

Indian Child Welfare Act

June 9, 2021



**CALIFORNIA
TRIBAL FAMILIES
COALITION**

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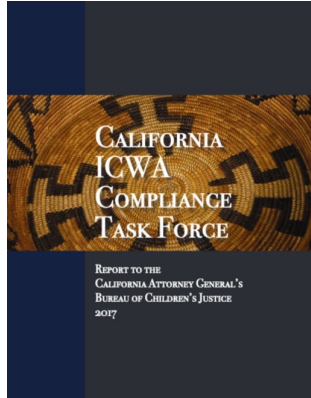
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WELCOME AND INTRODUCTIONS

- Land Acknowledgement
- Presenter's Intro
- We would like to get to know you! Please drop your information into the chat box

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CALIFORNIA TRIBAL FAMILIES COALITION



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.

CTFC is a successor organization to the California ICWA Compliance Task Force. The California ICWA Compliance Task Force Report may be found at: www.caltribalfamilies.org

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What do YOU hope to get out of today?

What's Your Burning Question??

Drop it in the chat box....

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**INTENT & OVERVIEW
OF THE DAY**

**Strengthening
county/tribal
collaborative
relationships is
at the heart of
today**

Active Efforts

- Recognize the historical, philosophical and legal bases of the Indian Child Welfare Act (ICWA).
- Recognize that ICWA is a remedial act intended to address the historical trauma experienced by Indian/Native American people that results in distrust and challenges to engagement with Native Families.
- Understand the concept of tribal sovereignty and the value of the collaboration with tribes.
- Identify the basic provisions of ICWA.

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HISTORICAL TRAUMA DEFINED

Historical trauma, the term used most often by scholars of AI/AN trauma, is conceptualized as a collective complex trauma inflicted on a group of people who share a specific group identity or affiliation—ethnicity, nationality, and religious affiliation. It is the legacy of numerous traumatic events a community experiences over generations and encompasses the psychological and social responses to such events.

(Evans-Campbell, 2012)

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PHASES OF TRAUMA TRANSMISSION

Perpetuation of Massive Group Traumas

Response to traumas with psychological, biological and societal symptoms

Transmission to generations through environmental and psychological factors

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THE AMERICAN HOLOCAUST: INVASION (1492-1800)



- Death by disease, famine and murder
- Treaty making during the colonial period
- Department of War and the “Indian problem.”

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CALIFORNIA: MISSIONS (1769-1830s)

- Men, women and children were kidnapped and used for slave labor to build and run the mission systems
- Many died from diseases that were foreign
- Those enslaved were physically beaten and some sexually abused

[History of Native California Video](#)

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REMOVAL, RESERVATION AND RESISTANCE (1801-1886)



“The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent”
(Northwest Ordinance, 1787)



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CALIFORNIA: GOLD RUSH AND SLAVERY (1848-1867)



- Over 100,000 lives lost
- Legalized slavery of Native people

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CALIFORNIA: REMOVAL AND RESERVATION (1852—1930's)

"As there is no further west, to which they can be removed, the General Government and the people of California appear to have left but one alternative in relation to these remnants of once numerous and powerful tribes: extermination or domestication."

(Report from three federal Indian commissioners, January, 1851)

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ALLOTMENT AND BOARDING SCHOOLS (1879-1945)



INDIAN LAND FOR SALE

GET A HOME OF YOUR OWN ON EASY PAYMENTS

PERFECT TITLE POSSESSION WITHIN THIRTY DAYS

FINE LANDS IN THE WEST
IRRIGATED GRAZING AGRICULTURAL DRY FARMING

FOR THE YEAR FOR IT IS ESTIMATED THAT 350,000 ACRES WILL BE OFFERED FOR SALE

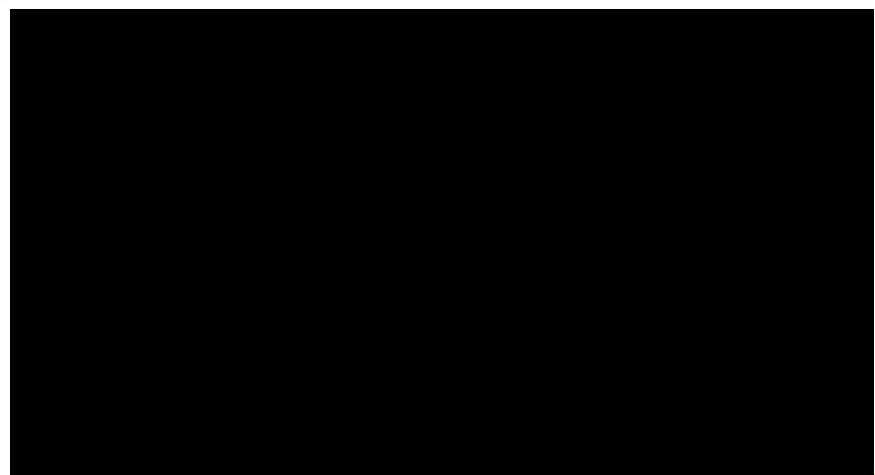
State	Acres	Price	State	Acres	Price
Colorado	3,211.23	\$7.27	Oklahoma	34,654.00	\$10.24
Idaho	17,023.00	24.45	Oregon	1,200.00	15.43
Kansas	1,054.50	15.45	South Dakota	120,441.00	16.53
Minnesota	11,034.00	9.80	Washington	4,250.00	41.27
Montana	3,641.00	36.45	Wisconsin	1,266.00	17.00
North Dakota	22,520.00	9.30	Wyoming	865.00	20.14

WALTER L. FISHER, ROBERT G. VALENTINE, Real Estate Agents

- 1879 First off reservation Boarding School
- 1887 Dawes Act

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LAND LOSS 1784-PRESENT



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TERMINATION, RELOCATION AND INDIAN ADOPTION 1945-1961

- Termination 1954-1962
- Indian Relocation Act of 1956
- Indian Adoption Program 1958-1967



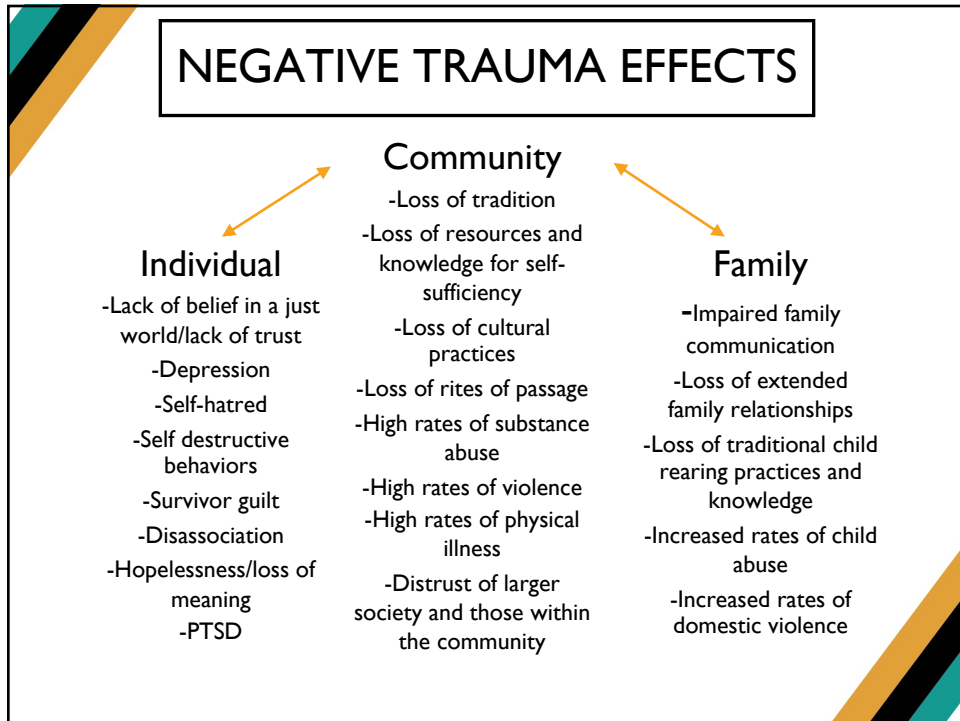
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CALIFORNIA: RELOCATION AND TERMINATION

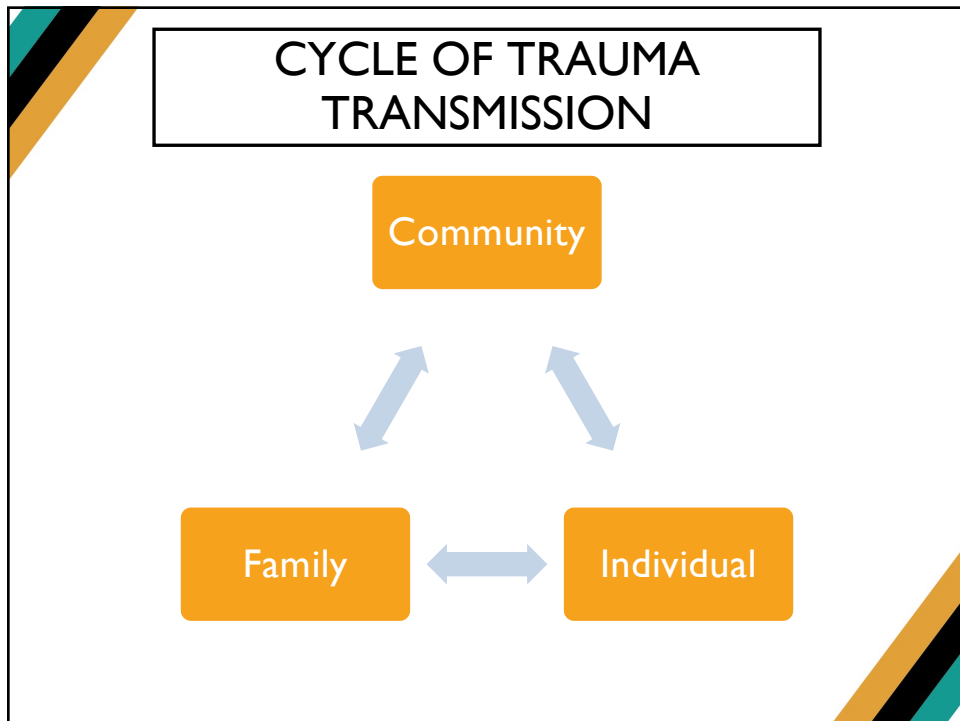
- Relocation of many tribal people to urban centers in CA
- CA Rancheria Act of 1958
termination of 44 CA tribes



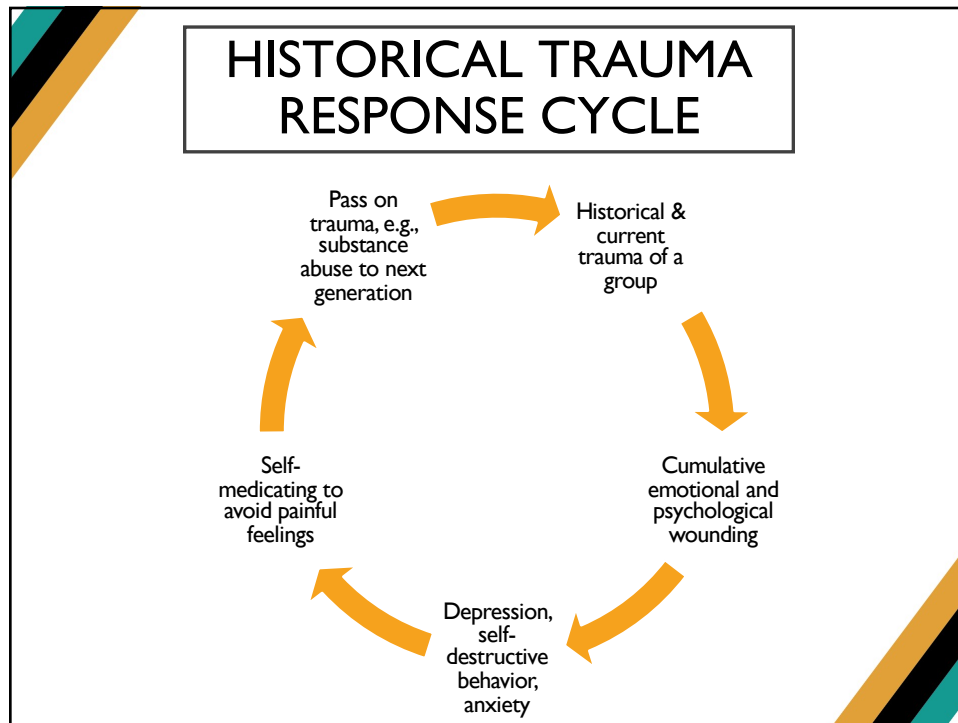
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CONTEMPORARY REALITIES

- American Indian women are 2.5 times more likely to be raped, and most perpetrators are non-Native
- One quarter of American Indian children live in poverty
- Native American individuals aged 15-24 are twice as likely as the national average to experience death by suicide.
- Native American children have the highest rates of accidental deaths due to car, firearm, and pedestrian related accidents as well as drowning and suffocation.

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Questions?

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WHERE DOES ICWA FIT?

Assimilation policies and the trauma on families resulted in:

- Nationally:
 - 25-35% of Native American children being removed from their families and communities
 - In California:
 - Over 90% of those removed were placed in non-Native homes
 - Native American children were 8 times more likely to end up in adoptive placement
- 

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HISTORY OF ICWA

Congress Found:

- An alarming high percentage of Native American families are broken up by often unwarranted removal of children
- An alarmingly high percentage of such children are placed in non-Native foster and adoptive homes and institutions where they frequently suffer serious adjustment problems during adolescence.
- State courts have often failed to recognize:
 - Essential tribal relations of Native people.
 - Cultural and social standards prevailing in Native families and communities.

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PREVENTING THE BREAK-UP OF THE INDIAN FAMILY

The requirement to engage in “active efforts” to prevent the breakup on the Indian Family begins from the moment the possibility arises that an agency case or investigation may result in the need for the Indian child to be removed and placed outside the custody of either parent or Indian custodian.

Investigating social workers must engage in active efforts to prevent removal of a child while investigating whether the child is a member of the Tribe, is eligible for membership in the Tribe, or whether a biological parent of the child is or is not a member of a Tribe.

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PURPOSE OF THE ICWA

Passed by Congress in 1978, ICWA gives Tribes the rights in child welfare cases involving Indian children which is a recognition of tribal sovereignty.

To protect the best interests of Indian children and Indian Tribes by recognizing that no resource is more vital to the continued existence and integrity of Indian tribes than their children.

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TRIBAL SOVEREIGNTY AND PL- 280

- Tribal Sovereignty - Tribes are distinct political entities with inherent rights to self-governance. Tribes continue to be entitled to all “reserved rights” that were not abrogated by treaty or legislation
- PL-280 Concurrent criminal and limited state civil jurisdiction in Indian Country

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FACTORS THAT MAY IMPACT TRIBAL-STATE RELATIONSHIPS

- Federal trust responsibility between Tribes and the Federal Government
- Influence of various Federal policies, including policies that allowed Indian lands to be taken from Tribes and Indian children to be removed for assimilation
- State jurisdiction over Tribal affairs, for instance, through Public Law 280 (P.L. 280), initially enacted in 1953 in six “mandatory” States and other “optional” States in 1968 that elected to assume full or partial State jurisdiction on Indian reservations, and eliminating Federal jurisdiction for Indian Country

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TRIBAL SOVEREIGNTY AND PL- 280



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FACTORS THAT MAY IMPACT TRIBAL-STATE RELATIONSHIPS

- Disproportionality of Indian children in the child welfare system, A/I and N/Alaskan children are in foster care at double the rate of nonminority children
- Discrepancy in availability of funding for child welfare activities
- Tribal-State differences in child welfare values and practices, especially differences related to the importance of family, community, culture, and permanency
- Tribal-State disagreements, especially those that end up in court and result in a “winner” and a “loser”

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CONTINUING NEED FOR ICWA & ICWA TEAMING

Just to reiterate and dial it down even further.....

According to a report by the Casey Family Foundation Indian Children are twice as likely than the general population to be in foster care.

For example, in California:

- Four Counties with less than 10% of the population reported as Native American and number of kids in care:
 - Humboldt County-38%
 - Inyo County-36%
 - Del Norte County-29%
 - Lake County-15%

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NA/AI YOUTH STATISTICS

- Graduation rates from high school are 17 percent lower than the national average.
- Twice as likely to die as their non-Native peers through the age of 24.
- 2.5 times greater risk of experience trauma when compared with non-Native peers.
- Highest per capita rate of violent victimization. Native youth between the ages of 12 and 19 are more likely than non-Native youth to be a victim of either serious violent crim or simple assault.
- Twice as likely to be placed in foster care.
- Indian juveniles experience PTSD at a rate of 22%, triple the rate of the general population.

Indian Law & Order Commission, (Nov. 2013) *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States*
https://www.aisc.ucla.edu/iloc/report/files/Chapter_6_Juvenile_Justice.pdf

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ICWA APPLIES TO:

- Child custody proceedings involving Indian children.
- Voluntary and involuntary proceedings that may result in Indian child's adoptive placement
- Any action removing an Indian child from the parent or Indian custodian for temporary placement in a foster home, institution, guardianship, or conservatorship
 - Where parent/Indian custodian cannot have the child returned upon demand and parental rights have not been terminated

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KEY ICWA PROVISIONS

- Inquiry
- Notice
- Active Efforts
- Intervention
- Tribal Jurisdiction and Transfer
- Expert Witness/Evidentiary Burdens
- Placement Preferences

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DEFINITIONS OF INDIAN CHILD & INDIAN PARENT

- An Indian Child is:
 - an unmarried minor that is either a member or is eligible for membership in an Indian tribe and a biological child of a member. (ICWA also applies for non-minor dependents unless the youth opts out).
- An Indian parent is:
 - any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. The biological parent does not have to be Indian to have the protections of the Act.

★ Membership can only be determined by the Tribe

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SPIRIT OF THE LAW APPLICABILITY

- Unrecognized Tribes
CA law allows the court discretion in allowing unrecognized tribes to be present and advise the court in regards to placement and services for their tribal children.
- Children not eligible for enrollment
- Delinquency proceedings

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INDIAN TRIBE AND TRIBAL MEMBERSHIP

- An Indian Tribe is:
Any 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 villages.
- Tribal Membership
Tribes have the exclusive right to define the requirements for membership and the tribe's determination of the child's membership is conclusive.

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INQUIRY

The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300, 601, or 602 may be or has been filed, is or may be an Indian child.

The duty to inquire begins with the initial contact, including, but not limited to, asking the party reporting child abuse or neglect whether he or she has any information that the child may be an Indian child.

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INFORMAL NOTICE

- Call from county... maybe to interface with enrollment? Is this an Indian child and who are their people?

Why Tribes would want to take the informal notice call from the County?

- Active efforts to prevent the breakup - collaboration
- Team with TANF, Tribal Health, education, county services to prevent removal - pull the supports in
- Prepare for possible removal and placement - family finding



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FORMAL NOTICE

- Agency or the petitioner must notify the parents, legal guardians, Indian custodians, tribe(s) and the BIA of all pending petitions and any hearings
- Notice must continue to be provided until it is determined that the ICWA does not apply
- Initial notice should be sent in the form of the ICWA 030 to the tribal chair or agent designated for service. Who is the Tribes Designated Agent for Formal Notice? It is available on the [BIA website](#)



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INTERVENTION

- Indian custodians and Tribes have the right to intervene at any point in the proceeding and may appear by counsel or other representative.
- Intervention makes the Tribe a full party to the case and therefore has a right to examine all reports and documents filed with the court.
- Tribes may choose to monitor a case and not intervene for a variety of reasons. Regardless of intervention, ICWA still applies.

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ACTIVE EFFORTS


- ICWA requires the agency to make active efforts from the referral level to provide remedial services and rehabilitative programs designed to prevent the break-up of the Indian family.
- Finding by clear and convincing evidence that active efforts were provided by the agency but were unsuccessful, must be made before a child is placed out of the custody of the parent or Indian custodian. Finding beyond a reasonable doubt before parental rights are terminated.
- CA law requires the agency to make active efforts to follow the ICWA placement preferences and to place the child in a home that will commit to allowing visitation with extended family and participation in cultural events of the Tribe.

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ACTIVE EFFORTS

- Efforts beyond the passive services “reasonable” services provided in other cases.
- Efforts that are culturally appropriate, specifically taking into account the prevailing social and cultural conditions of the child’s Tribe.
- Efforts that make use of the child’s extended family, the tribe, and Indian social service agencies, and Indian caregivers.

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The Indian Child Welfare Act (ICWA) created placement preferences for Indian children that applies to all state court cases.

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PLACEMENT PREFERENCES:
keeping children close

- Foster Care Placements:
 - Member of extended family
 - Foster home approved by the tribe
 - Indian foster home
 - Institution approved by the tribe or operated by an Indian organization
- Adoptive Placements:
 - Member of extended family
 - Other members of child's tribe
 - Other Indian families

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PLACEMENT PREFERENCES

Essential tribal roles in placement

- Active Efforts - The agency must consult with the tribe, and use available tribal services, when making a placement of an Indian child.
- The tribe may establish a different order of placement preference by resolution.
- If a child is not placed according to the placement preferences, the agency must prove “good cause”, including proof by clear and convincing evidence of a diligent search for a suitable Indian home.


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ICWA CULTURAL & SOCIAL STANDARDS IN PLACEMENT

WIC 16519.5 (c)(ii) requires:

“in the case of an Indian child for whom the child’s tribe is not exercising its right to approve a home, the county shall apply the prevailing social and cultural standards of the Indian community to resource family approval for that child”.

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The Indian Child Welfare Act authorizes tribes to approve homes for placement of their children removed from the custody of their parents or Indian custodian (25 USC § 1915, CA Health & Safety §1505).

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Tribally Approved Homes (TAH)
vs.
Tribally Specified Homes (TSH)



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TRIBALLY APPROVED HOMES

A Tribally Approved Home (TAH) means a home that has been licensed or approved by an Indian tribe for foster care or adoptive placements of an Indian child using standards established by the tribe pursuant to ICWA. It is not required to be licensed by the state or county and is equivalent to a state or county-licensed home for the purposes of services and funding.

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TRIBALLY SPECIFIED HOMES

A Tribally Specified Home (TSH) means a home that a tribe designates as its preferred placement option for an Indian child who is in the custody of the county. (These homes are completing the RFA county process for approval).

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EMERGENCY PLACEMENT

ACTIVE EFFORTS BEST PRACTICES

1. Contact the Tribe to identify potential ICWA compliant emergency placement options
2. Determine who will contact who in the search for emergency placement (dependent upon availability, relationship)
3. County proceeds with their process of running background checks & associated approval processes.
4. County and Tribe collaborative go out and assess home; including identifying resource needs (diapers, beds, etc.) and who will facilitate offering of those resources

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QUALIFIED EXPERT WITNESS

The qualified expert witness should be one of the following with preference in descending order:

1. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family or organization in childrearing practices;
2. A member of another tribe who is recognized to be a QEW by the Indian child's tribe based on their knowledge of the delivery of child and family services to Indians and the Indian child's tribe;
3. A layperson who is recognized by the Indian child's tribe as having substantial experience in the delivery of child and family services to Indians and an extensive knowledge of prevailing social and cultural standards and childrearing practices within the child's tribe;
4. A professional having substantial education and experience in the area of his or her specialty.

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QEW - BEST PRACTICES

If the Tribe disagrees with the selection of the qualified expert witness the tribal designated staff can:

- Submit a letter to the child welfare agency listing the preferred qualified expert witness
- Exercise the option of hiring a tribal QEW as an alternative to the county selected QEW

What is your current county/tribal practice for determining QEW appointments?

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PERMANENCY

- Legal Permanency: established through reunification, adoption, or guardianships.
- Stability in the home
- Relational Permanency: emotional attachment between the child and caregivers and other family members and kin.
- Welfare and Institutions Section 16501.1(j): for children 10 years or older, case plan must include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals.
- Cultural Permanency: continuous connection to family, tradition, race, ethnicity, culture, language and religion.
- Cultural Connectedness results in positive mental health outcomes for Indian youth

Source: University of Iowa School of Social Work, National Resource Center for Family Centered Practice. (2009). Improving Outcomes for Youth in Transition. Located [here](#).

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ICWA SPECIFIC PROVISION IN CALIFORNIA JUVENILE DELINQUENCY CASES

- Juvenile probation officers have an affirmative duty to conduct inquiry. This starts at initial contact. Welfare and Institutions Code, Section 224.3.
- What about the other provisions? They apply when:
 - A child is either in foster care or at-risk of entering foster care and one of the following:
 - Petition only alleges status offenses;
 - Court has set a hearing to terminate parental rights - "Criminal" conduct not required; or
 - The court has placed the child in foster care or an adoptive placement due to abuse or neglect in the child's home.

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Wow, some of y'all get to practice social work in partnership with Tribes, their children, and their families?? What an honor and a privilege!

ICWA is the Gold Standard of child welfare practice

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FAMILY & COMMUNITY ENGAGEMENT

Engagement isn't just required at the individual and family level, its required at the community level as well. How do you engage with the communities you serve? How do you show up in community?

- **Direct and Transparent** - *be clear, be honest, even if speaking the truths are uncomfortable*
- **Human/Personalized** - *be yourself, YOU are your greatest tool*
- **Ongoing and Consistent** - *follow through and follow-up, check-in regularly, even if it's a quick text*
- **Respectful** – *how do you think others experience their interactions with you?*

By building relationships based on trust, honesty, and partnership we know that historical mistrust can be overcome. Establish yourself as a helper, do what you say you will do, and collaborate with other native organizations and service providers.

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Getting to Know Your Tribal Community Activity

The ability to build healthy and productive relationships is a critical component of all areas of advocacy work. To build balanced relationships with the populations we work with we must immerse ourselves in those communities and contribute in times of celebration and wellness and not just in times of struggle and trauma.

In California, we are blessed to be living and learning in places with rich and diverse tribal populations that in many ways are flourishing and even leading the way when it comes to cultural preservation, assertion of tribal sovereignty, natural resource preservation, building governmental infrastructure, program development, economic development, etc.

Task: Research and attend tribally sponsored community events in your local areas. Share those experiences with your colleagues.

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Getting to Know Your Tribal Resources Activity

As a team, map out any tribal programs, agencies and resources that you are aware of in your county or neighboring counties.

Assign a tribal resource to team member to research further and bring back to the team. Research/visit/call/follow on social media and report out on the following:

1. Agency Name, Location, mission, history
2. What services do they provide?
3. What specific populations/service area do they serve?
4. What makes their practices different than mainstream and therefore culturally appropriate?
5. Are there partnership opportunities? *Reciprocity*

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We are
nearing
the end of
our time
together...

Follow-up Questions,
Comments,
Wonders,
Excitement, etc.?

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CONTACT INFORMATION

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CDSS Office of Tribal Affairs:

<https://www.cdss.ca.gov/inforesources/tribal-affairs>

TribalAffairs@dss.ca.gov

Link for Tribal State Legislation, Regulations, ACLs & ACINs:

<https://www.cdss.ca.gov/inforesources/tribal-affairs/tribal-state-legislation-regulations-acls-acins>

Technical Assistance: <https://www.cdss.ca.gov/inforesources/tribal-affairs/training-technical-assistance>

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