisdiction’s law and policies, since they will be practicing across numerous jurisdictions.*

6. Ensure the office has quality technical and support staff.

Action: The Tribal Attorney Manager should advocate for high quality technical and support staff. The Tribal Attorney must have adequate and operational equipment to do the high-level job described in these standards. Additionally, quality staff support is essential. The office should employ qualified legal assistants and administrative assistants to help the Tribal Attorney. Staffing may include having an interpreter available if counsel is not fluent in the Tribe's language. The Tribal Attorney Manager should create detailed job descriptions for these staff members to be sure they are providing necessary assistance. For instance, a qualified legal assistant can do research, interface with tribal social workers, help draft petitions, schedule and help prepare witnesses, and more.

Commentary: The attorney must have access to a good quality office infrastructure and technology to efficiently perform work. Also, by employing qualified staff, the attorney will be free to perform tasks essential to quality representation while also having dedicated staff to perform the essential administrative and logistical matters necessary for quality representation.

7. Develop and follow a hiring practice focused on hiring highly qualified candidates.

Action: The Tribal Attorney Manager should give a great deal of attention to hiring the best attorneys possible. If possible, the Tribal Attorney Manager should form a hiring committee comprised of managing and staff Tribal Attorneys and possibly an agency representative. Desired qualities of a new Tribal Attorney should include educational and professional achievements, experience with and commitment to the tribal community and/or the child welfare field, effective interpersonal skills, writing and verbal skills, and ability to handle an often high-pressure, fast-paced litigation practice in a complex legal environment. They should also have experience and knowledge about tribal governance and sovereignty, working within tribal communities, and, whenever possible, knowledge of the specific tribal community they will serve. Advertising the position widely will help draw in a wider group of candidates. The hiring committee should set clear criteria for screening candidates before interviews and should then conduct thorough interviews and post-interview discussions to choose the candidate with the best skills and strongest commitment. Reference checks should be done before making an offer. The Tribal Attorney Manager should also create paths that develop talent through law school partnerships and clerkship programs, and internal staff development plans for legal assistants and paralegals.

Commentary: Hiring high quality attorneys is essential to raising the level of representation and the level of services the Tribe and tribal families receive. The Tribal Attorney's job is difficult. There are many tasks to complete in a short time. Since Tribal Attorneys often move the rest of the system, strong, committed attorneys can drastically improve the system.

8. Develop and implement an attorney evaluation process.

Action: The Tribal Attorney Manager should develop an evaluation system that focuses on practice consistency, strengths, constructive criticism, improvement, and the Tribe's overall strategic plan/goals. Some factors to evaluate include: thoughtful case strategy in line with the client's goals; trial preparation and courtroom skills; ability to work collaboratively with the client and other professionals; and ability to work as a team player. During the evaluation process, the Tribal Attorney Manager should consider observing the attorney in court, reviewing the attorney's written work product, talking with colleagues, judges, and agency representatives about the attorney's performance, having the attorney fill out a self-evaluation, and meeting in person with the attorney. The evaluation should be based on information which the Tribal Attorney Manager will need to collect.

Commentary: A reliable and thorough attorney evaluation process helps attorneys know what they should be working on, what management believes are priorities, what they are doing well, and where they need improvement. If a positive process is created and deployed, the Tribal Attorneys will feel supported in their positions and empowered to improve.

9. Advocate for competitive salaries for staff attorneys.

Action: Tribal Attorney Managers should advocate for overall compensation for the Tribal Attorneys that is competitive with other attorneys doing similar work in the jurisdiction. To recruit and retain experienced attorneys, salaries and benefits must compare favorably with similarly situated attorneys.

Commentary: Even when resources are scarce, Tribal Attorneys deserve to be paid a competitive wage and have competitive benefits, such as healthcare, paid time off, and student loan forgiveness. They will not be able to stay in their position, nor be motivated to do their best advocacy, without reasonable compensation. High attorney turnover may decrease when attorneys are paid well and have good benefits.

10. Act as advisor, counselor, and trainer for the tribal child welfare agency and leadership.

Action: The Tribal Attorney Manager must ensure that the agency is receiving high quality representation both inside and outside the courtroom. No matter what model of representation, Tribal Attorneys should be sure agency staff and leadership are fully informed about legal matters and fully prepared for court and policy decisions. The Tribal Attorney Manager should, therefore, develop protocols concerning such issues as:

- communication, including holding regular office hours at the agency office and responding timely to agency telephone calls and emails;
- information sharing;
- conflict resolution;
- attorney-client work product and confidentiality issues; and
- dealing with media and high-profile cases.

The Tribal Attorney Manager should be sure there is a system in place for reviewing all court orders and communicating the results with the agency and/or leadership. The Tribal Attorney Manager should help prepare all federal reviews and implement any program improvement plans that result.

The Tribal Attorney Manager should ensure there is a process for agency legal training. As part of the process, the Tribal Attorney Manager could design materials, with samples, to help caseworkers prepare for court and provide testimony. Agency training could occur during formal, new hire training; at brown bag lunches; or during after-hours courses. Topics could include, for example:

- overview of ICWA;
- overview of state and federal laws;
- writing appropriate court reports and case plans;
- testifying in court;
- the trial and appellate court processes;
- the need for and steps to complete acceptable searches for an absent parent;
- interdisciplinary advocacy;
- building strong relationships with clients and tribes;
- developing appropriate relationships with other party representatives;
- local court rules and practices; and
- debriefing positive and negative case results to improve practice.

Commentary: Regardless of whether the Tribal Attorney represents the agency or the Tribe, the caseworkers often have the information needed to put together a strong case. Therefore, the attorneys and caseworkers must meet and communicate regularly. This could involve having office hours when the caseworkers can visit and ask questions or designating an attorney to take caseworkers' telephone calls. Similarly, the better the caseworkers and agency staff understand the law and legal process, the easier it is for them and the Tribal Attorneys to do their jobs well. The Tribal Attorney Manager should be responsible for developing a system for training the agency staff as well as protocols to improve the working relationships between the agency and Tribal Attorneys.

11. Implement and lead agency strategy for appeals.

Action: The Tribal Attorney Manager should work with the agency and/or leadership to develop and implement an overall strategy for appeals. It should identify the list of issues that will be most important and appropriate to appeal. It should include an internal system for bringing potential appeals to the Tribal Attorney's and Tribal Attorney Manager's attention. The Tribal Attorney Manager should then be ready to pursue the strategy when appropriate cases arise.

***Commentary:** Not every motion, ruling, or court decision must or should be appealed. However, the Tribal Attorney Manager must have a clear strategy, communicated to Tribal Attorneys, on what is appealed, both in the interests of a particular case and to advance the overall interests of the Tribe. The agency strategy on appeals must be revisited from time to time as interests, courts, and issues in child welfare evolve.*

12. Work actively with external entities to improve the child welfare system.

Action: The Tribal Attorney Manager should act as a liaison between the Tribe and outside entities involved in the child welfare system. For example, the Tribal Attorney Manager should meet regularly with the court and the state court improvement program to improve issues concerning court administration. The Tribal Attorney Manager (or designee) should sit on all multidisciplinary committees charged with improving court functions or other aspects of the system. The Tribal Attorney Manager should be in regular contact with agencies, such as local behavioral health providers, hospitals, or schools, that employ people who are frequently called as witnesses and who do work with the same population of children. Doing so can build strong relationships and improve the care the children receive from all of the involved agencies.

***Commentary:** The Tribal Attorney Manager should be visible in the community and provide a positive presence and association with the Tribe and Tribal Attorney's office. The Tribal Attorney Manager should understand the many issues the Tribe faces related to child welfare and help resolve some of these through work with the court and other involved entities.*

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Date Published: 10/02/2019 09:00 PM

Assembly Bill No. 175**CHAPTER 416**

An act to amend Section 1530.91 of the Health and Safety Code, and to amend Section 16164 of, and to repeal and add Section 16001.9 of, the Welfare and Institutions Code, relating to foster care.

[Approved by Governor October 02, 2019. Filed with Secretary of State
October 02, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 175, Gipson. Foster care: rights.

Existing law provides for the out-of-home placement, including foster care placement, of children who are unable to remain in the custody and care of their parents, and imposes various requirements on the county child welfare agency in regard to arranging and overseeing the foster care placement. Existing law provides that it is the policy of the state that all minors and nonminors in foster care have specified rights, including, among others, the right to receive medical, dental, vision, and mental health services, the right to be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed in their court or child welfare records, the right to review their own case plan and plan for permanent placement if the child is 12 years of age or older and in a permanent placement, and the right to attend Independent Living Program classes and activities if the child meets applicable age requirements.

This bill would instead require all children and nonminor dependents in foster care to have these rights and would revise various rights, including providing the right to review their own case plan and plan for permanent placement to children 10 years of age or older regardless of whether they are in a permanent placement and the right to not be prevented from attending Independent Living Program classes by the caregiver as a punishment. The bill would include additional rights, including, among others, the right to be referred to by the child's preferred name and gender pronoun, the right to maintain the privacy of the child's sexual orientation and gender identity and expression, except as provided, and the right to have reasonable access to computer technology and the internet. To the extent that the bill would impose additional duties on counties, this bill would impose a state-mandated local program.

Existing law establishes the Office of the State Foster Care Ombudsperson within the State Department of Social Services and sets forth the duties of the office, including disseminating information on the services provided by the office and rights of children and youth in foster care, developing standardized information explaining those rights, and compiling and making available to the Legislature all data collected by the office, including specified data regarding complaints made to the office and investigations conducted by the office.

This bill would additionally require the office to provide training and technical assistance to foster youth, social workers, and child welfare organizations, among others, on the rights of children and youth in foster care, reasonable and prudent parent standards, and services provided by the office. The bill would require the office to review amendments to laws applicable to foster youth at the end of every two-year legislative session and determine whether updates to the foster care rights should be recommended in the compilation of data prepared by the office and made available to the Legislature.

Existing law, the California Community Care Facilities Act, provides for the licensing and regulation of community care facilities, including foster family homes and group homes, by the State Department of Social Services. Existing law requires certain community care facilities that provide care to foster children to either provide each schoolage child and the child's authorized representative with an orientation that includes an explanation of the rights of the child or post a listing of the above-described rights.

This bill would require the department to ensure that those facilities accord children and nonminor dependents in foster care with their personal rights, including the above-described rights. The bill would require the department to adopt regulations to implement these provisions, and would authorize the department to implement these provisions by written directives until regulations are adopted.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1530.91 of the Health and Safety Code is amended to read:

1530.91. (a) Except as provided in subdivision (b), a care provider that provides foster care for children pursuant to this chapter shall provide each schoolage child and the child's authorized representative, as defined in regulations adopted by the department, who is placed in foster care, with an age and developmentally appropriate orientation that includes an explanation of the rights of the child, as specified in Section 16001.9 of the Welfare and Institutions Code, and addresses the child's questions and concerns.

(b) Any facility licensed to provide foster care for six or more children pursuant to this chapter shall post a listing of a foster child's rights specified in Section 16001.9 of the Welfare and Institutions Code, as developed by the Office of the State Foster Care Ombudsperson pursuant to Section 16164 of the Welfare and Institutions Code. The Office of the State Foster Care Ombudsperson shall provide the posters it has designed pursuant to Section 16164 of the Welfare and Institutions Code to each facility subject to this subdivision. The posters shall include the telephone number of the Office of the State Foster Care Ombudsperson.

(c) The department shall ensure that a facility licensed, and a home certified or approved by a foster family agency to provide foster care, pursuant to this chapter shall accord children and nonminor dependents in foster care their personal rights, including, but not limited to, the rights specified in Section 16001.9 of the Welfare and Institutions Code, as applicable. The department shall adopt regulations to implement and enforce this subdivision. Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and enforce this subdivision by written directives until regulations are adopted.

SEC. 2. Section 16001.9 of the Welfare and Institutions Code is repealed.

SEC. 3. Section 16001.9 is added to the Welfare and Institutions Code, to read:

16001.9. (a) All children placed in foster care, either voluntarily or after being adjudged a ward or dependent of the juvenile court pursuant to Section 300, 601, or 602, shall have the rights specified in this section. These rights also apply to nonminor dependents in foster care, except when they conflict with nonminor dependents' retention of all their legal decisionmaking authority as an adult. The rights are as follows:

- (1) To live in a safe, healthy, and comfortable home where they are treated with respect. If the child is an Indian child, to live in a home that upholds the prevailing social and cultural standards of the child's Indian community, including, but not limited to, family, social, and political ties.

- (2) To be free from physical, sexual, emotional, or other abuse, corporal punishment, and exploitation.
- (3) To receive adequate and healthy food, adequate clothing, grooming and hygiene products, and an age-appropriate allowance. Clothing and grooming and hygiene products shall respect the child's culture, ethnicity, and gender identity and expression.
- (4) To be placed in the least restrictive setting possible, regardless of age, physical health, mental health, sexual orientation, and gender identity and expression, juvenile court record, or status as a pregnant or parenting youth, unless a court orders otherwise.
- (5) To be placed with a relative or nonrelative extended family member if an appropriate and willing individual is available.
- (6) To not be locked in any portion of their foster care placement, unless placed in a community treatment facility.
- (7) To have a placement that utilizes trauma-informed and evidence-based deescalation and intervention techniques, to have law enforcement intervention requested only when there is an imminent threat to the life or safety of a child or another person or as a last resort after other diversion and deescalation techniques have been utilized, and to not have law enforcement intervention used as a threat or in retaliation against the child.
- (8) To not be detained in a juvenile detention facility based on their status as a dependent of the juvenile court or the child welfare services department's inability to provide a foster care placement. If they are detained, to have all the rights afforded under the United States Constitution, the California Constitution, and all applicable state and federal laws.
- (9) To have storage space for private use.
- (10) To be free from unreasonable searches of personal belongings.
- (11) To be provided the names and contact information for social workers, probation officers, attorneys, service providers, foster youth advocates and supporters, Court Appointed Special Advocates (CASAs), and education rights holder if other than the parent or parents, and when applicable, representatives designated by the child's Indian tribe to participate in the juvenile court proceeding, and to communicate with these individuals privately.
- (12) To visit and contact siblings, family members, and relatives privately, unless prohibited by court order, and to ask the court for visitation with the child's siblings.
- (13) To make, send, and receive confidential telephone calls and other electronic communications, and to send and receive unopened mail, unless prohibited by court order.
- (14) To have social contacts with people outside of the foster care system, including, but not limited to, teachers, coaches, religious or spiritual community members, mentors, and friends. If the child is an Indian child, to have the right to have contact with tribal members and members of their Indian community consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe.
- (15) To attend religious services, activities, and ceremonies of the child's choice, including, but not limited to, engaging in traditional Native American religious practices.
- (16) To participate in extracurricular, cultural, racial, ethnic, personal enrichment, and social activities, including, but not limited to, access to computer technology and the internet, consistent with the child's age, maturity, developmental level, sexual orientation, and gender identity and expression.
- (17) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity and expression, mental or physical disability, or HIV status.
- (18) To have caregivers, child welfare and probation personnel, and legal counsel who have received instruction on cultural competency and sensitivity relating to sexual orientation, gender identity and expression, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender children in out-of-home care.

(19) To be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed in their court, child welfare, medical, or vital records, to be referred to by the child's preferred name and gender pronoun, and to maintain privacy regarding sexual orientation and gender identity and expression, unless the child permits the information to be disclosed, or disclosure is required to protect their health and safety, or disclosure is compelled by law or a court order.

(20) To have child welfare and probation personnel and legal counsel who have received instruction on the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) and on cultural competency and sensitivity relating to, and best practices for, providing adequate care to Indian children in out-of-home care.

(21) To have recognition of the child's political affiliation with an Indian tribe or Alaskan village, including a determination of the child's membership or citizenship in an Indian tribe or Alaskan village; to receive assistance in becoming a member of an Indian tribe or Alaskan village in which the child is eligible for membership or citizenship; to receive all benefits and privileges that flow from membership or citizenship in an Indian tribe or Alaskan village; and to be free from discrimination based on the child's political affiliation with an Indian tribe or Alaskan village.

(22) (A) To access and receive medical, dental, vision, mental health, and substance use disorder services, and reproductive and sexual health care, with reasonable promptness that meets the needs of the child, to have diagnoses and services explained in an understandable manner, and to participate in decisions regarding health care treatment and services. This right includes covered gender affirming health care and gender affirming mental health care, and is subject to existing laws governing consent to health care for minors and nonminors and does not limit, add, or otherwise affect applicable laws governing consent to health care.

(B) To view and receive a copy of their medical records to the extent they have the right to consent to the treatment provided in the medical record and at no cost to the child until they are 26 years of age.

(23) Except in an emergency, to be free of the administration of medication or chemical substances, and to be free of all psychotropic medications unless prescribed by a physician, and in the case of children, authorized by a judge, without consequences or retaliation. The child has the right to consult with and be represented by counsel in opposing a request for the administration of psychotropic medication and to provide input to the court about the request to authorize medication. The child also has the right to report to the court the positive and adverse effects of the medication and to request that the court reconsider, revoke, or modify the authorization at any time.

(24) (A) To have access to age-appropriate, medically accurate information about reproductive health care, the prevention of unplanned pregnancy, and the prevention and treatment of sexually transmitted infections.

(B) At any age, to consent to or decline services regarding contraception, pregnancy care, and perinatal care, including, but not limited to, abortion services and health care services for sexual assault without the knowledge or consent of any adult.

(C) At 12 years of age or older, to consent to or decline health care services to prevent, test for, or treat sexually transmitted diseases, including HIV, and mental health services, without the consent or knowledge of any adult.

(25) At 12 years of age or older, to choose, whenever feasible and in accordance with applicable law, their own health care provider for medical, dental, vision, mental health, substance use disorder services, and sexual and reproductive health care, if payment for the service is authorized under applicable federal Medicaid law or other approved insurance, and to communicate with that health care provider regarding any treatment concerns or needs and to request a second opinion before being required to undergo invasive medical, dental, or psychiatric treatment.

(26) To confidentiality of medical and mental health records, including, but not limited to, HIV status, substance use disorder history and treatment, and sexual and reproductive health care, consistent with existing law.

(27) To attend school, to remain in the child's school of origin, to immediate enrollment upon a change of school, to partial credits for any coursework completed, and to priority enrollment in preschool, afterschool programs, a California State University, and each community college district, and to receive all other necessary educational supports and benefits, as described in the Education Code.

(28) To have access to existing information regarding the educational options available, including, but not limited to, the coursework necessary for career, technical, and postsecondary educational programs, and information regarding financial aid for postsecondary education, and specialized programs for current and former foster children available at the University of California, the California State University, and the California Community Colleges.

(29) To attend Independent Living Program classes and activities, if the child meets the age requirements, and to not be prevented by caregivers from attending as a consequence or punishment.

(30) To maintain a bank account and manage personal income, consistent with the child's age and developmental level, unless prohibited by the case plan.

(31) To work and develop job skills at an age-appropriate level, consistent with state law.

(32) For children 14 to 17 years of age, inclusive, to receive a consumer credit report provided to the child by the social worker or probation officer on an annual basis from each of the three major credit reporting agencies, and to receive assistance with interpreting and resolving any inaccuracies.

(33) To be represented by an attorney in juvenile court; to have an attorney appointed to advise the court of the child's wishes, to advocate for the child's protection, safety, and well-being, and to investigate and report to the court on legal interests beyond the scope of the juvenile proceeding; to speak to the attorney confidentially; and to request a hearing if the child feels their appointed counsel is not acting in their best interest or adequately representing their legal interests.

(34) To receive a notice of court hearings, to attend court hearings, to speak to the judge, to view and receive a copy of the court file, subject to existing federal and state confidentiality laws, and to object to or request the presence of interested persons during court hearings. If the child is an Indian child, to have a representative designated by the child's Indian tribe be in attendance during hearings.

(35) To the confidentiality of all juvenile court records consistent with existing law.

(36) To view and receive a copy of their child welfare records, juvenile court records, and educational records at no cost to the child until the child is 26 years of age, subject to existing federal and state confidentiality laws.

(37) To be involved in the development of their own case plan, including placement decisions, and plan for permanency. This involvement includes, but is not limited to, the development of case plan elements related to placement and gender affirming health care, with consideration of the child's gender identity. If the child is an Indian child, the case plan shall include protecting the essential tribal relations and best interests of the Indian child by assisting the child in establishing, developing, and maintaining political, cultural, and social relationships with the child's Indian tribe and Indian community.

(38) To review the child's own case plan and plan for permanent placement if the child is 10 years of age or older, and to receive information about their out-of-home placement and case plan, including being told of changes to the plan.

(39) To request and participate in a child and family team meeting, as follows:

(A) Within 60 days of entering foster care, and every 6 months thereafter.

(B) If placed in a short-term residential therapeutic program, or receiving intensive home-based services or intensive case coordination, or receiving therapeutic foster care services, to have a child and family team meeting at least every 90 days.

(C) To request additional child and family team meetings to address concerns, including, but not limited to, placement disruption, change in service needs, addressing barriers to sibling or family visits, and addressing difficulties in coordinating services.

(D) To have both informal and formal support people participate, consistent with state law.

(40) To be informed of these rights in an age and developmentally appropriate manner by the social worker or probation officer and to be provided a copy of the rights in this section at the time of placement, any placement change, and at least once every six months or at the time of a regularly scheduled contact with the social worker or probation officer.

(41) To be provided with contact information for the Community Care Licensing Division of the State Department of Social Services, the tribal authority approving a tribally approved home, and the State Foster Care Ombudsperson, at the time of each placement, and to contact any or all of these offices immediately upon request regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints.

(b) The rights described in this section are broad expressions of the rights of children in foster care and are not exhaustive of all rights set forth in the United States Constitution and the California Constitution, federal and California statutes, and case law.

(c) This section does not require, and shall not be interpreted to require, a foster care provider to take any action that would impair the health and safety of children in out-of-home placement.

(d) The State Department of Social Services and each county welfare department are encouraged to work with the Student Aid Commission, the University of California, the California State University, and the California Community Colleges to receive information pursuant to paragraph (28) of subdivision (a).

SEC. 4. Section 16164 of the Welfare and Institutions Code is amended to read:

16164. (a) The Office of the State Foster Care Ombudsperson shall do all of the following:

(1) (A) Disseminate information and provide training and technical assistance to foster youth, social workers, probation officers, tribes' child welfare agencies, child welfare organizations, children's advocacy groups, consumer and service provider organizations, and other interested parties on the rights of children and youth in foster care, reasonable and prudent parent standards, and the services provided by the office. The rights of children and youth in foster care are listed in Section 16001.9. The information shall include methods of contacting the office and notification that conversations with the office may be disclosed to other persons, as necessary to adequately investigate and resolve a complaint.

(B) At the end of every two-year legislative session, review amendments to the laws applicable to foster youth and determine whether updates to the rights listed in Section 16001.9 should be recommended in the compilation prepared pursuant to paragraph (8). The office shall update the standardized information prepared pursuant to paragraph (1) of subdivision (e), and any training materials prepared pursuant to subparagraph (A), in accordance with the legislative review.

(2) Investigate and attempt to resolve complaints made by or on behalf of children placed in foster care, related to their care, placement, or services.

(3) Decide, in its discretion, whether to investigate a complaint, or refer complaints to another agency for investigation.

(4) Upon rendering a decision to investigate a complaint from a complainant, notify the complainant of the intention to investigate. If the office declines to investigate a complaint or continue an investigation, the office shall notify the complainant of the reason for the action of the office.

(5) Update the complainant on the progress of the investigation and notify the complainant of the final outcome.

(6) Document the number, source, origin, location, and nature of complaints.

(7) Receive data from the State Department of Education regarding complaints about foster youth education rights made through the uniform complaint process.

(8) (A) Compile and make available to the Legislature all data collected over the course of the year, including, but not limited to, the number of contacts to the office, the number of complaints made, including the type and source of those complaints, the number of investigations performed by the office, the trends and issues that arose in the course of investigating complaints, the number of referrals made, the number of pending complaints, and a summary of the data received from the State Department of Education pursuant to paragraph (7). The office shall include recommendations consistent with this data for improving the child welfare system.

(B) Present this compiled data, on an annual basis, at appropriate child welfare conferences, forums, and other events, as determined by the department, that may include presentations to, but are not limited to, representatives of the Legislature, the County Welfare Directors Association of California, Chief Probation

Officers of California, Indian tribes, child welfare agencies, child welfare organizations, children's advocacy groups, consumer and service provider organizations, and other interested parties.

(C) It is the intent of the Legislature that representatives of the organizations described in subparagraph (B) consider this data in the development of any recommendations offered toward improving the child welfare system.

(D) The compiled data shall be posted so that it is available to the public on the existing internet website of the office.

(E) Nothing shall preclude the office from issuing data, findings, or reports other than the annual compilation of data described in this paragraph.

(9) Have access to copies of any record of a state or local agency, and contractors with state and local agencies, that is necessary to carry out their responsibilities, and may meet or communicate with any foster child in their placement or elsewhere.

(b) The office may establish, in consultation with a committee of interested individuals, regional or local foster care ombudsperson offices for the purposes of expediting investigations and resolving complaints, subject to appropriations in the annual Budget Act.

(c) Information obtained by the office from a complaint, regardless of whether it is investigated by the office, referred to another entity for investigation, or determined not to be the proper subject of an investigation, shall remain confidential under relevant state and federal confidentiality laws. Disclosure of information shall occur only as necessary to carry out the mission of the office and as permitted by law.

(d) The office shall provide administrative and technical assistance to county, regional, or local foster care ombudsperson's offices, including, but not limited to, assistance in developing policies and procedures consistent with the policies and procedures used by the office.

(e) (1) The office, in consultation with the County Welfare Directors Association of California, Chief Probation Officers of California, Indian tribes located in the state, foster youth advocate and support groups, groups representing children, families, foster parents, children's facilities, and other interested parties, shall develop standardized information explaining the rights specified in Section 16001.9. The information shall be developed in an age-appropriate manner, and shall reflect any relevant licensing requirements with respect to foster care providers' responsibilities to adequately supervise children in care.

(2) The office, counties, foster care providers, and others shall use the information developed in paragraph (1) in carrying out their responsibilities to inform foster children and youth of their rights pursuant to Section 1530.91 of the Health and Safety Code, Sections 27 and 16501.1, and this section.

(3) The office shall measure the distribution of the standardized materials for purposes of evaluating and improving the degree to which foster youth are adequately informed of their rights. This data shall be included in the compilation prepared pursuant to paragraph (8) of subdivision (a).

SEC. 5. To the extent that this act has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.

Foster Youth Are at Great Risk for Suicide As They Prepare to Leave the System, California Study Finds

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BY JEREMY LOUDENBACK

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Illustration by Christine Ongjoco.

Roughly one-quarter young adults in foster care in California have attempted suicide and their rate of suicidal behavior is nearly three times that of peers who aren't in government care, according to a recently published study and policy brief.

Colleen Katz, an associate professor of social work at Hunter College and an author of the [study](#), called the findings "shocking." While there are many anecdotal accounts of young people taking their own lives while in foster care, she said little information exists about the prevalence of suicide or which young people are most at risk.

"These numbers just jumped off the page," Katz said of the study released last month. The findings were also included in a [policy brief](#) released by the UC Berkeley-based Transition-Age Youth Research and Evaluation Hub. "This is something that we urgently need to understand better."

About a quarter of young adults in foster care in California have attempted suicide and their rate of suicidal behavior is nearly three times that of peers who aren't in government care, researchers found.

The study validates the [well-documented](#) understanding that foster youth are at a greater risk of suicidal behavior. But there has been limited research about the characteristics of those youth.

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The data used for Katz's study comes from the landmark California Youth Transitions to Adulthood Study, also known as [CalYOUTH](#). The decade-long longitudinal CalYOUTH study asked hundreds of California youth a battery of questions about all facets of their life, including two pertinent queries: "Have you ever felt so low that you thought about committing suicide?" and "Have you ever attempted suicide?"

Katz and her colleagues contrasted the answers from this survey with federal Substance Abuse and Mental Health Services Administration data, and found that foster youth had markedly higher experiences with suicide than young people in the general population. For example, roughly 24% of foster youth in the survey had attempted suicide compared with about 2% of young adults in the U.S. between the ages of 18 and 25.

In addition, 40% of young people in foster care had considered suicide, compared with 11% of young adults in the general population.

Researchers found that certain foster youth are at a greater risk for pursuing suicide. Young people identifying as LGBTQ+ were two to four times more likely to consider and attempt suicide than other foster youth. Mental health issues and substance use were also key predictors of suicidal behavior among foster youth, particularly young people who struggle with both. And young adults who experienced neglect while in foster care were far more likely to report suicidal behavior.



Colleen Katz

Katz said she hoped that a better understanding of which foster youth were most likely to experience suicidal behavior would prompt more child welfare systems to take action. Most CPS agencies have limited resources and can't provide psychotherapy or thorough assessments for every foster child, she said. But they could ask a handful of screening questions that require only a few minutes. A 2024 [JAMA study](#) found that simple screening tools have been shown to predict suicidal behaviors.

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Declining mental health for young people nationwide

A 2024 [report](#) on youth health by the Centers for Disease Control and Prevention found that “nearly all indicators of poor mental health, and suicidal thoughts and behaviors” have worsened over the past decade, including the percentage of young people who seriously considered suicide or made an actual plan to take their own life. [One in three](#) young adults aged 18 to 25 nationwide have experienced a mental, behavioral, or emotional health issue in the past year, a share that is higher than other adults.

In California, suicide is the second-leading cause of death among adolescents and young adults aged 15 to 24, mirroring a similar national trend. There have been some positive signs recently — a slight decline in suicide over the past two years. But the suicide rates for Black and Latino youth have held steady or increased, according to the [California Department of Public Health](#).

In 2023, the department launched a youth suicide prevention media and outreach campaign and awarded \$16 million to several nonprofits working with those disproportionately impacted by suicide, including Native, Latino, Black and LGBTQ youth, as well as young people in foster care.

Researchers and advocates say young adults transitioning out of foster care are particularly vulnerable to suicide. Many experience significant trauma before and after entering government custody. They also have the added stress of securing housing and adapting to life on their own after leaving foster care. And often, many are isolated and lack supportive relationships because they may have been living in foster care placements that are far from family, friends and their community.

Leigh-Anna Faith, 25, entered foster care at age 17 in the San Francisco Bay Area before moving to New York City to attend The New School. Faith said she faced a devastating mental health crisis in 2019 that was triggered by sudden homelessness and the strain of working three jobs while pursuing a 19-credit load during her junior year. Her downward spiral included anxiety, suicidal thoughts and hospitalization, she said.

Faith returned to California where she faced a weeks-long wait for a psychiatrist. Eventually, with the help of her mother who had lost custody of her, Faith stabilized herself.

Faith is now a part-time law student and full-time paralegal at a housing nonprofit. She said some child welfare systems prioritize the tangible needs of foster youth, such as housing and gift cards for groceries, at the expense of other needs.



The Sacramento-based Race and Gender Equity Project offers healing and wellness opportunities to Black youth and other young people of color, including yoga classes. Provided photo.

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Faith added that a fear of being hospitalized or placed in restrictive residential treatment facilities prevents many foster youth from divulging their mental health issues to social workers. Access to peers with similar experiences can be “a life-saving factor” for youth with suicidal behavior, she said.

“There needs to be more funding for comprehensive mental health care, but we can do more to prevent youth from getting to a serious point by having peer advocates within agencies, listening to youth who are struggling to understand their traumatic experiences,” she said.

Stacey Ault, executive director of the Race and Gender Equity Project, agrees. Her organization trains young people as peer “wellness coaches,” who are trained to recognize signs of possible self-harm and learn how to work with someone in crisis and connect them to the right help.

And, noting the shortage of Black mental health professionals nationwide, the Sacramento-based nonprofit also tries to provide culturally sensitive care by offering a Black therapist for a few hours a week to youth, including those from foster care.

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But Ault added that along with traditional therapy, offering other forms of wellness support can also be helpful to young people, particularly those in foster care.

“Not all healing looks like a one-on-one session with a therapist,” Ault said. “We’re hearing from young people that just spending time with their peers, doing cultural projects or painting or dancing is the prevention and healing that they need.”

EXPLORE THE IMPRINT

Californiafoster caremental healthsuicidal ideation

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COMPLEX CARE AND TRIBAL ADVOCACY

Complex care refers to circumstances in which youth have a variety of needs that have been unmet by behavioral health, child welfare, probation, education and other systems. As a result, these youth need high intensity, individualized treatment options to better resolve challenges and address their needs.

COMPLEX CARE AND INDIAN CHILDREN

With California Native children being more than four times as likely to be placed in foster care than white children, issues related to foster care and complex care are of priority concern to tribal providers. Advocacy in the area of complex care is a critical exercise of ICWA and tribal oversight.

ICWA
ELIGIBLE
YOUTH
LIVING IN
GROUP
HOMES

CCWIP, 2023



10%

The number of tribal foster children living in congregate care in California has steadily decreased in the past decade by 38%, matching national foster care trends. (CCWIP, 2023) This marks a systemwide understanding of the negative impacts of congregate care, though disparities remain. Youth are at greater risk for further physical abuse when they are placed in group homes, compared with their peers placed in families. (Ryan et al, 2008) State, county and local systems have a responsibility to better serve tribal youth with complex care needs.

AB 153

Assembly Bill 153 allocated \$61.3 million to counties and IV-E Agreement Tribes to provide additional services and develop programs to serve children with complex or co-occurring needs. Counties should consult with any Tribe that has children under the county's jurisdiction regarding the availability of this funding and how it can best serve tribal children in their care. (ACIN I-18-22)

\$61.5 FOR
COMPLEX
CARE
MILLION NEEDS

BOARDING SCHOOL HISTORY AND CONTEMPORARY IMPLICATIONS

Separating tribal children from their communities by way of congregate care harkens back to Indian Boarding School Era practices of forcibly removing tribal children from their communities. This history and its implications are generally well-known in tribal communities, but may not be known to county providers working with tribal children and families. For example, research indicates that having a parent or grandparent who attended boarding school is associated with a near doubling the likelihood of suicidality. (Bombay et al, 2014) It is critical for providers to understand this historical context when making treatment and placement decisions for tribal children. See Resources below for more information.



COMPLEX CARE

AND TRIBAL ADVOCACY

COMPLEX CARE WITHIN THE COMMUNITY

When considering how to meet the multiple needs of a youth in care within the community, there are a number of opportunities to consider. County child welfare agencies should be exploring and exhausting these opportunities with the tribal social worker prior to considering congregate care.

WRAPAROUND

A family-driven model designed to resource community based services to coordinate care across life domains.

IN HOME BEHAVIORAL SERVICES AND KATIE A. SUBCLASS SERVICES

Intensive in-home and in-community mental health services available via county behavioral health and contracted providers.

INTENSIVE SERVICES FOSTER CARE

ISFC can support a rate up to the STRTP rate for a parent to provide a child's placement in a family setting.

SCHOOL SUPPORTS VIA INDIVIDUALIZED EDUCATION PLANS (IEPs) and 504 PLANS

Children eligible for an IEP or 504 have the right to an educational program designed to meet their individual needs. Supports included in the plan can include one on one behavioral support.

DEVELOPMENTAL REGIONAL CENTER SERVICES

Children eligible for regional center services are entitled to supports that meet their developmental needs, which can include intensive in-home and in-community support.

SERVICES SHOULD ALLEVIATE, NOT ADD TO FAMILY STRESSORS

The intention of intensive services delivery is to alleviate existing stressors to the family system to preserve the child's placement within community. However, tribal providers throughout the state have shared that is not always the case. Poor service provision can be culturally inappropriate, task the family with additional "homework" rather than alleviate the multiple stressors across life domains they may be experiencing, and/or be of insufficient duration, frequency or inaccessible due to barriers of distance and transportation. Tribal providers are strongly encouraged to address poor service delivery and/or care coordination early on by notifying agency leadership, contacting the ombudsman, and documenting the grievance.

INSTITUTIONS ARE NOT AN ALTERNATIVE TO COMMUNITY CARE

Tribal providers can advocate by reminding county service providers of their responsibility to offer adequate care within the tribal child's community, regardless of the remote or rural location of placement.

TRIBAL SERVICE DELIVERY AND FFPSA

Tribes and tribal agencies continue to grow their social and behavioral service menu, and can be contracted with to deliver culturally driven services that meet the holistic needs of the tribal child and family. As California counties develop their Family First Prevention Services Act (FFPSA) plans, tribes are critical partners in meeting the unique and varied needs within their respective tribal communities. Tribal agencies are encouraged to engage in discussion related to contracting with their respective counties and advocate for reimbursement when service delivery is provided. These services may make the difference needed to keep a tribal child within their community.



COMPLEX CARE

AND TRIBAL ADVOCACY

CONGREGATE CARE

Congregate care is an umbrella term that refers to out of home care in institutions or group home like settings. These are typically the most restrictive placement settings available, however may be necessary to meet the Indian child's individualized treatment needs.

"GOOD CAUSE"

California Law sets out a list of factors that may constitute good cause not to follow ICWA placement preferences, to include:

1. The request of the biological parents or the child when the child is of sufficient age;
2. The extraordinary physical or emotional needs of the child as established by testimony of qualified expert witnesses; or
3. The unavailability of suitable homes that meet the preference criteria after a diligent search and "whether a placement is unavailable shall conform to the prevailing social and cultural standards of the Indian community." (WIC 361.31(j)(5))

A placement shall not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a nonpreferred placement made in violation of ICWA. (WIC 361.31(l))

SHORT TERM RESIDENTIAL THERAPEUTIC PROGRAMS (STRTP)

STRTPs were established in 2017 by Continuum of Care Reform with the intent to reduce the time children live in congregate care. STRTPs vary widely, but must provide 24-hour care as well as some Medi-Cal specialty mental health services. You may also hear the term Qualified Residential Treatment Programs (QRTTP), which is the federal term established by FFPSA. Currently, there are over 340 licensed STRTPs in California. Additionally, there are lower level group home settings available that may or may not be appropriate based on complexity of needs. (See CCL Facility Search Lookup.)

WHAT YOU NEED TO KNOW

A county seeking to place a child in congregate care via an STRTP or out of state placement must obtain an assessment from a Qualified Individual (QI) who determines the setting which will provide the child with the most effective and appropriate level of care in the least restrictive environment, consistent with the short- and long-term goals for the child, as specified in the permanency plan. (BCIN 21-060)

QUALIFIED INDIVIDUALS (QI)

QI Assessments are typically conducted by county behavioral health clinicians. An individual may also be designated by the child's tribe as the QI. In the absence of that designation, the QI must have specialized knowledge of, training about, or experience with, tribes and ICWA. (BCIN 21-060)

WHAT TO LOOK FOR IN THE QI ASSESSMENT

1. The QI must confer with the child's tribe as part of the assessment. Did the QI contact the tribal designee and conduct a thorough interview?
2. Is the tribe's position accurately reflected in the QI assessment?
3. Was the QI Assessment process discussed through Child and Family Teaming?

QI ASSESSMENT TIMELINES

Unless an emergency placement, the QI must conduct the assessment prior to placement, and has **30 days from time of referral** to complete the assessment.

Emergency Placements: The placing agency caseworker shall notify and engage CFT members **within 1 business day of placement**, and submit a QI referral within 2 business days of placement.

CCL FACILITY SEARCH LOOKUP

Community Care Licensing maintains a transparency facility search lookup website, where you can find details about specific licensed STRTPs and other residential settings, to include recent citations, inspections, complaints and reports conducted by CCL.



COMPLEX CARE

AND TRIBAL ADVOCACY

ATTENDING TO ACTIVE SUICIDALITY

Tribal youth experience suicide at higher rates than any other demographic (CDC, 2023), and attending to youth suicidality in tribal communities can be among the most complex work for tribal providers. When youth are actively suicidal or have just attempted suicide, a timely response is critical and may warrant an involuntary hold.

Dial 988

The preferred national response to suicidality, 988 crisis line staff can support tribal providers navigate complex situations over the phone and help determine whether a call to 911 is warranted.

INVOLUNTARY HOLDS

5150-HOLD

Up to a 72-hour involuntary hold for adults.

5585-HOLD

Up to a 72-hour involuntary hold for minors.

5250-HOLD

Up to a 14-day involuntary hold for BOTH adults and minors. These, as well as any extensions requested by the holding facility, must be reviewed by the court.

WHO CAN PLACE A HOLD

Only Peace Officers and designated county personnel can place a hold, though these individuals should be conferring with the parent/guardian, tribe and other providers when making determinations about whether to place the hold.

HOLD CRITERIA

In order to place an involuntary hold, the youth must meet one of the following criteria:

1. Danger to self
2. Danger to others
3. Gravely disabled (unable to provide for their own food, clothing, shelter) even though provided to minor by others (WIC 5585.25)

ADVOCATING FOR A HOLD

Designated personnel may be resistant to placing a hold if they are unable to verify the youth meets criteria. While this should not be a consideration, severe shortages in availability of bed space in suitable facilities also impacts decision-making. Youth may also be more transparent with trusted providers and withhold information from designated personnel. Tribal providers can advocate for a hold in these situations. Examples follow.

USE A TOOL TO IDENTIFY HIGH RISK

A universally recognized screening tool such as the Columbia Suicide Severity Rating Scale offers a measurable way to identify risk with a corresponding recommended response. Providing these results to the designated personnel documents the measured need for intervention.

VIEW THE CRISIS AS A MENTAL HEALTH EMERGENCY

Responders may arrive at the scene and mis-identify a youth experiencing a mental health crisis as a criminal matter. Advocate for the crisis to be viewed as a mental health emergency. You can do this as early as when speaking with dispatch by requesting an ambulance or crisis clinician in lieu of law enforcement to respond.

RESOURCE THE CLINICAL TEAM

Clinical providers familiar with the youth can assist in communicating the youth's typical presentation and highlighting the differences in current behaviors that present the danger.

WHAT HAPPENS NEXT

Once a hold is placed, youth may be transported by ambulance or law enforcement to a Crisis Stabilization Unit or ER. From there, youth must be discharged with an aftercare plan as soon as they no longer meet criteria. (WIC 5585.57) If, after 72-hours, the youth is unable to be discharged, a 5250-hold will be submitted to the court for review and, pending approval, the youth will either remain at the hospital/CSU or else be transported to a Psychiatric Health Facility. (WIC 5250)



COMPLEX CARE

AND TRIBAL ADVOCACY

TREATMENT VERSUS PLACEMENT

A youth in crisis may simultaneously risk a loss of placement during that time. This could be due to a variety of factors, to include caregiver fatigue and a belief that access to treatment can only be facilitated by giving up placement. Parents and guardians may also sustain a belief that refusing to take their child back is a necessary step in accessing treatment for their child, and misinformed providers may reinforce this belief. Tribal providers who encounter these beliefs can support the family with understanding their child's complex needs as a need for treatment, which may necessarily include short and long-term residential treatment options. Treatment should be understood as a necessary rehabilitative step to support the child's return home, and not confused with placement. Accessing these treatment options can be accomplished by a variety of avenues, which may include a Voluntary Placement Agreement (VPA) and may or may not require formal child welfare intervention. (Alliance for Children's Rights, 2021) Especially for Indian children living at home and in tribally preferred placements, every effort should be made to preserve and support family and relative placement.

GROUP HOMES ARE NOT IN- PATIENT TREATMENT

While STRTPs offer a treatment component in their service array, services and scope vary widely and may not meet the child's complex needs. (CDSS STRTP Interim Licensing Standards, 2023) Lower level group homes and transitional housing may offer a variety of case management and outpatient mental health services, but these should not be confused with the higher level of care offered by inpatient treatment options. Be wary when providers seeking placement options revert to placement options that do not meet the child's complex treatment needs.

MEDI-CAL COVERED IN- PATIENT

The following treatment options are covered by Medi-Cal insurance.

CRISIS STABILIZATION UNITS (CSUs)

Licensed by DHCS, CSUs provide short-term, 24-hour inpatient care and are designed to address immediate behavioral health crises, though scope of services vary widely. DHCS maintains an active list of CSUs by county.

PSYCHIATRIC HEALTH FACILITIES (PHF)

Licensed by DHCS, PHFs provide 24-hour inpatient care for mentally disordered, incompetent, or other persons as described in WIC. Care includes: psychiatry, clinical psychology, and psychiatric nursing beyond what can be offered in residential (i.e. STRTP) settings. Currently there are just four PHFs that accept youth in the state. DHCS maintains a current Dataset of licensed PHFs.

IHS COVERED IN- PATIENT

The following treatment options are covered by Indian Health Services (IHS) via direct or Purchase Referred Care (PRC).

IHS YOUTH RESIDENTIAL TREATMENT CENTERS

Currently, Indian Health Service maintains two Youth Residential Treatment Centers in California and several more throughout the country. These centers are designed to treat co-occurring substance use disorders in youth ages 12-17 and may not be appropriate for youth who are actively suicidal.

PURCHASE REFERRED CARE

IHS may determine a private pay or private insurance facility to be the only suitable treatment option for a youth's complex needs and support payment for this treatment. However, children with active child welfare cases should first be served by the responsible county agency.



COMPLEX CARE

AND TRIBAL ADVOCACY

PRIVATE INSURANCE OPTIONS

There are a variety of Residential Treatment Centers accepting private pay or private insurance throughout the state serving a range of specialty diagnoses. While the services provided may be best suited to support a youth's treatment, often they are financially prohibitive. In these cases where most appropriate treatment is identified, tribal providers are encouraged to advocate with the county child welfare agency involved to resource the Complex Care funding counties receive to ensure tribal children receive appropriate, individualized treatment that allows them to safely return to their communities. Psychology Today maintains a list of [Teen and Adolescent Residential Treatment Centers in California](#).

WHAT IF THE FACILITY WANTS TO DISCHARGE PREMATURELY?

Due to the widely known lack of treatment options available, tribal providers may find that facilities want to discharge a youth without an adequate or safety plan in place for discharge. Concerns may include:

- Youth remains actively suicidal, continuing to voice intent and/or plan;
- Inadequate services are in place to maintain the child's safety upon discharge, the family is voicing they cannot attend to safety.
- Facility is giving notice or voicing the child needs a higher level of care

Planning for discharge should occur as soon as admission, however discharge of a youth who remains in crisis should only occur to an appropriate level of care. If you believe premature or inadequate discharge planning is occurring with a tribal youth, you can act by notifying agency leadership, contacting the ombudsman, documenting the grievance and presenting your concerns in court.

STEP DOWN PLANS AND RETURNING TO COMMUNITY

Planning for discharge should occur as soon as admission to ensure adequate supports are in place when the youth is ready to return home safely. Once a youth achieves treatment goals and is ready to return to community, discharge planning should include intensive home-based and community services that can support the transition from 24-hour therapeutic care to less frequent services. Greater than weekly frequency and duration is recommended to transition from 24-hour care to community living. See Page 3, Complex Care within the Community, for examples of intensive, community based services the child and family team can explore implementing prior to discharge.

RESOURCES

1. [Voluntary Placement Agreement Self-Advocacy Guide Alliance for Children's Rights, 2021](#)
2. [Notional Directory of Crisis Services for Indigenous People](#)
3. [CDSS Complex Care Resource Guide](#)
4. [Stanford Child & Adolescent Mental Health ECHO Program](#)
5. [Congregate Care in the Age of Family First, ACF 2020](#)
6. [Away From Home: Youth Experiences of Institutional Placements in Foster Care, Think of Us, 2021](#)
7. [Group Placement Impacts, Casey Family Programs, 2022](#)

EDUCATIONAL RIGHTS HOLDERS IN CA DEPENDENCY PROCEEDINGS

CTFC

WHAT IS AN EDUCATIONAL RIGHTS HOLDER?

An **Educational Rights Holder (ERH)** is “the adult identified or appointed by the court to make educational or developmental services decisions for a youth, nonminor, or nonminor dependent.” California Rules of Court Rule 5.502. In this document, ‘Educational Rights’ also refers to developmental service decision-making rights.

Educational Rights Holders can play a key role in ensuring that youth involved with the dependency system have access to an education and, if necessary, special education and developmental services.

WHO CAN BE AN EDUCATIONAL RIGHTS HOLDER?

The court must first consider appointing a responsible adult relative, nonrelative extended family member, or another adult that the youth knows before appointing an ERH who is not known to the youth. Rule 5.650. An individual with a conflict of interest, including conflicts prohibited by Section 1126 of the Government Code, may not be appointed as an ERH. WIC §§ 361(a)(2), 726(c); Rule 5.650(c)(2).

TIP: *The appointment of a county social worker or a public-school employee as an ERH is in clear violation of WIC §§ 361(a)(2). Whether a tribal representative or tribal social worker has an impermissible conflict of interest should be considered on a case-by-case basis.*

RELEVANT JV FORMS

- **JV 225** - Your Youth’s Health and Education
- **JV 535 INFO** - Information on ERHs
- **JV 535** - Order Designating ERH. Must be used whenever educational rights are limited, modified, restored, or where there are updates to any contact or other information. Rule 5.649.
- **JV 535(A)** - Attachment to Order Designating Educational Rights
- **JV 536** - LEA Response to JV-535--Appointment of Surrogate Parent.
- **JV 537** - ERH Statement. May be used by ERH to explain any educational or developmental services needs to the court, or to provide notice of resignation as ERH.
- **JV 539** - Request for Hearing Regarding Youth’s Access to Services. May be used by the youth’s attorney, social worker, or probation officer to request a hearing to appoint an ERH.
- **JV 180** - Request to Change Court Order. May be used by any party to request appointment of a new ERH.

WHO HOLDS EDUCATIONAL OR DEVELOPMENTAL SERVICE DECISIONMAKING RIGHTS?

- **Parents & Legal Guardians**: By default, parents hold educational rights for youth under 18 years old unless the court limits and transfers those rights to someone else. Rule 5.649 & 5.650(e)(2). Keep in mind that ‘Parent’ is defined broadly under California’s Education Code (EDC § 56028) and various federal laws. Educational rights automatically transfer to appointed legal guardians unless the court determines a limitation is necessary. Rule 5.650(e)(2). A parent’s or guardian’s rights are also reinstated when the court returns custody unless the court specifically finds continued limitations are necessary. Rule 5.650(e)(1).
- **Non-Minors**: youth who are over 18 years old hold their own educational rights unless:
 - (1) the youth has chosen not to make educational decisions or is found incompetent, AND
 - (2) the court finds an ERH would be in the best interest of the youth. Rule 5.650(b).
- **Foster Parents/Caregivers**: a caregiver may, *without a court order*, hold educational rights for a dependent youth with a court-ordered permanent plan of placement in a planned permanent living arrangement unless the court specifically provides otherwise. WIC § 361(a)(1)(E); Rule 5.650.
- **Educational Rights Holders**: Whenever the court limits educational rights, the court must appoint an ERH unless a caregiver holds educational rights or an ERH cannot be identified. Rule 5.650. An ERH retains educational rights until they provide notice to the court of their resignation or one of the following occur:
 - Dismissal of petition
 - Conclusion of disposition hearing if ERH was appointed prior to adjudication under WIC § 319(g).
 - Youth reaches 18 years of age, unless an exception applies under Rule 5.650(b).
 - A new ERH is appointed
 - A successor guardian or conservator is appointed
 - Youth is placed into a planned permanent living arrangement. WIC § 361(a)(1).
- **Surrogate Parents**: federal law requires a surrogate parent to be appointed by an LEA for students with disabilities who are without parental representation in special education procedures. The court must refer a youth for appointment of a surrogate parent if educational rights are limited, an ERH cannot be identified, and the youth may be eligible for special education. Rule 5.650(a)(2).
- **Courts**: The court may, with the input of any interested person, hold educational rights if educational rights are limited, an ERH cannot be identified, and the appointment of a surrogate parent is not warranted. WIC §§ 319(j)(3), 361(a)(4) (C).

TIP: *Even if the court does not hold educational rights, the court is still required to direct an appropriate person to take the necessary steps to request needed assessments, evaluations, or services-including special education, mental health, developmental, and other related services. Rule 5.649(d).*

WHEN CAN AN ERH BE APPOINTED IN THE DEPENDENCY PROCEEDING?

If a WIC 300 petition is filed, the court has the authority to limit educational rights and appoint an ERH at the initial hearing or anytime thereafter up until the time the petition is dismissed. WIC §§ 319, 361. Although, a different legal standard applies if the youth has not yet been adjudicated as a dependent of the court. *Id.*

At every hearing, the court should identify who holds educational rights. *See* Rule 5.649 & 5.651. Further, the court must determine whether a parent or guardian’s educational rights should be limited at every hearing related to, or that might affect, the child's or youth's education or receipt of developmental services, including the disposition hearing and ALL subsequent review or permanency hearings. *Id.*

Additionally, the youth’s attorney, social worker, or probation officer can use a JV 539 form to request a hearing to appoint an ERH. A JV 180 form can also be used to request a hearing to appoint an ERH or otherwise address educational rights.

WHAT IS THE LEGAL STANDARD FOR APPOINTING AN ERH?

Prior to Adjudication (WIC § 319): When a WIC 300 petition is filed, a parent or legal guardian’s educational rights may *temporarily* be limited if ALL of the following conditions are found:

- (1) The parent or guardian is unavailable, unable, or unwilling to exercise educational or developmental services rights for the youth,
- (2) the county placing agency has made diligent efforts to locate and secure the participation of the parent or guardian in educational or developmental services decision-making, AND
- (3) the youth’s educational and developmental services needs cannot be met without the temporary appointment of a responsible adult.

After Adjudication (WIC § 361(a)(1)): When a minor is adjudicated a dependent of the court under WIC 300, the court may limit the rights of the parent, guardian, or Indian custodian to make educational or developmental services decisions for the minor as ‘necessary to protect’ the youth.

TIP: *In practice, courts have interpreted these provisions to allow an ERH to be appointed without completely transferring educational rights. This way a parent can still provide education advocacy, or develop their advocacy skills, while an ERH can provide additional support or advocacy as necessary. See also WIC 361(a)(3)(referring to ‘person or persons’ holding educational rights).*

WHAT RIGHTS AND RESPONSIBILITIES DOES AN ERH HAVE?

- An ERH holder has a right to:
- Access school records
 - Receive notice of and participate in school discipline meetings or proceedings
 - Exercise special education rights and provide special education advocacy
 - Attend and participate in educational or service planning meetings, such as Regional Center IFSP meetings or school IEP or 504 meetings.
 - Consult with the youth’s education or developmental service providers
 - Consent to a youth’s educational or developmental service plans, including any non-emergency related services, mental health treatment services, and occupational or physical therapy services. Rule 5.650(f).

TIP: *a foster parent, relative caregiver, nonrelated extended family member, or resource family retain rights and obligations regarding accessing and maintaining health and education information pursuant to EDC §§ 49069.3, 49076 and WIC § 16010 regardless of an ERH being appointed. WIC § 361(a)(3).*

- An ERH also has many legal obligations, including the following:
- Investigating a youth’s educational and developmental service needs and determining whether the needs are met to ensure:
 - Stability of the youth’s school placement
 - Placement in a “least restrictive” educational program
 - Access to academic resources, services, and extracurricular and enrichment activities
 - Access to needed educational and developmental services
 - Resolution to school disciplinary matters
 - Access to a free and appropriate public education (‘FAPE’)
 - Meeting with the youth at least once and as often as necessary to make decisions in the best interest of the youth
 - Being culturally sensitive to the youth
 - Complying with federal and state confidentiality laws
 - Participating and making decisions regarding all matters affecting the youth’s educational or developmental services needs
 - Maintaining knowledge and skills that ensure adequate representation of the youth’s interests
 - Attending status review hearings and participating in any part of the hearing concerning the youth’s educational or developmental service needs UNLESS, prior to the hearing, the ERH does one of the following:
 - The ERH provides information and recommendations regarding the youth’s education and developmental service needs to the assigned social worker or probation officer, or
 - The ERH submits a written recommendation to the court regarding the youth’s education and developmental service needs. Rule 5.650(f).



JUDICIAL COUNCIL OF CALIFORNIA

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

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

Overview

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

Duty of Inquiry

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

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

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

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

When do ICWA requirements beyond inquiry apply?

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

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

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

Services for Native American Children

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

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

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

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

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

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

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

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

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

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

Native Youth in California's Youth Justice System: What Do We Know?



**CALIFORNIA
TRIBAL FAMILIES
COALITION**

**AUTHORED BY
CALIFORNIA
TRIBAL FAMILIES
COALITION**

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(CHHS) AGENCY**



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California's Youth Justice System

The Division of Juvenile Justice (DJJ) was the state agency charged with juvenile incarceration and juvenile delinquency management for youth offenders with the most serious criminal backgrounds in California since it was established in 2005 operating under the Department of Corrections and Rehabilitation.¹ The DJJ was established as a result of a reorganization of California corrections agencies and was previously known as the California Youth Authority.² By 2007, most youth offenders ordered to secure confinement were committed to county facilities, while those convicted of the most serious felonies and having the most severe treatment needs were committed to the DJJ at the discretion of the court.³ However, the last two decades have brought about great reform to California's youth justice system including realignment in 2020 which allowed for courts and probation departments to step youth into less restrictive settings and to prevent youth from being sent to adult criminal courts for prosecution.

The 2020 realignment initiated by a bill known as SB 823, required that no new youth would be committed to the Division of Juvenile Justice, except for rare, court ordered exceptions, and those previously committed and awaiting acceptance after June 2021.⁴ DJJ facilities were set to close in June 2023 apart from the Pine Grove Youth Conservation Camp which will remain open.⁵

Realignment has gradually transferred the responsibility for managing all committed youth housed at the DJJ from the state to local county jurisdictions. This process follows a series of legislative and voter-approved measures designed to reduce incarceration and instead expanding rehabilitative and community-based options for youth across the state.

In 2021, the Office of Youth and Community Restoration (OYCR) was established to aid in the realignment efforts and to ensure that data and interventions remain available for community-based placements. OYCR aims to “promote a youth continuum of services that are trauma responsive and culturally informed, using public health approaches that support positive youth development, build the capacity of community-based approaches, and reduce the justice involvement of youth.” OYCR will promote evidence-based and promising practices to:

- Reduce the transfer of youth into the adult criminal justice system;
- Reduce racial and ethnic disparities; and
- Increase community-based responses and interventions.

1. Division of Juvenile Justice, *Historical Timeline*, Cal. Dept. of Corrections and Rehabilitation, <https://www.cdcr.ca.gov/juvenile-justice/historical-timeline/>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

Native Youth in California's Youth Justice System

One of the driving factors for the most recent realignment phase in California's youth justice system was to reduce the racial and ethnic disparities. While data is limited, we know that Native youth⁶ are disproportionately represented in the justice system compared to their population size and they are more likely to face harsher sentences.⁷ As one example, Native youth are 50 times more likely than White youth "to receive the most punitive sanctions such as out-of-home placement after adjudication or a waiver to adult court."⁸ This overrepresentation is part of a broader trend of racial disparities affecting Black and Brown youth as well.⁹

Unlike in the child welfare system, where Indian children receive remedial protections to address disproportionality, additional Native-specific protections often do not apply to Native youth in the youth justice system.¹⁰ The most effective protections that Indian children are afforded in the child welfare system include the authority for their tribal nations to be involved in their state court proceedings and requirements for county

agencies to work with the child's tribe to provide culturally driven services and connection. On the contrary, because similar protections are rarely applied in the realm of youth justice, tribes in California have had nominal involvement in the juvenile detention system over its history and individual Native youth may not have direct connection to their tribe while they are involved in the system.

Other system-wide challenges include that, county probation departments currently do not have a uniform method for identifying Native youth once they are in the system and there is not a consistent definition for who qualifies as a Native youth so the full scope of Native youth impacted is unavailable.¹¹ Additionally, tribes rarely can adjudicate or address justice issues of their youth because there is insufficient youth justice funding for tribes as the money has either never been made available, the grants not publicized, or barriers exist that make the tribes ineligible to receive the funding in parity with state counterparts.¹²

6. This report uses the term "Native youth" to describe children and young adults affiliated with tribal nations, but the authors acknowledge that tribal nations and tribal persons may prefer different terms and that systems and data sets often differ in the terms used to describe this population. Additional terms may include: American Indian/Alaska Native youth; Indigenous youth; Indian children and youth; etc. To the extent that a term other than "Native youth" is used in this report, it refers to a term used specifically by the individual or dataset to which it's referencing.

7. OYRC ab 102 rpt. At 3.

8. Off. Of juv. Just. And Delinq. Prevention, Lit Rev. A Product Of The Model Programs Guide, 2 (apr. 2016).

9. OYRC AB 102 Rpt. at 3.

10. The federal Indian Child Welfare Act (ICWA) applies to child custody proceedings involving foster care placement, termination of parental rights, proadaptive placements, and adoptive placements. 25 U.S.C. §1903, Indian Child Welfare Act (1978). ICWA falls short of full protection when it comes to Indian children within the youth justice system. ICWA specifically states protections do not need to apply when an Indian child has committed an act that would be considered a crime if committed by an adult. However, cases in which Indian children in California who are placed in out of home care do receive ICWA protections, are known as "status offense cases," or cases falling under the Welfare and Institutions Code Section 601 cases. Status offense cases are offenses that would not be considered criminal if committed by an adult such as truancy, being out of control of a parent or guardian, or running away from home. For more information, please see the "ICWA Information Sheet: Delinquency – Child's Indian Status – Right to Political and Cultural Connections – ICWA Requirements" by the Judicial Council of California. Available at: <https://courts.ca.gov/sites/default/files/courts/default/2024-08/icwa-delinquency-factsheet.pdf>.

Native Youth Data and Training Project

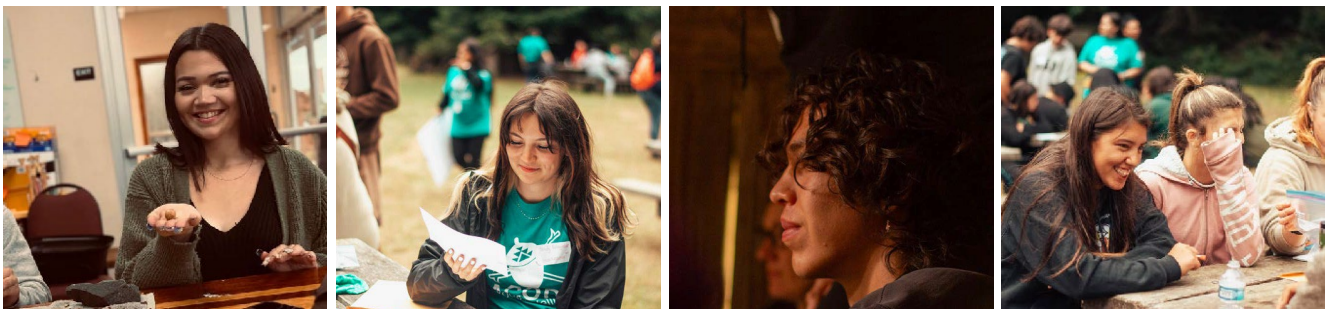
Because of the challenges outlined in the first two sections of this report, [California Tribal Families Coalition \(CTFC\)](#) began to work in partnership with California's new [Office of Community and Youth Restoration \(OYCR\)](#) to explore the data and story behind Native youth involvement in the justice system.

CTFC and OYCR have hosted tribal listening sessions and interviews and surveyed California probation officers to learn more about the current realities that Native youth, and their tribal communities, face in the California youth justice system. The goal of the project is to bring system partners together to develop promising practices for how the system can serve Native youth during this time of realignment and shifting to lesser restrictive settings.

However, CTFC and OYCR are not the first to embark on the journey of understanding and improving justice systems for Native youth in the United States. Read the resources below that have laid the groundwork for understanding the issues and tribally driven solutions.

Resources

- Tribal Juvenile Justice Background and Recommendations | 2019 National Congress of American Indians
- Native American Youth Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency | 2018 United States Government Accountability Office



¹¹ *Id.* at 7.

What Probation Officers in California's Youth Justice System Know, Think & Perceive About Working with Native Youth

In the Fall of 2023, a survey was circulated to juvenile probation officers throughout California to collect information from their professional perspective and experience on the current state of services provided by Juvenile Probation Departments for Native youth involved in the California youth justice system.

Surveys were distributed to California Juvenile Probation Departments through email. Participation was voluntary. The survey included 18 questions total and was estimated at 15 minutes to complete. There was a mix of quantitative and qualitative questions.

Summary of demographics of the 54 respondents:



- Most (50%) respondents work in small (population of approx. 0-200,000 people) counties.



- Most (43%) respondents work in the Central Region.



- Most (41%) identified as working in "Management."



- Most (74%) have worked in the youth justice system for more than 10 years.



- Most (46%) of respondents identified as "White" followed by (42%) as "Hispanic, Latino or Spanish Origin."

What size is the county or counties in which you work or serve?



- Small (Population of approx. 0 - 200,000 people) 50%



- Large (Population of approx. 700,001+ people) 39%



- Medium (Population of approx. 200,001 - 700,000 people) 11%

In which region do you work or serve?

- Central Region 43%
- North Region 23%
- Bay Area Region 13%
- South Region 11%
- Sacramento Region 9%

How long have you worked in the youth justice system?

- More than 10 years 74%
- 8-10 years 9%
- 5-7 years 7%
- 1-4 years 7%
- Less than 1 year 2%

What is your current job level?

- Management 41%
- Line Staff 33%
- Administration 26%

What is your race/cultural background?

- White 46%
- Hispanic, Latino or Spanish Origin 42%
- Black or African American 6%
- Prefer not to disclose 6%

Summary of self-assessment responses:

We asked respondents for reflections on their own knowledge and experience working with the youth justice system.

- 59% of respondents agreed that: Native American youth respond well to cultural and/or spiritual connections with their tribal communities.
- Followed by 24% of respondents agreeing that: Native American youth have a difficult time remaining connected to their tribes and tribal communities while they are in the system.

Few respondents agreed that:

- Native American youth that I have worked with tend to reoffend or re-enter the youth justice system at a higher rate. 13%

Few respondents reflected that they see an overrepresentation or that they have worked with a majority of Native American youth before:

- Native American youth are overrepresented in the youth justice system where I work 9%
- Native American youth are a majority of the youth population that I work with. 2%

Respondents were asked to describe their “current experience” working with the youth justice system and Native American youth on a scale ranging from: *Somewhat (1); Yes (2); No (0); I don’t know*

A majority of respondents agreed that cultural, spiritual, and tribal backgrounds are important for Native youth in the youth justice system as well as an important part of how respondents can best serve Native American youth populations.

- 93% of respondents agreed that they “see an importance for Native American youth in the system to maintain cultural and spiritual connections and practices.”
- 91% agreed that it is important for them to “understand cultural, spiritual and tribal backgrounds and histories to best serve Native American youth populations.”

Most respondents were unsure or did not have experience with policies and procedures in their own departments that are specifically designed to address the needs of Native American populations or best practices for working with tribal governments and agencies.

- 56% of respondents said “No” or “I don’t know” when asked if their probation department staff “received training related to the potential impacts of multi-generational trauma on Native American probationers and their families.”
- 56% of respondents said “No” or “I don’t know” when asked if their department has “policies and procedures for a government-to-government interaction between your agency and the Tribal Governments?”

Respondents were asked about their general knowledge level of various topics related to working with tribes and tribal communities by selecting one of the following options: *None (0); Introductory (1); Working Knowledge (2); Intermediate (3); Advanced (4)*

Respondents identified limited knowledge about most all of the topics that were included in the survey. They are listed below in order of reported knowledge from least to most. Respondents reported the least level of knowledge regarding Public Law 280. They reported the most amount of working or Intermediate/Advanced knowledge about ACEs (abuse, neglect, and other adverse childhood experiences). Of 54 respondents:

	None/ Introductory	Working	Intermediate/ Advanced
Public Law 53-280, that extends California’s jurisdictional authority for the enforcement of state criminal codes on Indian Trust Lands	68%	15%	17%
Reducing Native American mental health disparities through cultural connections.	53%	36%	11%
Tribal Sovereignty	53%	22%	25%
Tribal demographics, communities, and culture.	43%	32%	25%
Historical Trauma in Native American communities.	43%	32%	25%
ACEs (abuse, neglect, and other adverse childhood experiences)	13%	21%	66%

Respondents were asked what would be the most helpful to learn about in order to best serve Native American youth in the youth justice system. They were asked to rate according to the following scale. *Not helpful (0); Somewhat helpful (1); Helpful (2); Very helpful (3)*

The list below is in order demonstrating the percentage of respondents that marked “Helpful” or “Very Helpful.” Of 54 respondents:

Native American organizations, providers, and agencies that can provide services for Native youth.	89%
Current studies, research, and Native youth programs that provide best practices for working with Native American youth.	87%
Tribal government structures, systems, and sovereignty.	83%
A basic understanding of history and connections to historical trauma.	76%
A basic understanding of history and connections to historical trauma.	76%
Understanding ACEs (abuse, neglect, and other adverse childhood experiences) connections with tribal youth and communities.	13%

Other suggestions provided by respondents that would be useful to learn more about included:

- Indian Child Welfare Act (ICWA) notification requirements
- Local training opportunities
- Addressing gangs and gang violence for Native youth
- Engagement of tribal communities 101

Site Resources, Programs & Procedures

The below items asked about current resources, programs and procedures offered at work sites and/or as part of the youth justice system.

Respondents were asked if they had worked with any of the following or if their agency currently works with any of the following related to Native American youth in the justice system. Most had at least some experience working with the following services or their agency was currently connected with the resources and programs. The two areas that had the highest reported “I have no experience working with these services” were Native American cultural practitioners or spiritual leaders (38% reported no experience working with these services) and Native American psychologists or family therapists (31%).

Of 54 respondents:

	I have worked with this service	My agency works with this service	I do not know if my agency connects with these services	I have no experience working with these services
Native American cultural practitioners or spiritual leaders.	20%	18%	25%	38%
Tribal social workers	29%	25%	20%	25%
Indian Health Service (or Indian serving medical care facilities)	28%	23%	20%	28%
Native American youth programs or community organizations	17%	27%	27%	27%
Native American psychologists or family therapists	15%	15%	40%	31%
Native American artists or community members	21%	21%	22%	16%

When asked to rate the types of services that Native American youth need to navigate and succeed in the justice system respondents generally noted that all services were at least somewhat important. The average ranking for those on a scale of 1-4 with 4 being "Very Important" for each item is listed below in order by weighted average. The scale used was: *Very important (4); Important (3); Somewhat important (2); Not important (1); Neutral (0)*

- Mental health services(counseling, prevention programs) 3.74
- Access to educational opportunities (classes, workshops, trainings) 3.67
- Connections to their tribal communities and cultures 3.6
- Tutoring and/or educational assistance to complete schooling 3.56
- Ongoing clinician services from tribal social workers 3.48

When asked what has worked to connect with Native American youth in the youth justice system respondents noted the following in order of most mentioned:

- Culturally relevant services.
- Respect, and genuine empathy.
- Engaging with local tribal leaders and representatives to develop case plans. Direct tribal involvement.

- Family support and reunification. Support for families. Connecting parents to resources. Connect with their families.
- Social workers/ tribal social workers.

When asked what other supports or services would improve the experience of Native American youth in the justice system respondents noted the following:

- Trainings for staff. Mandate minimum training standards for all probation staff regarding historical trauma, implicit bias, and cultural awareness, etc. In smaller counties, general knowledge of history, culture, traditions, and additional resources is needed.
- Have immediate tribal assistance, presence and input for assessments and therapeutic support when tribal youth are arrested and face detention.
- Have a tribal counselor assigned to juvenile hall or have a representative or liaison who is accessible to department at all times for questions, service referrals, recommendations etc.
- Native American mentors who were available to assist and support the youth and contribute to our case plans. Ongoing guest visitors and speakers with tribal connections.
- The residential programs are superb however the struggle is hard when youth return. A Native-type Wraparound program could be helpful.

“We employ a senior officer who is Native American who pays close attention to our relationship with the tribes with a special awareness of tribal issues such as Missing and Murdered Indigenous Women and she runs a Native Talking Circle.”

Finally, when asked to reflect on anything else that may be useful for addressing these issues within the youth justice system respondents were focused on the following general themes:

1. Some said that they did not have direct working experience with Native American youth because the amount of Native youth in the youth justice system is “very small.” Others reflected that in the population they work with, Native youth are not significantly involved. One respondent wrote “My 31 years of experience, I have had very minimal to no supervision or cases that involved Native American youth.”
2. Other respondents focused on the importance of tribal outreach and wrote that though they have in the past tried reaching out to tribes, tribal social workers, and tribal communities they did not receive a response. One respondent wrote “Recently, I contacted tribal social workers to request any additional support offered for Native American Justice Involved youth in our county. While I received responses regarding multiple youth, I have not received any collaboration from workers regarding treatment options or culturally affirming interventions that would support a minor or their family.”

What Tribal Leaders & Representatives Know, Think & Perceive About Native Youth in California's Youth Justice System

CTFC hosted tribal listening sessions with youth, tribal leaders, and tribal representatives (social service workers, tribal court staff, etc.) throughout the state of California to gauge what is currently known and experienced by tribal families and communities when their youth become involved in the state youth justice system. From the stories shared, themes emerged and recommendations were made. There were nearly 220 unique individual participants and 27 unique tribal nations represented across all listening sessions.

4/27/2023 Tribal Leaders and Representatives at CTFC Annual Meeting in Sacramento, CA	9/20/2023 Leaders and Representatives at CTFC Annual Dinner in Sacramento, CA	12/15/2023 Native Youth in Mendocino and Lake Counties	1/18/2024 Tribal Leaders and Native Youth in Inyo and Mono Counties	2/26/2024 Native Youth Statewide Virtual
72 participants from 23 tribal nations	64 participants from 13 tribal nations	40 participants from 8 tribal nations	17 participants from 3 tribal nations	26 participants from 9 tribal nations

Respondents in listening sessions were encouraged to participate via open discussion and were also given the opportunity to reflect in writing about the issues that Native youth face as they are navigating the youth justice system; services that might be beneficial for Native youth related to the youth justice system as well as how the California Tribal Families Coalition can best provide trainings or other interventions that can address some of the most pressing needs of Native youth. One particular importance of the listening sessions was the Native Youth who participated in the sessions providing insight and feedback from their perspectives and experiences. This was alongside youth justice workers, tribal social workers, and tribal leaders and community members.

Connections Across Issues Facing Native Youth

It is well established in research studies that high incarceration rates of youth can be connected with social inequities like poverty, disability, inconsistent or inadequate health care, and mental health.¹³ Listening sessions mirrored some of these findings and also expanded on how Native Youth and their families continue to face challenges while they navigate the system.

One tribal representative shared a powerful statement about their ongoing experience with these issues facing Native youth:

I sat on the Youth justice board for 9 years and noticed the disparity. All I had to do was sit in the lobby. When I saw a kid, a 9-year old sitting in chains, I went to the board with everything I was witnessing. Native Americans are the smallest population, but you could just see it, the over representation of these children. ...If you look at the data, you know that you have a systems failure. I watched a child broken. ...That case bothers me to this day because there were so few interventions. But when I saw the tribe start to create a program for tribal youth to understand who they are, the way we are, and who we can be. I went back to the board and they said "What needs to happen?" Stop taking Native kids, reach out to tribes, pay attention and do what is in the best interest of the tribes.

As of 2020, children under 12 can no longer be prosecuted in juvenile court except in rare incidents – setting a minimum age for court jurisdiction for the first time in California – but more work to ensure children's needs are being met with age-appropriate services is needed.



¹² *Id.* at 11.*Id.* at 7.

¹³ Annamma, Subini Ancy, and Jamelia Morgan. "Youth incarceration and abolition." *NYU Rev. L. & Soc. Change* 45 (2021): 471.

Another respondent put it very succinctly by saying:

What do our youth face? Real life issues. No home, no food, no support and no good influences.

1 • Issues facing Native Youth Entering the Youth justice System

Listening sessions held with tribal leaders and tribal youth throughout California highlighted several systemic, cultural, and social factors that contribute to the high rates of Native youth involvement in youth justice system. Themes identified by listening sessions included:

- **Geographic Isolation and Lack of Access to Services:** The geographic isolation of many Native communities limits access to crucial services like mental health counseling early interventions for things like problems at school; chronic absenteeism; lack of transportation etc. This leads to factors that contribute to youth becoming involved in crime or leading them into the youth justice system.
- **Education and School Expulsion:** In certain areas of the state, school expulsions are higher for Native American Youth than any other group despite the fact that Native American Youth make up a lower percentage of the population than other groups, leading to disparities in educational achievement and funneling Native Youth into the youth justice system at an early age.¹⁴ Listening session respondents reflected that this is something they continue to experience. Youth are often treated unfairly and instead of receiving services for behavioral issues, particularly when youth act out, the school system appears to be quick to remove youth rather than addressing underlying issues or providing support. This exacerbates the chances of youth entering the justice system.
- **Intergenerational Trauma & Family Dynamics:** Many families have multiple generations involved in the justice system, which exacerbates trauma and perpetuates cycles of incarceration. A lack of early intervention and support for families in distress often leads to youth involvement in the system. One participant youth justice system worker noted that they currently serve multiple families with three generations involved in the carceral system – grandfather in prison or jail, father in prison or jail, and now a child in juvenile hall.
- **Socioeconomic Challenges:** Poverty, lack of basic life skills, limited access to education, and inadequate housing are common issues facing Native youth entering the justice system. One area particularly highlighted by respondents was that youth face struggles with gang affiliation and lack of positive role models. This also included a lack of learning basic life skills that help them feel more secure in their lives, leading to them seeking out gangs to feel as if they have a safety net that can help prevent them with struggling with ongoing socioeconomic issues. One respondent

¹⁴ <https://www.sdsu.edu/news/2019/09/report-native-americans-suspended-disproportionate-rates-recommendations-offered>.

In Ukiah/Mendocino County I see about 40% of [youth] in juvenile detention that are Native. Many have gang involvement and they often feel that barriers for them include a total lack of basic life skills learning both in and out of the system.

One Native Youth (Age 17) stated:

I feel you would have to keep a lot of Native youth or any youth out of gangs because that is how most end up in juvie or on drugs.

Youth were also clear to emphasize that systemic issues and historical injustices continue to exacerbate Native youth involvement in the youth justice system. One youth (Age 15) stated *I feel like most Native youth end up in juvie because a lot of Natives are trafficked or they hangout with the wrong group of people.* Another (Age 17) agreed trafficking is a big thing. *And even though you are a victim you are treated like a criminal.* Considering that trafficking rates of Native American people (primarily Native American women and girls) are some of the highest nationally and in the state of California, this is an ongoing issue that demonstrates how this deeper structural inequity criminalizes marginalized youth and contributes to ongoing vulnerabilities instead of addressing deeper structural issues and needs.

- **Cultural Misunderstandings:** Cultural misunderstandings between Native youth and non-Native authority figures, like public defenders or probation officers, contribute to miscommunication and alienation. For example, cultural norms (like not making direct eye contact with authority figures) can be misinterpreted as disrespect. This compounds feelings of marginalization for the Native youth and prevents them from seeking out further services or utilizing services because of a lack of trust. One participant noted that
-

My son has been involved the system because of violence. The public defender who was helping him pushed off the case as my son was just a bad kid who didn't want to listen or had a bad attitude. This is because he wouldn't make eye contact with her so, as his mom, explained to her about our cultural norms.

noted: Racism: Participants noted that racism continues to play a significant role in the challenges Native youth face, affecting their interactions with authorities and impacting their treatment within the justice system.

2• Current Experience Working with the Youth Justice System

Listening sessions held with tribal leaders and tribal youth throughout California highlighted several systemic, cultural, and social factors that contribute to the high rates of Native youth involvement in youth justice system. Themes identified by listening sessions included:

- **Challenges with Collaboration:** There is a significant gap in communication and collaboration between tribal communities and county youth justice systems. Staff have a lack of training or knowledge and there is very little Native representation on boards or commissions to represent the particular needs or interests of tribal youth or tribal sovereign nations. Throughout these processes tribes may be left out of being able to advocate effectively for the youth limiting access to culturally relevant services and preventing the tribe from being keyed in to how best to advise their youth. In addition, there is limited follow-up by youth justice system staff about youth transitioning between systems and jurisdictions can be convoluted and there is rarely ongoing follow-up with tribal youth that help them to clearly navigate a way through and out of the system. Youth and their families may feel “passed around” or lose track of the number of people who may be involved in how youth must navigate through the system.
- **Cultural Relevance:** Many tribal representatives expressed frustration with youth justice programs that do not incorporate Native culture or fail to understand its importance. While some tribes have made efforts to incorporate cultural activities and cultural practices in their interventions, there is a lack of broader systemic recognition of these practices.
- **Access to Services:** Tribal communities often struggle with inaccessible or incomplete state and county data, which hampers their ability to track and respond to the needs of Native youth. Tribal families and tribal employees reflected that lack of engaging with detention center staff and not having opportunities for county, state and other staff to understand tribal needs and tribal sovereignty present significant barriers to implementing effective youth programming and interventions.

3• Community Responses and Interventions

Several communities have developed their own community-based interventions to support Native youth:

- **Youth Empowerment Initiatives:** Programs like the Bishop Paiute Youth Council and the Wellness Warriors Program create safe spaces for youth, offering mentorship, field trips, and opportunities for cultural engagement. These initiatives focus on creating a sense of belonging and identity.

- Cultural and Mentorship Programs: Many respondents emphasized the need for cultural education and mentoring. Youth need access to mentors and role models who can guide them and help them develop a positive sense of self. Some community efforts include the Juvenile to Healing Project, which are designed to give youth a sense of purpose and future prospects outside of the justice system.

One respondent noted:

We need mentors because children need to have a sense of belonging. There should be programs that support community adults to just be there in a positive manner with youth so they have someone to make sure they have food and clothing and are able to participate in activities.

Two student youth reflected a particular connection to Pow-Wows as a key intervention opportunity.

You must be sober for Pow Wows. This can help with sobriety to be connected with this. (Age 16)

Growing up in the community surrounded by Pow Wows creates a completely different mindset. (Age 15)

Another respondent added:

We need to connect the cultural events with the kids who need it. Probation departments could help to facilitate this for our youth who are in the system

- **Safe Spaces for Youth:** Creating designated spaces for youth, like education centers or youth councils, allows them to participate in activities that foster a positive identity and help counteract the feelings of alienation that lead them into the youth justice system and also that prevent them from successfully navigating the system during and after any period of incarceration. This can also be a key way to introduce youth to job training and create pathways to education, which were named as essential interventions for preventing youth from entering or re-entering the youth justice system.

4. Listening Session Recommendations

Key recommendations focus on early intervention, cultural empowerment, and community-based support:

- **Access to Data & Data Collection:** Listening session respondents noted that tribes need to measure their own data because the state and county data is usually outdated or not reflective of tribal voices. Providing funding for tribes or the creation of well-funded and documented data sets by organizations like CTFC will help to make data more accessible to tribal staff.
- **Cultural Competency:** Youth justice professionals should be trained in cultural competency, with an emphasis on understanding California Indian history; Native tribal sovereignty, and ongoing issues facing Native youth and communities, with a focus on trauma informed care and Native resiliency. This includes incorporating cultural activities into rehabilitation programs to help youth connect with community and mentorship connections. Tribal knowledge holders should be included in how best to develop and implement these programs and projects.

One respondent noted:

The only way to be better is through knowledge. Departments should research and gather information about the tribes and peoples they work with, they should know about our communities and histories. Their focus needs to be on helping youth and how to make it easier for the youth to navigate the youth justice system.

Another added:

Staff and workers should think of themselves as allies. But to be a good ally, they need to learn their own bias and judgements of some people. We would like to see our children treated better and validated instead of people making excuse after excuse for why they cannot help.

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- **Mentorship and Leadership:** Building mentorship programs that pair youth with positive role models from their communities is essential. Tribal leaders emphasize the importance of leadership development and creating opportunities for youth to become leaders in their own communities.
- **Early Intervention and Family Support:** Tribes, schools, mentors, social workers etc. need to intervene earlier, especially when youth show signs of academic or behavioral struggles. Providing family-centered support, including resources for parents and caregivers, is critical to breaking the intergenerational cycles of involvement in the system. There was a repeated call for increased community involvement, especially from elders and family members, in efforts to intervene before youth enter the system.
- **Community-Based Programs:** Communities should continue to develop their own programs and interventions, as these are often more culturally relevant and accessible. Examples include leadership training, life skills programs, and reintroducing Native youth to nature and cultural practices as a way of grounding them in land and their communities.
- **Supportive Environments:** Creating welcoming, harm-reducing spaces where Native youth feel validated and empowered is essential. This includes providing spaces for youth to express themselves, make decisions, and learn about their cultural heritage. This can also connect youth to each other so they build more peer supports.

One respondent noted:

Kids in the juvenile system don't hang out with the 'good' kids. They think 'these kids are too good for me. I don't belong here.' We need to create opportunities for them to create real connections.

Another added:

Kids don't have opportunities to play sports because of money and transportation issues. These same kids I know facing this issue got in trouble for breaking into the gym.

Listening sessions underscored the importance of cultural sensitivity, early intervention, and community-based solutions to support Native youth in navigating the youth justice system. There is a clear need for more culturally relevant programs, increased mentorship, and systemic changes to improve outcomes for Native youth in the justice system. Staff training and helping staff to further engage and build true collaborations and partnerships with tribes was a key recommendation of respondents.

What's Next for Native Youth in California's Juvenile Justice System

Given all that has been learned throughout the first couple years of this project, California Tribal Families Coalition Member Tribes put forth the following recommendations on where systems partners, including tribes, probation officers, counties agencies, the Office of Youth and Community Restoration, advocates, parents, and community members can focus efforts moving forward:

- 1• *Strengthen Training for Placements, Probation Officers, and System Partners About the History of Tribes in California, Native Youth in Youth justice, and the Importance of Tribal Connection to Healing and Rehabilitation.*

Implementing culturally relevant and sensitive interventions can help reduce recidivism and improve outcomes for Native youth.¹⁵ As evidenced by probation officer survey responses, probation officers working with Native youth are interested in further training on cultural competency and how to connect youth to Native-specific resources and programming. Tribal leaders and representatives should be included in developing training for officers, placements, and others to build the knowledge and capacity of all who work with Native youth in youth justice.

- 2• *Enhance Data Collection and Analysis to Improve Understanding of Youth Justice Population.*

While there is some data available (detailed throughout this report) about Native youth in California's youth justice system, there are various terms used to describe Native youth population in different data sets and there are inconsistencies in how counties collect data, leading to gaps in data currently

¹⁵ U.S. Dept. of Just. & U.S. Dept. of Interior, Expert Working Group Report: Native American Traditional Justice Practices, 7 (Sept. 2014).

available. It is crucial to improve the accuracy and completeness of data collection regarding Native youth. First, the term “Indigenous” or “Native” or “American Indian and Alaska Native” – or whichever term is used - must be defined and all counties must be operating with the same definition for data to be comparable across the state. The AB 102 Report indicates the term “Indigenous” is currently being used and since that term can encompass Indigenous Peoples from outside the United States as well, it is recommended that a definition be adhered to for clarity in reporting.

3• *Increase Community-Based Support by More Robustly Including Tribes in System Development and Improvement.*

By strengthening partnerships with tribes and tribal organizations, community-based placements can provide better support systems for youth in conjunction with the youth justice system. This includes expanding access to mentorship programs, culturally appropriate counseling, and community-based alternatives to detention that include tribal practices and ideologies. One positive example that can be looked to as a model is Leech Lake Band of Ojibwe’s Wellness Court which has shown that both cultural and community based interventions lead to a significant decrease in recidivism for Native youth.

Acknowledgements

The Board of Directors and the staff at California Tribal Families Coalition express our deep gratitude to all the tribal youth, tribal leaders, tribal Indian Child Welfare Act (ICWA) advocates, county probation officers, and subject matter experts including Dr. Cutcha Risling Baldy and William Feather, for their time, wisdom and guidance in the development of this report. Thank you for sharing your stories, concerns and insights. We will work hard to honor them through continued tribal collaboration to see the recommendations of this report realized.

¹⁶. *Id.*

¹⁷. *Id.*



CALIFORNIA TRIBAL FAMILIES COALITION



PSYCHOTROPIC MEDICATIONS AND TRIBAL ADVOCACY

Significant legislative efforts in California over the past decade have curtailed use of psychotropic medications in foster care, resulting in meaningful declines in prescriptions and promising quality improvement practices. Yet disparities remain, particularly for older foster youth in congregate care.

CALIFORNIA
FOSTER
YOUTH
IN
CONGREGATE
CARE ON
**PSYCHOTROPIC
MEDICATION**

66%

CCWIP, 2022

DECLINES IN
ANTIPSYCHOTIC
PRESCRIPTIONS
OVER THE PAST
DECADE

AGES 16-17 ON
**PSYCHOTROPIC
MEDICATION**

30%

CCWIP, 2022



58%

NUNES, 2023

Older foster youth who have been in foster care for 24 months or longer, as well as youth placed in congregate care, are among the youth most likely to be prescribed psychotropic medications, particularly antipsychotics, the most potent psychotropic. Youth in these demographics have similarly experienced the least amount of decline in prescribing. While there is much work to champion, youth in long-term foster care remain most vulnerable to over prescribing trends.

WHY IT MATTERS FOR TRIBES

With California Native children being more than four times as likely to be placed in foster care than white children, issues related to foster care and complex care are of priority concern to tribal providers.

Advocacy in the area of psychotropic medication is a critical exercise of ICWA and tribal oversight.

4.12 RACIAL
DISPARITY
CCWIP 2023

COMPLEX TRAUMA AND MISDIAGNOSIS

Symptoms of complex and intergenerational trauma are many, and may present in children as difficulties with:

- Forming relationships
- Testing boundaries
- Controlling behavior
- Expressing emotions
- Nightmares and flashbacks
- Self medicating and substance abuse
- Sleep and toileting issues

All of these symptoms may resemble diagnostic criteria for mental illness. In addition there is concern that treatment of perceived mental illness with psychotropic medications may not address underlying trauma and attachment issues at the root of the behaviors and symptoms. (Szilagyi et al, 2015) The American Academy of Pediatrics recommends a trauma-informed approach, taking into consideration the life experiences of the child and family, and assessment by a mental health professional with training in trauma-informed care. (AAP, 2016)



PSYCHOTROPIC MEDICATIONS

AND TRIBAL ADVOCACY

WHAT YOU NEED TO KNOW

While not prescribers, ICWA advocates can take several marked steps to ensure the medication plans for their tribal children are appropriate and have considered the holistic context of the Indian child, as well as the risks and benefits of medication. Prior to prescribing, a Benefits and Risks Analysis compares the benefits and risks of a treatment plan that does not include medication with one that does. (CDSS, 2018) It is important to look for this analysis when reviewing medication evaluations.

POTENTIAL BENEFITS

Both short and long term improvements in:

- Stabilizing mood
- Reducing symptoms
- Overall improved quality of life

The potential benefits of medication are many, and many children in foster care both benefit and are in clinical need of such medicinal interventions to manage otherwise debilitating symptoms. Where indicated, medication can be an essential component of a comprehensive treatment plan.

POTENTIAL RISKS

- Suicidal ideation
- Sleep disturbance
- Sleepiness and lethargy
- Rapid weight gain and obesity
- Blood sugar and metabolism issues
- Nervousness and irritability
- Headaches and upset stomach
- Long-term complications such as serious illness, body and facial ticks

Risks increase with off-label prescribing

Many potential risks are unknown, however early research indicates long-term use of psychotropic medications, particularly in childhood, could have lasting effects on children's health and wellbeing.

MYTH

"Changes to the child's medication plan could risk their placement."

FACT

Psychotropic medications are *not* indicated for placement stabilization.

JV 220

The JV 220 Form Package includes a series of court forms related to Psychotropic Medications. The JV 220 initiates the request to the court to give the psychotropic medication to the child. Judicial approval is mandated prior to administration of psychotropic medications except under the following circumstances:

1. The child is in out-of-home care that is not foster care,
2. Indicated otherwise by a previous court order,
3. In cases of emergency.

In cases of emergency, a JV 220 must be filed within two days of administration.

JV 220 A & B

The JV 220 must be accompanied by a physician's statement attachment, included in JV 220 A (or JV 220 B if a request to continue an existing court ordered regimen.) The physician's statement should include essential information to include the physician's risk benefit analysis and reasons for recommending the psychotropic medication.

ICWA

ADVOCACY TIP

If the tribe hasn't received all of these forms, request them in court. They contain essential information to help you determine whether appropriate steps have been taken prior to recommending psychotropic medication.

JV 223

The JV 223 will contain the court's order whether to approve the medication plan or not.



PSYCHOTROPIC MEDICATIONS

AND TRIBAL ADVOCACY

THE TRIBE DISAGREES WITH THE MEDICATION PLAN. NOW WHAT?

Once the tribe has reviewed case information and determined a position, Tribal Social Workers have several avenues from which to choose in advocating for further medication review.

BRING IT TO THE CHILD AND FAMILY TEAM

Child and Family Teaming provides an excellent opportunity to explore concerns related to new or existing psychotropic medications prescribed to the child, as well as opportunity for the child and family to engage in meaningful conversation about past or current experiences with side effects, effectiveness, and any reservations the team may have.

CONSULT WITH THE PRESCRIBING PHYSICIAN

Case consultation with the prescribing physician offers the TSW an opportunity to provide essential context regarding the child and family's history from a tribal perspective that the physician may not have been aware of or otherwise considered. This is also an opportunity for the TSW to address any identified limitations or omissions in the JV 220 Physician's Statement, and ask questions about whether the physician: considered alternatives, reviewed the child's medical, behavioral, and child welfare records, prior to prescribing.

FILE A JV 222

The JV 222 allows you to address the court with your concerns and/or opposition related to the proposed medication plan. This must be filed within four court days of receiving notice of the pending application for medication.

HOW TO MAKE YOUR CASE

DID THE TRIBE RECEIVE NOTICE?

Without notice of the proposed medication in the form of the JV 220 and JV 220 A or JV 220B, the tribe can request additional time to review the application.

DID THE PHYSICIAN STATEMENT INCLUDE SUFFICIENT INFO?

Without thorough review of the child's medical, behavioral, and child welfare history, as well as a thorough Benefit and Risk Analysis and proposed treatment plan, the tribe can request the physician provide additional information.

IS THE PLAN PROPOSING 2 OR MORE PSYCHOTROPICS?

If this is the first time the child is being prescribed medication and the application calls for more than one psychotropic, or if there is a contraindication for prescribing the medications together, it is reasonable to request additional court review.

IS THE PLAN PROPOSING 3 OR MORE PSYCHOTROPICS?

Children prescribed three or more psychotropics for longer than 90 days triggers an audit review by the Medical Board of California. The JV 228 and JV 229 will allow release of the child's information to the medical board for additional review.

RESOURCES

1. [CalSWEC Psychotropic Medications in Foster Care Online Course for Community Partners](#)
2. [Foster Care Quality Improvement Project JV 220 Form Package on Google Drive](#)
3. [Drugging Our Kids, Bay Area News Group 2014 Investigative Report](#)
4. [Helping Foster and Adoptive Families Cope with Trauma, American Academy of Pediatrics 2016](#)
5. [California Guidelines for Use of Psychotropic Medications with Youth in Foster Care, CDSS 2018](#)
6. Foster Youth Ombudsperson
fosteryouthhelp@dss.ca.gov or 877-846-1602

2024

CHILD AND FAMILY TEAMS - TRIBAL ENGAGEMENT GUIDE





Acknowledgments

This Child and Family Team -Tribal Engagement Guide was a project of the California Department of Social Services in collaboration with California Tribal Families Coalition (CTFC) and the Resource Center for Family Focused Practice. The project was inspired by the findings of the CTFC CFT project and 2020 CFT Report. The Guide was vetted through a tribal engagement process, which included three listening sessions.

CALIFORNIA TRIBAL FAMILIES COALITION

[HTTPS://WWW.CALTRIBALFAMILIES.ORG/](https://www.caltribalfamilies.org/)

The mission of the California Tribal Families Coalition is to promote and protect the health, safety and welfare of tribal children and families, which are inherent tribal governmental functions and are at the core of tribal sovereignty and tribal governance.



CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

[HTTPS://WWW.CDSS.CA.GOV/](https://www.cdss.ca.gov/)

The mission of CDSS is to serve, aid, and protect needy and vulnerable children and adults in ways that strengthen and preserve families, encourage personal responsibility, and foster independence.



UC DAVIS, HUMAN SERVICES

[HTTPS:HUMANSERVICES.UCDAVIS.EDU](https://humanservices.ucdavis.edu)

We deliver innovative, research-based workforce and organizational development services through training, consultation and technical assistance. We partner with Human Service professionals and agencies to improve the lives of those most in need.



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EXECUTIVE SUMMARY

The Child and Family Teaming (CFT) model forms the basis of practice for child welfare services under the Integrated Core Practice Model (ICPM) and California's Continuum of Care Reform (CCR). The ICPM guiding principles hold that practice with children and families through the CFT process must be trauma-informed and culturally and linguistically responsive.[1] For Indian children and families, successful implementation of these principles requires compliance and incorporation of the following into daily practice:

- Indian Child Welfare Act (ICWA) requirements;
- Understanding how the "essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families"[2] impact cases; and
- Comprehending the history of colonization and historical trauma impacting Tribes, Indian children, and their families.

ICWA was passed to prevent the recurrence of historical practices that led to the wholesale and unwarranted placement of Indian children in foster care with White families. ICWA was a completely new approach to child welfare and ICWA's requirements are considered the gold standard.[3] Despite ICWA's passage more than 40 years ago, inconsistent implementation and the continuing effects of colonization have resulted in the disproportional rates of Indian children in foster care. Today, Indian children in California are four times more likely to enter foster care than White children.[4] As California seeks to address disproportionality and increase equity in the child welfare system, this Guide is meant to assist county child welfare and probation staff, contracted providers, and community based organizations in complying with legal requirements and implementing best practices for Indian children, families, and Tribes in the CFT process.

This Guide begins with an overview of ICWA requirements for the CFT. The Guide then moves on to best practices in partnering with Tribes, including learning about the Tribe and understanding differing perspectives. The Guide continues with recommended best practices for including children and engaging all team members in the CFT, provides guidance in making CFT meetings accessible and culturally responsive, and gives tips to practitioners in their ongoing communication with the team between meetings.

Appendix A of the Guide is a checklist to review in preparing for CFT meetings with Indian children, families, and Tribes. Appendix B explains the importance of Continuous Quality Improvement (CQI) and provides further information on CQI's value in fortifying the processes of the CFT and advancing outcomes for Indian children, families, professionals, and Tribes.

ICWA AND CFT REQUIREMENTS FOR INDIAN CHILDREN IN CALIFORNIA

CFT meetings are a key component in the delivery of services to parents, children, and families, and when it comes to cases involving Indian children, active efforts must be provided in the CFT process. Active efforts must be “affirmative, active, timely, and thorough.” [5] Further guidance on active efforts prior to removal can be found in [ACL 23-64](#). [6]

- In the context of CFT meetings, active efforts require the timely setting of meetings:
 - (1) To comply with “active efforts” to prevent the break up of an Indian family, a CFT meeting should occur **prior to removal** of an Indian child and placement in foster care; [7]
 - (2) It is required for a CFT meeting to be scheduled **before the Disposition Hearing** (30 days from the date the Indian child entered foster care); [8]
 - (3) Ongoing CFT meetings must be scheduled at a minimum of every six (6) months, but best practice for a case involving an Indian child may require shorter time settings; STRTP, ICC, IHBS, and TFC youth require CFT meetings every 90 days; [8]
 - The Tribe or family may request more frequent meetings, as often as weekly, to address barriers to achieve case plan objectives as required by active efforts.
- As directed under [ACL 19-26](#), the CFT must be engaged whenever there is a **need for a placement change**, to engage the team in developing a placement preservation plan, conducting family finding, and/or creating a transition plan. [9] In cases involving an Indian child, “active efforts” requires that representatives of the Indian child’s tribe be meaningfully included in the CFT meeting. [5,7]
- Scheduling CFT meetings require affirmative efforts, specifically in conducting **early collaboration with the Indian child’s Tribe** to identify the time, date, and location of the CFT meeting. If a Tribal representative is unavailable but would like to participate, the best practice is to reschedule the meeting or provide alternative modes for meeting participation. [10]
- Active and thorough efforts must be provided to invite and include the Tribal representative in the CFT process and meetings. Such efforts foster and support a commitment to collaboration. These efforts should include:
 - Engaging the Tribal representative in pre-meetings to prepare for the CFT meeting.
 - Engaging the Tribal representative in any assessments to inform the CFT process, including CANS, mental health and developmental screenings.

“I WAS CALLED THE DAY OF [THE CFT MEETING] LIKE, ‘WHY AREN’T YOU HERE? WE’RE HAVING THE CFT RIGHT NOW’... AND I WAS NOT INVOLVED IN THE PREPARATION OR KNOWING THAT IT WAS HAPPENING.” -TRIBAL ICWA WORKER

ICWA AND CFT REQUIREMENTS FOR INDIAN CHILDREN IN CALIFORNIA

- The Tribal representative is a **required CFT team member** and it is essential for the County to collaborate with the Tribe. The Tribal representative cannot be excluded from the CFT process, even at the request of the child or parent. When the Tribe is not participating in the team, the County must demonstrate that active efforts occurred to include the Tribal Representative, including documenting all attempts to contact them.[10] If the Tribe cannot attend the CFT meeting, the caseworker shall inform the Tribe of the outcomes, verbally or in writing.
- Remember, if one parent is incarcerated, active efforts must be made to include that parent in the CFT meeting.
- The Tribe must be invited to each of the parents' CFTs if held separately, even in the situation where one parent is non-Native. Remember, the Tribe is involved because of the child's ICWA status.
- The CFT must include all available supports for the Indian child and their family, including extended family networks and tribal services providers. The CFT should assess on an ongoing basis if all available supports are included. Engage Tribal partners to identify and include spiritual and cultural coaches.
- Case plans, which *must* be informed by a CFT meeting, are required to be carefully tailored and incorporate the prevailing social and cultural standards of the Indian child's Tribe by offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe.[11]
- If a Tribe has intervened in the case but is unable to attend the CFT meeting, the Child Welfare Services (CWS) social worker will provide the Tribe with the CFT meeting notes.[12] Even where a Tribe may not have intervened, the legal requirements of ICWA still apply.
- Structured and standard assessment tools, such as the CANS, can help to assess the Indian family at the time of intervention but may only provide a snapshot of the family's needs. Comprehensive assessments are required for cases involving Indian children and, with the Tribe's participation, must include the prevailing social and cultural conditions and way of life of the Indian child's Tribe to understand the full needs of the family. The caseworker must make initial and ongoing efforts and accommodations to include the Tribe, and to offer the Tribe the opportunity to participate in the Indian child's assessments.[10]

CHILD AND ADOLESCENT NEEDS AND STRENGTHS ASSESSMENT AND TRIBAL COLLABORATION

The Child and Adolescent Strengths and Needs Assessment (CANS) has become an integral part of the Integrated Core Practice Model and the implementation of the CFT process in California. As the primary tool used in the CFT process to both understand the child and family's needs and strengths, and communicate and gain consensus in the development of the case plan, Tribal collaboration in the completion of the CANS is critical to meeting agency active efforts responsibilities. [13]

Tribal collaboration in completing the CANS will assist the county agency in providing active efforts to tribal families in the following ways:

- In helping to identify additional strengths of the child and family from a cultural perspective [14]
- In identifying family for both placement and support
- In understanding more about the child and family's history, culture and community
- In identifying culturally appropriate services and supports
- Through shared decision making on case plan objectives and services in the CFT, avoid protracted legal battles

FAMILY VOICE AND CHOICE AND TRIBAL INVOLVEMENT

Families may express resistance to tribal involvement in their case. If this occurs, it is important to engage the child or parent in a discussion about their concern and clarify that **tribal inclusion is not optional**: The Tribe is a required member of the CFT.

case worker: "I hear your concerns, but the Tribe is not an optional team member. The involvement of your child's Tribe in your case is an essential and required part of this process. This includes case planning and teaming. What can we do to address your concerns or otherwise repair the relationship?"

You may choose to engage the family in a conversation related to the root of their concerns. Is it privacy? Has the Tribe held them accountable in the past? Are they upset with political or other decisions made by the Tribe? Work to unpack these concerns and help the family to understand the historical disruptions in relationship between the Tribe and its membership and the many benefits of tribal involvement, to include: additional support and services, generational knowledge, cultural insight, and a unique commitment to community connection that the Tribe alone can provide.

PARTNERING WITH TRIBES IN THE CFT

THE TRIBE IS A REQUIRED MEMBER OF THE CFT

Active efforts require the county agency convening CFTs to engage with Tribes early and often, to build partnerships and foster joint decision making between the Tribe and the county.[5,15] *Collaboration must start at the hotline level [16] and includes partnership in conducting initial safety and on-going assessments, scheduling CFT meetings, and identifying individuals for the team prior to the first CFT meeting.[17]* The Tribe may be represented on the CFT by its chosen representative, which may be the Tribal attorney, social worker, representative, or advocate.

Note on Tribal attorney participation: Some Tribes do not have Tribal social workers or an ICWA Tribal representative. As a result, the Tribal attorney may be designated to participate in meetings to obtain key information on the case. This may create challenges for counties with practices that limit attorney participation. Counties should create local protocols to balance the Tribe's participation through their attorney while maintaining the non-adversarial communication and collaboration expected at CFT meetings.

WHY BUILD RELATIONSHIPS WITH TRIBES?

Early tribal partnership is legally required as part of active efforts. [5] Effectively engaging with Tribes will:

- Reduce delays and contested legal battles (i.e. removal, placement, permanency)
- Provide the CWS social worker with support through shared decision making
- Build connections for tribal families to their community and culture
- Help locate ICWA compliant placements
- Increase positive outcomes for children and families

RELATIONSHIP BUILDING TIPS

- **Early and ongoing communication** helps establish trust and fulfills the legal requirement to partner and collaborate with the Indian child's Tribe.
- Understand that **each Tribe is a sovereign nation** and may have different decision making protocols than another Tribe with which you previously worked.
- Team with the Tribe(s) **as equals and** emphasize shared decision making.
- **Confer** with the Tribe regarding their position on matters and **do not presume to speak** for the Tribe.
- **Meet** the Tribal representative **in-person** (i.e. coordinate carpools to travel to meetings and use time to forge a relationship).
- Understand that the county, the Tribe, and the family may have very different views of the case. **Be careful not to create friction between the family and the Tribe when disagreement exists.**

LEARN ABOUT THE CHILD'S TRIBE

When working with Tribes, Indian children, and families, learning about a Tribe's unique governance structure, history, and culture is an integral part of culturally informed practice. **The Tribal representative can be your greatest resource in this learning.**

- Each tribe is a sovereign nation. As diverse sovereign nations, each Tribal government has its own way of governing. Decision making processes in cases, as well as the appropriate person to contact regarding ICWA matters at each Tribe will be different. Contact the designated agent for service for ICWA matters by reviewing the contacts listed for each Tribe on the [ICWA Designated Agents List](#) or contact the [CDSS Office of Tribal Affairs](#) if you need help identifying the appropriate Tribal contact in ICWA matters. Be careful not to assume that because one Tribe handles a case one way that another Tribe will do the same.
- All Tribes have their own unique history. While there are common experiences shared by Tribes, there are unique Tribal histories and specific historical events that have shaped the lives of tribal members and families.
- Each Tribal community, and individual Tribal families, have unique cultural contexts that are diverse and range in connection to traditional practices, values, and belief systems. For some Tribal families, entry into the child welfare system may be the first contact they have had with their Tribe.
- Trauma-informed practice with Indian children and families requires understanding the role historical trauma has played in disconnecting Tribal members from their culture and its effect on an individual's trauma responses and coping mechanisms.

TO RESPECTFULLY LEARN ABOUT A TRIBE:

Approach Tribes as respectfully as you would when traveling to another sovereign nation. Prepare for any visit to Tribal lands with the proper authorities (which might be Social Services Department staff) and learn about the laws, culture, and history of the Tribal nation

Talk to the Tribal representative

Talk to the [CDSS Office of Tribal Affairs](#) to connect you with a Tribal representative

Access publicly available cultural resources offered by the Tribe, such as videos, books, cultural trainings, and the Tribal website

Attend Tribally-sponsored public community events when invited or if open to the community, when appropriate

HISTORICAL TRAUMA IMPACTS - EXAMPLE

In many Tribal communities, children were forcibly taken from their homes to attend boarding schools. At the boarding schools, many children were subjected to abuse, neglect, and trauma. Similarly, child welfare systems historically implemented policies and practices that resulted in the targeted removal of Indian children and placement in non-Indian families. As a result, adult Tribal members may be wary of government officials and fearful of losing their children. Understanding the historical context for actions or opinions held by Tribal individuals increases professionals' ability to connect and engage with Tribal families.

UNDERSTANDING DIFFERING PERSPECTIVES

When developing CFTs and holding CFT meetings that involve Indian children, the county social worker must partner with the Indian child's Tribe. This partnership can be challenging if attention is not paid to the differing perspectives held by Tribal and county representatives. Without seeking to learn and understand differing perspectives, misunderstandings can occur leading to unnecessary and avoidable conflicts that may damage collaboration between Tribes and counties. County social workers should strive to understand the Tribal worldview to be culturally informed to support better outcomes for Indian children and families and to meet ICWA requirements. This table highlights some examples of differing perspectives.

County-Based Perspective in Child Welfare	Tribal-Based Perspective in Child Welfare
Safety is assessed based on static legal definitions	Safety cannot be assessed by a single legal definition but is learned and assessed from a variety of shifting factors
Intervention is based on structured-decision making defined by legal thresholds	Intervention is prevention-based and decision-making examines the individual person's needs and multigenerational/community impacts
Family is understood as the nuclear family with extended family and kin like relationships defined as "potential natural supports"	Broader view of individuals included as family, which may include extended family, spiritual family, community members, and the Tribe; family is considered integral to the healing process and not optional
Work with a family is a snapshot in time – generally tied to the date of county intervention	Work with a family considers the whole family – often working and considering 3 generations of family history
Success defined through compliance indicators and behavior changes, often defined through measurable individual goals or objectives	Success is measured by restoring balance to one's role within their family and community, and strengthening connections to self, children and other healthy supports
Agency rules may encourage workers to limit contact in the community and refuse cultural gestures of appreciation	Tribal agency rules may encourage community involvement – interacting with families in the community is expected and developing familial-like relationships is supported

INCLUDING CHILDREN IN THE CFT

THE INDIAN CHILD IS A REQUIRED MEMBER OF THE CFT

It is critical that the Indian child is included in all CFT meetings, as the Indian child is the focus of the CFT. Often the Indian child is not invited or excluded due to the sensitive nature of items discussed in the CFT meeting. In many tribal communities, it is common for children to be present in meetings with adults and elders. In an article titled, "American Indian and Alaska Native Grandfamilies: The Impact on Child Development," researchers explain that tribal children often participate in meetings with families and contribute to discussion:

Children were included in the cultural ways of listening in to conversations by adults and/or with elders that focused on the concerns of the tribal community (Hilger, 1992)... and they were able to contribute to the discussion if they thought they had something to add.[18]

If a child/youth does not wish to be present at a meeting or the team has determined that it is in their best interest to not be present, their voice still must be included in the process, and their participation should be continually revisited over time. Be sure to discuss whether the child's attendance is appropriate with the Tribal representative.

TIPS FOR ENGAGING THE INDIAN CHILD

- **Be honest and direct** in a developmentally appropriate way about the reason for child welfare involvement and the limits on your authority. Honesty is the foundation in any relationship with children.
- **Build trust by doing what you say you are going to do.** Consistency is key.
- **Meet the child where they are.** The child may be frustrated with child welfare involvement and may express that in a number of different ways. No matter how hard they might push you away, never give up.
- **Engage with the child in places where they are comfortable, bring food, and listen.** Building a relationship will take time and require that you show up as an individual and not as an agent of a department.

"I never connected with my social worker because she always seemed like a robot, someone who didn't care about me just about telling me what to do."
~Former Tribal Foster Youth

IDENTIFY AND ENGAGE TEAM MEMBERS TO PARTICIPATE IN THE CFT

Identifying and engaging team members for the CFT is the critical foundation that will support ongoing work with the family. Successfully building the team also aligns with the tribal value of developing healthy relationships with family and community.

IDENTIFYING AND ENGAGING TEAM MEMBERS

When identifying members of the CFT for Indian children and families, it is important to have an expansive view of who should be included. As described in the differing perspectives section above, family in a tribal context includes a broad array of individuals who have relationships with the child and their parents. This may not align with county perspective of maintaining confidentiality, emphasizing individual participants and nuclear families.

Engaging team members to participate in CFTs for the Indian child prior to the first CFT meeting is necessary preparation. To successfully engage parents, children, and family, work with the Tribal representative to hold pre-meeting and post-meeting conversations that assist all team members in understanding the purpose and process of the CFT.

TIPS FOR ENGAGING AND PREPARING TEAM MEMBERS

- **Explain the purpose and process of the CFT ahead of time.** Provide general information including the structure of the CFT meeting, the purpose of the meeting and what types of decisions can and cannot be made at the CFT meeting.
- **Explain that the team is essential to building supports.** For safety, permanency, and the well-being of the child, the team should understand their own importance.
- **Explain the roles of each team member.** The child, family and other team members should understand who will be at the meeting, the reason for their presence, and the role they may serve in the meeting and throughout the CFT process *prior to* the CFT meeting. Do not assume this has been done.
- **Use accessible language, not professional speak.** To aid in greater understanding, provide members with key terms and explanations ahead of time, this includes spelling out acronyms.
- **Help parents, children, and family members understand ICWA requirements** and how the requirements will be included in the CFT process.

MAKE THE CFT MEETING ACCESSIBLE & ENGAGING

ACCESSIBILITY

Prior to scheduling the CFT meeting, it is important to determine and address any barriers to participation for the parents, child, family, and/or Tribe. Assist team members by:

- Providing or arranging transportation or bringing the CFT meeting to a more accessible location, this may include on Tribal lands, at an Indian Health clinic or Tribal community center. If the meeting needs to occur virtually, make sure the family has virtual access and understands how to use the medium selected.
- Scheduling a time most convenient for the family and Tribal representative, and providing ample notice. **The Tribal representative must be invited and accommodations made to include the Tribal representative in all aspects of planning for the meeting.**
- Working with the Tribal representative and the family to find the most comfortable meeting space. This may include a Tribal office, Indian Health clinic, or community center. Participation in a CFT meeting will be more difficult in sterile county office environments.
- Encourage facilitators to be flexible and dynamic during the CFT meetings. Solely conducting CFT meetings in a prescriptive manner may stifle discussion or cause individuals to disengage from the process.

THE IMPORTANCE OF LANGUAGE

Communication should be:

- **Direct and Transparent** – shying away from conversations that make us uncomfortable is an abuse of system power & privilege
- **Human/Personalized** – remember, not everyone speaks "child welfare"
- **Ongoing and Consistent** – continually follow-up, check-in, and clarify
- **Respectful** – people need to be seen, heard, felt, and safe for wholehearted engagement

THE IMPORTANCE OF FOOD

In Tribal communities, food is central to gatherings. It is important when scheduling meetings to inquire with team members about preference for food and snacks. Many times, the food provided at the CFT Meeting are "healthy" options, which may not be preferred by team members. Having options requested by team members further reinforces that the team member is valued and essential to the teaming process.

SUPPORT CHILD AND FAMILY CONNECTION TO CULTURE IN THE CFT

Culture is a key protective factor for tribal families. Connecting tribal children to their culture creates a greater sense of belonging and empowerment.[19] The CFT can ensure case plans include culturally appropriate and responsive services and/or supports to preserve or build cultural identity. Ensuring Indian children have a connection to their tribe is required by California law and must be reflected in the child's case plan.[20] This is not only important for children who grew up around their culture, but also for Indian children who do not live in or near their respective tribal communities.[21]

With over 570 federally recognized Tribes in the United States, and 109 in California, incorporating supports for cultural connection into the CFT meeting and case plans may seem daunting and is very important. While there is no universal cultural guidance, here are some tips for the CFT:

- Culture is not limited to religious practices, but includes **food, clothing, language, relationships, traditions, and places.**
- Cultural connections are **supported through bonds with family and their tribal community.**
- Be clear with team members that the case plan may provide tribally-specific services instead of county offered services. For example:
 - A tribal parenting program would take the place of a county-provided parenting course, not as an additional service.
- If cultural connections have been identified, specific services to support and preserve **those connections may be documented in the CFT Action Plan and/or the case plan.** The CANS may assist in identifying cultural needs and strengths. For example:
 - A county contracting with a tribal cultural resource to create a cradle board or baby basket for a newborn would be captured in a CFT Action Plan (instead of a crib or bassinet for the substitute care provider).
 - A grandmother agreeing to transport (with county provided gas cards) her grandchild to a cultural event would be captured in a CFT Action Plan.
 - A CWS social worker providing active efforts through transporting a child to cultural events or purchasing cultural supplies for the child to participate in a cultural arts workshop would be captured in both the CFT Action Plan AND the case plan.
- Programs and services provided by tribal communities are often grant-funded and may not be centralized or uniformly delivered. County workers must investigate all potential sources of assistance and collaboration with the Tribe is essential in identifying programs and services for the family.

ONGOING COMMUNICATION AND WORK BETWEEN MEETINGS

Preparation and engagement with team members continue throughout the life of a case and the CFT. Before all CFT meetings, ask yourself, “**How am I engaging *all the team members*?**” Work done before and between the meetings is just as important as work conducted during the meeting.

Meet with Tribal representatives and family members in between meetings to:

- Prepare for the next meeting by identifying new team members that might be included. Active efforts requires identifying and utilizing the resources of the Tribe and extended family.[5,15]
- Help parents and family in completing action steps developed at the last meeting. Active efforts requires actively assisting parents in addressing barriers to completing service plans.[5,15] Remember, if a parent is incarcerated, active efforts must be made to include the incarcerated parent in the CFT meeting.
- The Tribe must be invited to each parents’ CFT meeting, if held separately, even if one parent is non-Native. Remember, the Tribe is involved because of the child’s ICWA status.
- Check in on any changes that may have occurred between meetings. Has anything changed between meetings that would cause the CFT meeting purpose to have to shift? For example, parents have separated and there is now a restraining order, which requires separate CFT meetings for each parent.
- Monitor safety plans. If safety plans were made in the CFT, follow up between meetings to ensure the safety plan is being implemented. If it is not, you may need to call an emergency CFT Meeting or take other necessary next steps.
- Seek feedback from participants on their comfort and experience during the CFT meeting to improve engagement and accessibility.

PRACTICE EXAMPLE

Seeking feedback from all participants on the CFT process and meetings will assist the CWS social worker in building a more successful team. For example, in many tribal communities, elders have a significant role and are treated with high levels of respect. For example, CWS social workers may seek feedback from the tribal representative and the family about how elders are being treated and included in the CFT process. Often, tribal members may defer to a tribal elder due to the experience and wisdom they have collected throughout their life. Some ways of showing deference to elders would be by letting the elder speak first and not interrupting until the opinions and thoughts of the elder are fully expressed.[22] Elders will often offer advice through indirect storytelling.[22] For non-tribal members, this may seem meandering and facilitators may interrupt elders to hasten the process. Interrupting an elder is seen as disrespectful and can harm the intent of the CFT meeting.

Appendix A: Child and Family Team Meeting

Best Practices and Sample Structure

Pre-Meeting Checklist

1. Place

Conference with the family and Tribal representative (TR) and agree to meet where the family and Tribe are most comfortable. This could be at the Tribal office, or the family or a relative's home, and should be a suitable space to discuss sensitive information. Consider offering a virtual option to allow all individuals to participate.

2. Facilitators

TR's may choose to co-facilitate the CFT meeting and an offer to co-facilitate should be made. When this is the case, the co-facilitators should have ample time to plan and prepare for the meeting to determine roles. Co-facilitation should not result in the TR being put on the spot to lead the difficult conversations on behalf of county child welfare. Tribes should be offered opportunities to participate in state-wide CFT facilitator trainings and/or offered compensation for their co-facilitation.

3. CFT Members

Aim to have more healthy informal supports present at the meeting and avoid misconceptions that "less is more" unless advised by your TR. Conference with the TR and the family to identify any individuals who are healthy supports for the family. When inviting supports, make sure they understand the purpose of the meeting and invite them to share what they would like to contribute to the meeting. Large family meetings about difficult topics *are* a cultural practice.

4. Reminders

On the day of the meeting, remind the family, the Tribe, and all other *mutually agreed* upon invitees of the meeting time and place. A call or text the morning of the meeting is helpful to encourage attendance.

5. Check-ins with the Tribal Representative

Prior to the CFT meeting, the CWS social worker should do a check-in, up to 24 hours before the meeting, to relay any emerging updates so that you and the TR are on the same page. Discuss how to approach the concerns of the Tribe during the CFT meeting to maintain a relationship between the Tribe and the family. Have an open and candid discussion about what decisions can and cannot be made by the CFT at the CFT meeting. This can alleviate "surprises" and allows for better teaming during the CFT.

6. Transportation

Provide or arrange transportation to the meeting for the family, or consider bringing the meeting to a more accessible location. If your offer to transport is declined but there is still a need, brainstorm with the family to identify reliable transportation, and offer gas cards.

7. Considering Safety

If there is an active restraining order or domestic violence in the family, consider how this may impact the choice of CFT meeting location, guest list, transportation plans and structure.

THE MEETING

1. Provide refreshments for participants. Offer refreshments to elders first. Speak to the family and TR prior to the meeting about food preferences. Be mindful of the role that food can play in one's culture.

2. Allow space for the family or Tribe to open with a prayer or intention setting words for the meeting.

3. Is the family present and what do they need to participate?

If the family is unable to make it or is inconsistent in attendance, the onus is on the CWS and/or Probation case worker to resolve. Determine barriers, for example family stressors or transportation, and address them. Barriers might be resolved through additional preparation time, pre-meeting check-ins with the family, team agreement on meeting location and times, and working to alleviate any immediate stressors on the family that may impact their ability to be present during the meeting. (Are they facing eviction? Have they eaten today? Did they just leave an abusive argument? Do they have childcare? Will they have to take time off work to attend?) Getting the family to the meeting and, whenever possible, alleviating barriers to their ability to focus, is just as important as facilitating the meeting.

4. Introductions

Have individuals introduce themselves and their connection to the child and family. Allow elders in the room to introduce themselves first.

5. Level Setting

Facilitator(s) discuss why the team is meeting. CWS and/or Probation case worker to share that utilizing the CFT meeting structure is meant to bring the family and their supports into the decision-making process by providing input or perspective on what needs to happen next when child welfare is involved in the family's life. Explain the following items to the team:

- i. Each CFT member has a role, including the youth, family, case worker, Tribe, attorney and court.
- ii. How CWS and/or Probation can offer support to the family, especially within the context of active efforts requirements.
- iii. Placement preferences under ICWA.
- iv. The child's rights, including Foster Youth Bill of Rights. [20]
- v. The parents' rights.
- vi. What is a CFT meeting and the types of decisions that can be made at the CFT meeting; For example, the TR or CWS and/or Probation case worker may need to go back and consult with supervisors or other decision making bodies regardless of team consensus.
- vii. Who can be included on the team, who must be included on the team and what confidentiality rules are required of the team. Also discuss the different roles of members on the team, ensuring to include the family

This level setting does not have to be done at every meeting. If all of these things have been done well in the pre-meetings with team members, then you may not have to do this in every meeting. If you have not done this preparation, go over these important topics at the meeting. Checking in at the start of each meeting will help you know if you need to do level setting in the CFT meeting.

6. Purpose of the CFT Meeting

The CWS social worker should address exactly what type of input will be sought at the present meeting and explain how the meeting will be structured, including any follow up that will occur. Use language that is clear and direct. If there is fear of initiation of a removal or court process at this meeting, this needs to be discussed immediately. The CWS social worker should explain the purpose of the meeting and the issues that need to be addressed, including:

- i. If the team is meeting regarding potential removal of the child, explain what the safety risks are and the bottom lines of what child welfare needs to see for the child to remain at home.
- ii. If the team is meeting to discuss development of the case plan, reiterate what the safety issues are and that a case plan needs to be developed for parents, with the help of the team, to create the safety needed for the child to return home or stay at home. Make sure to meet with each parent again post-meeting individually to review each goal of their case plan, answer questions, provide clarity and confirm their understanding regarding next steps and implications for removal.
- iii. If the team is meeting to discuss progress in the case plan, the items of the case plan should be clearly laid out in a visual fashion.
- iv. If the team is meeting to discuss a potential placement change, the current need for the placement change should be explained and the ICWA placement preferences should be provided in a visual fashion.

7. Reviewing Team Membership

Review team membership and who might need to be there but isn't, or utilize an exercise (Circles of Support, Genogram or Ecomap) to identify any additional supports who could join the team. (This should have been done prior to any meetings but is inconsistently done and so may need to be a part of every meeting with the family).

Who's missing? Are there new supports who should be invited? Did the family or tribe want a relative or support present who was not invited or unable to make it? Why not? If the support person is appropriate, briefly address barriers and ways to ensure their attendance moving forward. See if they might be available to be phoned in to the present meeting.

8. Working Well

Discuss what is currently working well with the family (utilize the prompts and strengths-based questioning, focusing on the ways in which the family currently handles crises, safety, meeting case plan objectives, daily functioning, etc). Provide opportunities for individuals to contribute thoughts in writing as well as orally. For example, this could be done as post-its by each team member and then placed on a white board or sheet.

Always identify multiple strengths for every family member of focus, or for each parent and each child at minimum. Do not struggle with identifying strengths during the meeting. Come prepared by identifying strengths in advance. Do not rush through this as this is where all the tools and strengths to develop your action plan of solutions should come from. When naming strengths, be honest and rigorous and meaningful. Be flexible. If team members discuss worries and strengths at the same time, document both. Do not cut people off.

9. Worries/Needs

Discuss “worries or needs”, to include: The safety issues, case plan objectives, placement needs, child’s medical/educational/developmental/cultural or transition needs. Frame your concerns with compassion rather than judgment, while also naming the “elephants in the room” candidly. Have parents and/or the child discuss what they see as barriers to meeting the needs. Do not frame any worries as solely “concerns of the tribe.” All identified worries are team worries, and the county should demonstrate due concern for each. When naming worries, as with strengths, be honest and direct. The families you work with will remember.

10. Brainstorm

Allow all team members to discuss what strengths of the family or other network resources (especially child welfare) can assist the child and family in addressing:

- Safety threats
- Case plan objectives
- Other child and family needs
- Identifying another placement
- Preserving a current placement
- Transitioning the child to a permanent plan

11. Next Steps/Plan

Develop an action plan with specific steps that have an identified person responsible and a timeline. This plan should be in writing and discussed in the context of active efforts, meaning all items cannot be heaped on the family. The family should be completing action items in conjunction with other supports (especially child welfare) and the focus should be on eliminating the barriers the family has identified to their success. You should not wait until the next CFT meeting to see the family in person.

Notes from the meeting should be in writing and shared with the TR and family within 24 hours. The notes should include contact information for all team members. Consensus on decisions made in CFT meetings is the goal but not always possible. The notes should reflect if the Tribe or family members disagree with the decision made. It is critical to follow up with the TR if they disagreed with the decision made at the CFT meeting and that may require you to include your supervisor in the discussion to address the issues. The team, and the CWS social worker especially, should be working between meetings on various agreed upon action steps to ensure that parents and child will not be alone in completing action items.

12. BE FLEXIBLE!

Post-Meeting Checklist

1. Follow Up with Tribal Representative

After each CFT meeting, if the TR was not able to participate, the CWS social worker should reach out to the TR within 24 hours of the meeting to discuss the following:

- What decisions were made at the CFT meeting. If any decisions were made that the TR may not have agreed with, what next steps may be needed to correct this. For example, if decisions were made to place the child in a non-ICWA preferred placement, how must this now be remedied and how will communication and repair happen with the family.
- What follow up actions steps are needed. Be sure to share a copy of the notes and written action plan.
- Scheduling the next meeting at a time, place and date in which the TR can participate.
- Scheduling the steps in monitoring implementation of the action plan. This may include meeting with providers, assisting the family in scheduling appointments and/or transportation to appointments.

If the TR was able to participate, the following action steps should be taken:

- What follow up actions steps need to be completed, including sharing a copy of the notes and written action plan.
- Scheduling the next meeting at a time, place and date in which the TR can participate.
- Scheduling the steps in monitoring implementation of the action plan, this may include meeting with providers, assisting the family in scheduling appointments and/or transportation to appointments.

2. Follow Up with the Family

After each CFT meeting and a follow up meeting with the TR, schedule follow up meetings with the family to implement the steps outlined in the action plan. Remember that active efforts means assisting the family in accessing services including overcoming barriers that may impede the family in achieving the goals of the case plan. Active efforts are implemented on a case by case basis for each family but should be timely, active and thorough.

3. Plan the Next CFT Meeting in Collaboration with the Tribe

Before the next scheduled meeting it is critical to return to the beginning and follow the pre-meeting checklist outlined above, which should include planning all parts of the CFT meeting in collaboration with the TR.

Appendix B: Tribal Inclusion in Continuous Quality Improvement (CQI)

“Continuous Quality Improvement” or “CQI” is a system of processes that, when effectively implemented, can better ensure that a set of desired practices are delivered in the manner they were intended, continuously, and over time. CQI is valuable for strengthening CFT processes and improving outcomes for youth, families, and professionals. CQI can be utilized to ensure systems and teams are working collaboratively and effectively. This helps partners work together with improved inclusion and equity, while ensuring problems and solutions are explored from multiple perspectives.

County Interagency Leadership Teams, Tribes, and CQI

It is essential to collaborate with Tribes throughout all steps of the CQI process, and county Interagency Leadership Teams (ILTs) provide a vehicle through which such collaboration can occur. ACL 23-49 [23] provides guidance on the inclusion of a process for tribal engagement developed through Tribal Consultation in System of Care (SOC) memorandums of understanding (MOU) per Assembly Bill (AB) 153 (Chapter 86, Statutes of 2021), effective July 16, 2021. This bill amended Welfare and Institutions Codes (WIC) section 16521.6 [24] to require that each county ILT establish a process, through tribal consultation with the federally recognized Tribes, to engage and coordinate about the ongoing implementation of the SOC MOU initially required by AB 2083 (Chapter 815, Statutes of 2018). Counties and Tribes should consider including their collaboration regarding CFTs and CQI.

The webinar entitled Systems of Care With Inclusion of Tribal Governments on the UC Davis Resource Center for Family-Focused Practice website can be used as a resource for the ILT. These resources are valuable to further enhance collaboration between Tribes and counties and can be applied to CFT practice.

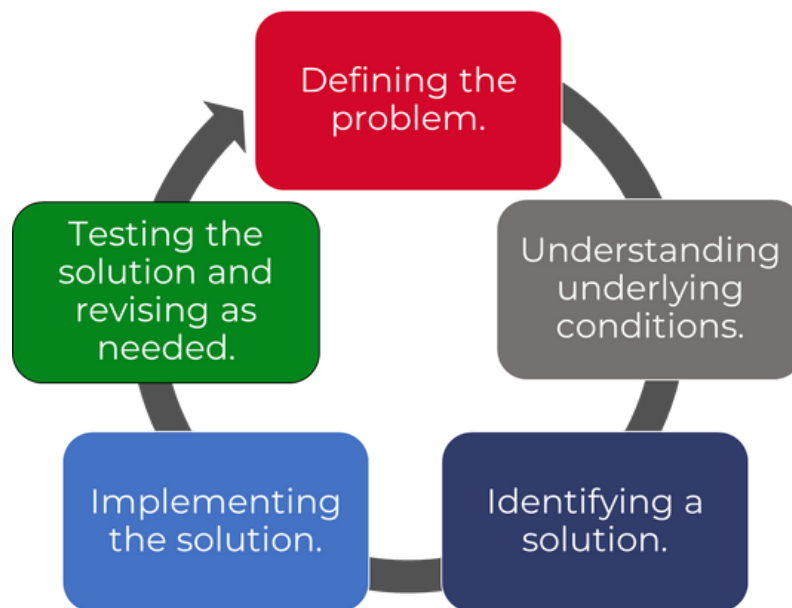
The Five Stages of CQI

CQI philosophy incorporates quantitative and qualitative data to determine the effectiveness of CFTs and methods to improve. CQI practices also consider racial equity, diversity, and inclusion in order to bring about substantial change. It is vital to include tribal partners in improvement efforts. There are five stages in a well-developed CQI process:

- Defining the problem,
- Understanding underlying causes,
- Identifying a solution,
- Implementing the solution, and
- Testing the solution and revising as needed.

These steps are iterative and can be repeated many times until an organization achieves its desired level of improvement for a practice or process. More in-depth information regarding CQI can be found in All County Information Notice (ACIN) I-48-19 [25] and ACIN I-84-16 [26].

FIGURE 1. CONTINUOUS QUALITY IMPROVEMENT PROCESS



1. Defining the Problem – Engage Local Tribal Partners.

In this stage, organizations within the California child welfare, juvenile probation agencies, and tribal partners need to clearly articulate a problem and the population impacted by this problem. This is also called an “area of focus.” In defining the area of focus, CQI team members should work together to clearly flush out the problem by articulating it in writing. This includes specifying the population to be studied, modified, or enhanced via specific improvements in service provision, practice, or other processes. This is an important step because identifying an area of focus helps the team prepare to ask evaluative questions about the breadth and depth of the problem.

- Are tribal communities experiencing positive permanency and wellbeing outcomes? Why or why not?
- Do CFT meetings help tribal children and families meet their needs and achieve their goals? To what extent?
- Did inquiry regarding ICWA occur with the family in a timely manner so the Tribe’s input could be considered in decision-making?

Agreement at this early stage is crucial and will facilitate all future conversations about the area of focus. Failure to have the agreement at this stage will guarantee additional work later for CQI team members in the future. Therefore, as part of your county’s ongoing CQI process, it’s important that Tribes are engaged early and embedded throughout the CFT and CANS practices. Counties should work with local tribal partners to identify areas that are functioning successfully and those that may be improved.

2. Understanding Underlying Causes.

If Indian children are not achieving favorable outcomes through the CFT process, it is critical to understand why. Surveys, focus groups, and interviews are valuable in understanding obstacles that prevent tribal communities from achieving positive outcomes.

One issue that could potentially be identified is that the CFT process was not implemented as intended. For example, the CFT meeting may have not occurred in time for the tribal representative to provide valuable input into the youth's case plan. Therefore, it is important to use resources to fully explore and discover the underlying causes of the problem needing to be solved. CDSS has tools available to measure CFT quality, including those within the CFT CANS Implementation Toolkit.

3. Identifying a solution.

When developing a solution to enhance outcomes in tribal communities through CFTs, it is critical to evaluate their strengths, needs, and resources, as well as if the intervention is appropriate for the community. The solution should be developed together with tribal partners and people with lived experience who are most familiar with community challenges. Furthermore, it is essential that the solution's goals are SMART: Specific, Measurable, Achievable, Relevant, and Time-bound. An example of a SMART goal could be:

By January 2025, the number of children with Native American heritage who receive a CFT meeting within 30 days of entering care will increase by 10%.

Each county and Tribe can determine which goals are the most relevant and actionable within their population. Again, it is important to actively work with your tribal partners and other stakeholders to determine what areas of improvement would be best to prioritize.

Counties and tribal partners may discover multiple approaches to resolve the identified problem. It is best to implement one solution at a time to avoid confusion regarding which intervention is most effective in obtaining desired goals.

4. Implementing the solution.

County leadership and tribal partners need to communicate with staff and stakeholders to prepare for the implementation of a solution to the identified problem. Consistent messaging about efforts is important, and leadership should ensure that staff understand the necessary steps and reasons for the changes. The CQI team, including relevant partners, should collaboratively develop a thoughtful implementation plan. This plan should outline the tasks involved in changing the system or practice, such as providing tools, resources, and training, adjusting policies, and establishing tracking and accountability mechanisms. It is crucial to communicate the proposed changes and desired outcomes to those affected. The plan should include the development of data reports to measure the effectiveness of implementation and its impact on the problem and the system. A monitoring strategy should be incorporated into the plan to assess the successful implementation of activities. Leadership, CQI team members, and partners should regularly update staff on CQI efforts, including the plan and timeline for implementing activities.

The data collection and evaluation plans should include steps to develop data reports for an evaluative component designed to provide measures of initial and intermediate outcomes expected so that as implementation goes forward, there are ways to measure its effectiveness on the problem and on the system at all levels. Such data may already exist or may have been developed previously. However, the plan might describe the development of new data or tracking methodologies that your organization will develop to better monitor CQI implementation. Counties, for example, might create checklists that indicate whether Tribes participated in identified CFT and CANS processes and disseminate them to case-carrying social workers.

5. Testing the solution and revising as needed.

During this step, the county and tribal organizations will achieve the following:

- Develop criteria to assess the effectiveness of CQI implementation and measure improvement.
- Data and evaluation tools to determine effectiveness are identified in the data collection and evaluation plans discussed above. These tools may include checklists, surveys, CWS/CMS and/or software such as SafeMeasures by Evident Change.
- Gather and analyze feedback from those implementing the plan.
- Establish a process to monitor unintended consequences.

To start, determine the assessment criteria beforehand, before any CQI activities take place. Then, create a plan to solicit, receive, and analyze feedback based on these criteria from those involved in CQI activities. Progress through the monitoring process and make adjustments if necessary. For instance, if a particular solution from the Root Cause Analysis (RCA) does not lead to improved permanency outcomes, the CQI team may suggest modifications to the implementation or propose another RCA-informed solution. It is important to examine unsuccessful solutions to understand their impact.

During this step, be alert to unintended negative consequences in other areas of the CQI system. Mitigate these outcomes as the CQI team seeks and analyzes feedback. For example, while implementing CQI activities to improve permanency outcomes, there may be an unintended increase in the length of stay for children placed out of home due to the complexity of their issues.

Transparency is valuable to building trust with system partners. It is important to ensure that partners are informed of progress. Some counties use platforms such as Tableau, Business Intelligence, or SafeMeasures to share data.

It is critical for counties to assess if they reached their objectives and served the needs of the community. This can be performed by measuring and documenting whether the goals defined in Step 3 were achieved, not met, or surpassed when all available data is collectively reviewed at the end of the time period. If goals are not met, the CQI process would return to Step 1 to determine why the solution did not have the intended effect and revise the intervention as needed.

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- [5] Welfare and Institutions Code § 224.1(f)
- [6] California Dept. of Social Services, ACL 23-64 Safety Assessment, Emergency Removal and Emergency Placement of Indian Children
- [7] Welfare and Institutions Code § 224.1(f)(3)
- [8] Welfare and Institutions Code §§ 224.2(i)(1); 352(b); *See also* California Dept. of Social Services, ACL 22-35 Timing and Frequency of Child and Family Team Meetings, p.4.
- [9] Welfare and Institutions Code §16010.7(b); *See also* California Dept. of Social Services. ACL 19-26 Placement Change Requirements.
- [10] California Dept. of Social Services, ACL 22-73 Assembly Bill (AB) 1068 and Practice Guidance for the Child and Family Team (CFT) Process, pg. 4;8.
- [11] Welfare and Institutions Code § 224.1(f)(3)-(4)
- [12] California Dept. of Social Services, ACL 18-140 Tribal Access To Child Welfare Case Records, pg. 2.
- [13] California Dept. of Social Services, ACL 21-27 Child Welfare Requirements For Child And Adolescent Needs And Strengths (CANS) Training, Certification, And Entry Of CANS Data Into The CARES-Live System, pg. 6.
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References

- [20] Foster Youth Bill of Rights, Welfare and Institutions Code § 16001.9
- [21] Schweigman, K., Soto, C., Wright, S., & Unger, J. (2011). The relevance of cultural activities in ethnic identity among California Native American youth. Journal of psychoactive drugs, 43(4), 343–348. Retrieved from <https://doi.org/10.1080/02791072.2011.629155>.
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- [23] California Dept. of Social Services, ACL 23-49 Guidance on Tribal Participation on Systems of Care Memorandum of Understanding Per Assembly Bill 153.
- [24] Welfare and Institutions Code § 16521.6
- [25] California Dept. of Social Services, ACIN I-48-19 Updated Child Welfare Continuous Quality Improvement Guidelines.
- [26] California Dept. of Social Services, ACIN I-84-16 Child Welfare Services Continuous Quality Improvement Guidelines.

The following material was also referenced as “Materials” for this topic:

- All County Letter No. 22-35
[All County Letter \(ACL\) 22-35](#)
- All County Letter No. 25-67
[ACL No. 25-67: Youth Who Are Missing / Run Away from Care and Protocol Development](#)
- All County Information Notice No. I-13-22
[ACIN I-13-22 Dual Agency Children Provisionally Eligible to Receive Lanterman Developmental Disabilities Services Act Services](#)
- Form JV-535-INFO
<https://courts.ca.gov/sites/default/files/courts/default/2024-11/jv535info.pdf>