

ACTIVE EFFORTS:

What Judicial Officers & Counsel for Parents & Children Need to Know

June 15, 2021

HON. LEONARD EDWARDS, JUDGE OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA (RET.)

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We would like to acknowledge our presentation is brought to you today from the original and current lands of the Ohlone people in the San Francisco Bay Area, where our Judicial Council of California Office is currently located. We thank the Ohlone ancestors and present tribal communities, as well as the tribal lands and communities from where our presenters are speaking from.

Land Acknowledgment

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ACTIVE EFFORTS

Active Efforts is a term created in 1978 with the passage of the Indian Child Welfare Act (the ICWA)

In 1980 Congress passed the Adoption Assistance and Child Welfare Act which created the term Reasonable Efforts.

Neither Active Efforts nor Reasonable Efforts has a definition in the original statutes.

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ACTIVE EFFORTS

2016

The Bureau of Indian Affairs issued regulations with a definition of Active Efforts in 2016.

In 2019 that definition was incorporated into California law with the passage of AB 3176.

2019

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ACTIVE EFFORTS

Federal Requirements

“Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”

25 U.S.C. 1912 (d) and 25 C.F.R Part 23

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ACTIVE EFFORTS

“To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child’s Tribe and should be conducted in partnership with the Indian child and the Indian child’s parents, extended family members, Indian custodians, and Tribe.”

§23.2 (available as an attachment)

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Active efforts is more than working with the parent to complete the case plan....

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ACTIVE EFFORTS

For example – Active Efforts must be employed by the social worker to do the following:

1. *Prevent Removal of an Indian Child.*
2. *Identify, notice and engage members of the Indian Child's tribe.*
3. *Provide services to promote reunification of the child with the family.*
4. *Prevent the breakup of an Indian family prior to disposition. (See WIC §306(f)(4)).*
5. *Take steps to ensure if the child must be removed that the child be placed with family or tribal members.*

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ACTIVE EFFORTS

WIC § 306(f)(4) – If it is reason to know that the child is an Indian child, the county social worker shall make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family prior to removal from the custody of a parent or parents or Indian custodian unless emergency removal is necessary to prevent imminent physical damage or harm to the Indian child.

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ACTIVE EFFORTS

Neither Active Efforts
nor Reasonable Efforts
has a specific
definition.

Each depends on the
problem(s) presented
and the resources
available in the
community.

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ACTIVE EFFORTS

However, the Federal Regulations outline specific aspects of what Active Efforts should include.



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ACTIVE EFFORTS

No one has expressed the meaning of Active Efforts better than Justice William Thorne (ret.)

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ACTIVE EFFORTS

This conversation made me realize that active efforts was not a measure of “services,” but instead a different attitude or approach to “helping” a parent or family succeed. Not judging, but healing. Not compliance focused, but oriented to assisting the parent and family. Not creating a parenting plan, but instead walking and working beside the parent and family. Active efforts is about doing things differently, not just more or increased amounts of the same things we have already been doing. It is about investing in the success of the family. It is about connecting them to healing. It is about walking beside them and lending them our strength when they need it. It is what we would do if they were our families. It is what we would do if their lives really “mattered.” All families matter...and we should act like it

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ACTIVE EFFORTS – CASE LAW

Active efforts involves an attitude on the part of the social worker.

There is an urgency in child welfare cases.

The social worker’s attitude must reflect the urgency of a situation where a child may lose his/her parents and his/her tribe.

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ACTIVE EFFORTS – CASE LAW



Few state appellate cases address the meaning of Active Efforts.



Most state appellate decisions conclude that Active Efforts require more 'efforts' than reasonable efforts.

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ACTIVE EFFORTS – CASE LAW

In the Maryland case of *In re Nicole B.*, 175 Md. App. 450 (at p. 472) (2007), the trial court found that the social worker had provided only reasonable efforts. The appellate court concluded that the social worker referred the parents to services and that referrals were not active efforts. The case was reversed and returned to the trial court.

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ACTIVE EFFORTS – CASE LAW

*Trial courts found active efforts had been provided in the following cases:

Department of Human Servs. v. Lee (in re JL), 483 Mich. 300, at p. 321 (2009);

**In re D.S.B. and D.S.B.*, 2013 MT 112 (2013) at pp. 5-6; *State v. Jamison M., and Shinai S.*, 18 Neb. App. 679 (2010) at p. 685;

**In re S.A.D. Jackson County Circuit Court*, A156322 (2014) at p. 5; *People ex rel. P.S.E.*, 2012 SD 49 (2012) at pp. 58-59; *P.D.C. v D.J.C.R.*, Utah Court of Appeals, 2001 UT App 353 at pp 356-357;

**In re Welfare of Children of S.W.*, 727 N.W. 2d 144 (2007)

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ACTIVE EFFORTS— CASE LAW

No state has had as many appellate cases regarding Active Efforts as Alaska.

All Alaska appellate cases are decided by the Alaska Supreme Court.

For example, see *Denny M. v State of Alaska, Department of Health & Social Services, Office of Children’s Services*, 365 P.3d 345 (2016).

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ACTIVE EFFORTS – CASE LAW

Only one state, Kansas, has issued an appellate decision regarding Active Efforts after the adoption of the federal regulations.

See *In re L.M.B.*, 398 P.3d 207 (2017).

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ACTIVE EFFORTS – CASE LAW

The Kansas court specified the services provided:

(1) the tribe participated in the creation of the case plan; (2) relatives who were members of the tribe participated throughout the case; (3) the social worker met regularly with the relatives and children; (4) the children were placed with maternal relatives which was consistent with the cultural tradition of the Citizen Potawatomi Nation; (5) the social worker attempted to facilitate parent-child visits, conditioned on clean drug tests by the parents, but the parents only showed up for one visit, (6) and the state provided therapy for the children when needed. The state also provided referrals for a parenting class and for a drug-and-alcohol assessment. The court found some of the efforts provided by the social worker “hazy” because it was so difficult to contact the parents, “let alone provide them with additional help.”

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ACTIVE EFFORTS – CASE LAW

California appellate law takes the position that active efforts are equivalent to reasonable efforts.

See *In re Michael G.*,
63 Cal App. 4th 700
(1998).

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ACTIVE EFFORTS – CASE LAW

The California Legislature passed WIC § 361.7(b)

“What constitutes active efforts shall be assessed on a case-by-case basis. The active efforts shall be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child’s extended family, tribe, and other Indian social service agencies, and individual Indian caregiver service providers.”

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ACTIVE EFFORTS – CASE LAW

However, after adoption of WIC §361.7, appellate case law has affirmed the position taken in the *Michael G.* case.

See . *In re T.W.*, 9 Cal.App.5th 339 (2017); *Adoption of Hannah S.*, 142 Cal.App.4th 988, at 998 (2006); *In re C.F.*, 230 Cal.App.4th 227 (2014).

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ACTIVE EFFORTS



Another takeaway from these decisions:



As numerous state appellate decisions have written, “Family reunification services are not ‘reasonable’ if they consist of nothing more than handing the client a list of services and then putting the entire responsibility on the client to find and complete the services.”

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ACTIVE EFFORTS

It is the specificity of actions by the social worker consistent with the regulations that determine whether Active Efforts have been provided.

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ACTIVE EFFORTS

Attorneys and judges must create a record by questioning the social worker about the specific actions he/she has taken to provide active efforts to the parents and child



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That is required by federal law.

§ 23.120 – How does the State court ensure that active efforts have been made

(b) Active efforts must be documented in detail in the record.

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ACTIVE EFFORTS

The questions in Attachment A are a starting point for the creation of a record.

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ACTIVE EFFORTS

Many of the questions in Attachment A can be addressed at the detention hearing.

Set an interim review 30-45 days after the detention hearing to address those issues which were not covered at the detention hearing.

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ACTIVE EFFORTS AND BYPASS

WIC 361.5 allows the bypass of reunification services in certain situations

However, WIC 361.7(a) says that in spite of 361.5, in an ICWA case, active efforts must still be provided

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ACTIVE EFFORTS AND BYPASS

WIC 361.7 was enacted in 2006

Since then, only one CA appellate case has held that bypass is allowed in an ICWA case

- *In re K.B.* (2009) 173 Cal.App.4th 1275

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ACTIVE EFFORTS AND BYPASS

In re K.B. – extreme circumstances – services denied to father who:

- Was a registered sex offender
- Had a prior conviction for lewd and lascivious acts on a child under the age of 14
- Was violating parole just by being present in the home with any children, including his own
- Had allegations sustained of sexual molestation of K.B.'s half-sister

Court said it could not conceive of any services that could be usefully offered to father, and that requiring services would be pointless

Key – can it be shown that services would be “nothing but an idle act”?

- *Letitia V. v. Superior Court* (2000) 81 Cal.App.4th 1009

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ACTIVE EFFORTS

A recent decision from the Federal 5th Appellate Circuit has ruled portions of the ICWA unconstitutional.

Brackeen v. Haaland, No. 18-11479, ___ F.3d ___ (5th Cir. Apr. 6, 2021)

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While that court ruled that the ICWA was constitutional, the Circuit Court of Appeals also ruled that the Active Efforts requirement of the ICWA is unconstitutional.



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That decision is effective only for the states in the 5th Federal Circuit (Texas, Florida, Mississippi, Louisiana, Georgia and Alabama).

It has no legal effect for other states including California.

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HOWEVER, this case may end up in the United States Supreme Court as both sides have appealed this decision.

At least 2 justices on the U.S. Supreme Court have opined that the entire ICWA is unconstitutional.

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ACTIVE EFFORTS

In your practice, be certain that
Active Efforts are discussed in
every court hearing.

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ACTIVE EFFORTS

QUESTIONS AND COMMENTS

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Thank You for Attending Today's Webinar

For questions, comments or contact information for today's presenters, please contact:

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Active Efforts

Legal Citations

FEDERAL REQUIREMENTS

25 U.S.C. 1912 (d) Remedial services and rehabilitative programs; preventive measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

[25 C.F.R. Part 23](#)

§23.2 Definitions

Active efforts means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and Tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include, for example:

- (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
- (2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
- (3) Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;
- (4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;
- (5) 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;
- (6) Taking steps to keep siblings together whenever possible;

(7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;

(8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;

(9) Monitoring progress and participation in services;

(10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;

(11) Providing post-reunification services and monitoring.

§23.120 How does the State court ensure that active efforts have been made?

(a) Prior to ordering an involuntary foster-care placement or termination of parental rights, the court must conclude that active efforts have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful.

(b) Active efforts must be documented in detail in the record.

[Guidelines for Implementing the Indian Child Welfare Act December 2016](#)

C.8 Active efforts in emergency situations

Guidelines:

We recommend that State agencies work with Tribes, parents, and other parties as soon as possible, even in an emergency situation, to begin providing active efforts to reunite the family.

E.1 Meaning of “active efforts”

Regulation:

§ 23.2 Active efforts means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family...

Guidelines:

ICWA requires the use of “active efforts” to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.¹ The statute does not define “active efforts,” but

¹ 25 U.S.C. 1912(d).

the regulation does in § 23.2. The “active efforts” requirement in ICWA reflects Congress’ recognition of the particular history of the treatment of Indian children and families. Many Indian children were removed from their homes because of poverty, joblessness, substandard housing, and other situations that could be remediated through the provision of social services. The “active efforts” requirement helps ensure that parents receive the services that they need so that they can be safely reunified with their children. The “active efforts” requirement is designed primarily to ensure that services are provided that would permit the Indian child to remain or be reunited with her parents, whenever possible, and helps protect against unwarranted removals by ensuring that parents who are, or may readily become, fit parents are provided with services necessary to retain or regain custody of their child. This is viewed by some child-welfare organizations as part of the “gold standard” of what services should be provided in all child-welfare proceedings, not just those involving an Indian child.²

Other Federal and State laws require that child-welfare agencies make at least “reasonable efforts” to provide services that will help families remedy the conditions that brought the child and family into the child welfare system. And some courts and States understand “active efforts” and “reasonable efforts” as relative to each other, where “active efforts” is higher on the continuum of efforts required and “reasonable efforts” is lower on that continuum.³ Some courts and States consider “active efforts” to be essentially the same as “reasonable efforts.”⁴ Instead of focusing on such a comparison, the rule defines “active efforts” by focusing on the quality of the actions necessary to constitute “active efforts” (affirmative, active, thorough, and timely) and providing examples and clarification as to what constitutes “active efforts.”

ICWA requires “active efforts” prior to foster-care placement of or TPR to an Indian child, regardless of whether the agency is receiving Federal funding.

What constitutes sufficient “active efforts” will vary from case-to-case, and courts have the discretion to consider the facts and circumstances of the particular case before it when determining whether the definition of “active efforts” is met.

Active efforts should be:

- Affirmative;
- Active;
- Thorough; and
- Timely

E.2 Active efforts and the case plan

Regulation:

§ 23.2 ... Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.

² See 81 FR 38813-388-14.

³ See, e.g., *In re Nicole B.*, 927 A.2d 1194, 1206-07 (Md. Ct. Spec. App. 2007)

⁴ See, e.g., *In re C.F.*, 230 Ca. App. 4th 227 (2014); *In re Michael G.*, 63 Cal. App. 4th 700 (1998).

Guidelines:

Because active efforts must involve assisting the parents or Indian custodian through the steps of the case plan, and with accessing or developing resources necessary to satisfy the case plan, the State agency may need to take an active role in connecting the parent or Indian custodian with resources. By its plain and ordinary meaning, “active” cannot be merely “passive.”

E.3 Active efforts consistent with prevailing social and cultural conditions of Tribe

Regulation:

§ 23.2... To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child’s Tribe and should be conducted in partnership with the Indian child and the Indian child’s parents, extended family members, Indian custodians, and Tribe.

Guidelines:

The rule indicates that, to the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions of the Indian child’s Tribe, and in partnership with the child, parents, extended family, and Tribe. This is consistent with congressional direction in ICWA to conduct Indian child-custody proceedings in a way that reflects the cultural and social standards prevailing in Indian communities and families. There is also evidence that services that are adapted to the client’s cultural backgrounds are better.⁵

Determining the appropriate active efforts may entail discussions with Tribal leadership, elders, or religious figures or academics with expertise concerning a given Tribe as to the type of culturally appropriate services that could be provided to the family. Culturally appropriate services in the child welfare context could include trauma-informed therapy that incorporates best practices in addressing Native American historical and intergenerational trauma, pastoral counseling that incorporates a Native American holistic approach and focus on spirituality, and Tribal/Native faith healers or medicine/holy men or women within the Tribe who utilize prayers, ceremonies, sweat lodge and other interventions. Another example is the use of Positive Indian Parenting curriculum, which is based on Native American beliefs and customs, and provided to clients to improve their parenting skills with a strong culture-based background. These are examples only and not an exhaustive list.

E.4 Examples of active efforts

Regulation: [see above]

Guidelines:

The examples of active efforts provided in the ICWA regulations reflect best practices in the field of Indian child welfare, but are not meant to be an exhaustive list. Active efforts must be tailored to each child and family within each ICWA case and could include additional efforts by the agency working with the child and family. The minimum actions required to meet the “active efforts” threshold will depend on unique circumstances of the case. It is recommended that the State agency determine which active

⁵ See 81 FR 38790-38791 (June 14, 2016).

efforts will best address the specific issues facing the family and tailor those efforts to help keep the family together. This will help active efforts to respond to the unique facts and circumstances of the case. For example, if one of the child's parents has a problem with alcohol abuse, active efforts might include assisting that parent with enrollment in an alcohol treatment program and helping to coordinate transportation to and from meetings. If substance abuse is not an issue, active efforts would not need to include this kind of assistance.

As the examples illustrate, the State agency should actively connect Indian families with substantive services and not merely make the services available. Agency workers and courts should ask whether they have truly taken "active" steps (i.e., affirmative, proactive, thorough, and timely efforts) to provide services and programs to the family, recognizing that resource constraints will always exist.

E.5 Providing active efforts

Regulation:

§ 23.120 How does the State court ensure that active efforts have been made? (a) Prior to ordering an involuntary foster-care placement or termination of parental rights, the court must conclude that active efforts have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful....

Guidelines:

The statute and rule provide that the State court must conclude that active efforts were provided and were unsuccessful prior to ordering an involuntary foster-care placement or TPR.⁶ Thus, if a detention, jurisdiction, or disposition hearing in an involuntary child-custody proceeding includes a judicial determination that the Indian child must be placed in or remain in foster care, the court must first be satisfied that the active efforts requirement has been met. In order to satisfy this requirement, active efforts should be provided at the earliest point possible.

If reunification with one parent is not possible (e.g., where the parent has severely abused a child or will be incarcerated for a long period of time), the court should still consider whether active efforts could permit reunification of the Indian child with the other parent.

Active efforts are required to prevent the breakup of the Indian child's family, regardless of whether individual members of the family are themselves Indian. The child's family is an "Indian family" because the child meets the definition of an "Indian child."

Checking on status of active efforts. The regulations reflect that the court must conclude that active efforts were made prior to ordering foster-care placement or TPR, but does not require such a finding at each hearing.⁷ It is, however, a recommended practice for a court to inquire about active efforts at every court hearing and actively monitor compliance with the active efforts requirement. This will help avoid unnecessary delays in achieving reunification with the parent, or other permanency for the child. The court should not rely solely on past findings regarding the sufficiency of active efforts, but rather

⁶ See 25 U.S.C. 1912(d); 25 CFR § 23.120.

⁷ See 25 CFR § 23.120.

should routinely ask as part of a foster-care or TPR proceeding whether circumstances have changed and whether additional active efforts have been or should be provided.

How long to provide active efforts. There are no specific time limits on active efforts, and what is required will depend on the facts of each case. State agencies should keep in mind that the State court must make a finding that active efforts were provided in order to make a foster-care placement or order TPR to an Indian child. Even if a finding was made that sufficient active efforts were made to support the foster-care placement, circumstances may have changed such that the court may require additional active efforts prior to ordering TPR. For example, if a parent initially refused alcohol treatment despite an agency's active efforts to provide services, a court could find that these efforts satisfied the requirement for purposes of the foster-care placement. But, if the parent subsequently completes alcohol treatment and needs additional services to regain custody (such as parenting skills training), the court will need to consider whether active efforts were made to provide these services. The requirement to conduct active efforts necessarily ends at the TPR because, after that point, there is no service or program that would prevent the breakup of the Indian family. If a child-custody proceeding is ongoing, even after return of the child, then active efforts would be required before there may be a subsequent foster-care placement or TPR.

Applying for Tribal membership. There is no requirement to conduct active efforts to apply for Tribal citizenship for the child. In any particular case, however, it may be appropriate to assist the child or parents in obtaining Tribal citizenship for the child, as this may make more services and programs available to the child. Securing Tribal citizenship may have long-term benefits for an Indian child, including access to programs, services, benefits, cultural connections, and political rights in the Tribe. It may be appropriate, for example, to assist in obtaining Tribal citizenship where it is apparent that the child or its biological parent would become enrolled in the Tribe during the course of the proceedings, thereby aiding in ICWA's efficient administration.

E.6 Documenting active efforts

Regulation:

§ 23.120 How does the State court ensure that active efforts have been made?

...(b) Active efforts must be documented in detail in the record.

Guidelines:

The active-efforts requirement is a key protection provided by ICWA, and it is important that compliance with the requirement is documented in the court record. The rule therefore requires the court to document active efforts in detail in the record.

State agencies also need to help ensure that there is sufficient documentation available for the court to use in reaching its conclusions regarding the provision of active efforts. Although the court itself determines what level of documentation it will require, the Department recommends that the State agency include the following in its documentation of active efforts, among any other relevant information:

- The issues the family is facing that the State agency is targeting with the active efforts (these should be the same issues that are threatening the breakup of the Indian family or preventing reunification);
- A list of active efforts the State agency determines would best address the issues and the reasoning for choosing those specific active efforts;
- Dates, persons contacted, and other details evidencing how the State agency provided active efforts;
- Results of the active efforts provided and, where the results were less than satisfactory, whether the State agency adjusted the active efforts to better address the issues.

While ICWA does not establish a standard of evidence for review of whether active efforts have been provided, the Department favorably views cases that apply the same standard of proof for the underlying action to the question of whether active efforts were provided (i.e., clear and convincing evidence for foster care placement and beyond a reasonable doubt for TPR).

CALIFORNIA REQUIREMENTS

Welf & I C §224.1 Definitions

(f) "Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. If an agency is involved in an Indian child custody proceeding, active efforts shall involve assisting the parent, parents, or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts shall be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and shall be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts shall be tailored to the facts and circumstances of the case and may include, but are not limited to, any of the following:

- (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal.
- (2) Identifying appropriate services and helping the parents overcome barriers, including actively assisting the parents in obtaining those services.
- (3) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues.
- (4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents.
- (5) 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.
- (6) Taking steps to keep siblings together whenever possible.

(7) Supporting regular visits with parents or Indian custodians in the most natural setting possible, as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child.

(8) Identifying community resources, including housing, financial assistance, transportation, mental health and substance abuse services, and peer support services, and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources.

(9) Monitoring progress and participation in services.

(10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available.

(11) Providing post-reunification services and monitoring.

Welf. & I C § 306. Duties of social workers; Indian child as ward of tribal court or subject to exclusive jurisdiction of tribe; temporary custody; transfer of custody to tribe; petition

...

(f) (4) If it is known or there is reason to know the child is an Indian child, the county social worker shall make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family prior to removal from the custody of a parent or parents or Indian custodian unless emergency removal is necessary to prevent imminent physical damage or harm to the Indian child.

Welf. & I C § 319. Initial petition hearing; examination and report; release; grounds for continued detention; judicial findings and order; limitations upon right to make educational or developmental services decisions for the child; matters involving Indian child

...

(f) (2) If the court knows or has reason to know the child is an Indian child, the court shall also determine whether the county welfare department made active efforts to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family. The court shall order the county welfare department to initiate or continue services or programs pending disposition pursuant to Section 358.

Welf & I C § 361.7. Termination of parental rights or involuntary placement of Indian children; standards

(a) Notwithstanding Section 361.5, a party seeking an involuntary foster care placement of, or termination of parental rights over, an Indian child shall provide evidence to the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. The active efforts shall be documented in detail in the record.

(b) What constitutes active efforts shall be assessed on a case-by-case basis. The active efforts shall be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts shall utilize the available resources of the Indian child's

extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

Welf. & I C § 366. Periodic status review

(a)(1) The status of every dependent child in foster care shall be reviewed periodically as determined by the court but no less frequently than once every six months, as calculated from the date of the original dispositional hearing, until the hearing described in Section 366.26 is completed. The court shall consider the safety of the child and shall determine all of the following:

(A) The continuing necessity for and appropriateness of the placement.

(B) The extent of the agency's compliance with the case plan in making reasonable efforts, or, in the case of a child 16 years of age or older with another planned permanent living arrangement, the ongoing and intensive efforts, to return the child to a safe home and to complete any steps necessary to finalize the permanent placement of the child, including efforts to maintain relationships between a child who is 10 years of age or older and who has been in an out-of-home placement for six months or longer, and individuals other than the child's siblings who are important to the child, consistent with the child's best interests. Where it is known or there is reason to know that the child is an Indian child, as defined by Section 224.1, the court shall also determine whether the agency has made active efforts, as defined in Section 224.1 and as described in Section 361.7, to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.

California Rules of Court, Rule 5.485. Placement of an Indian child

(c) Active efforts In addition to any other required findings to place an Indian child with someone other than a parent or Indian custodian, or to terminate parental rights, the court must find that active efforts have been made, in any proceeding listed in rule 5.480, to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and must find that these efforts were unsuccessful. These active efforts must include affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite the child with his or her family, must be tailored to the facts and circumstances of the case, and must be consistent with the requirements of Welfare and Institutions Code section 224.1(f).

(1) The active efforts must be documented in detail in the record.

(2) The court must consider whether active efforts were made in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe.

(3) Active efforts to provide services must include pursuit of any steps necessary to secure tribal membership for a child if the child is eligible for membership in a given tribe, as well as attempts to use the available resources of extended family members, the tribe, tribal and other Indian social service agencies, and individual Indian caregivers.

California Rules of Court, Rule 5.486. Termination of parental rights

(a) Evidentiary burdens The court may only terminate parental rights to an Indian child or declare an Indian child free of the custody and control of one or both parents if at the hearing 231 terminating parental rights or declaring the child free of the custody and control of one or both parents, the court:

(1) Finds by clear and convincing evidence that active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family were made; and

(2) Makes a determination, supported by evidence beyond a reasonable doubt, including testimony of one or more “qualified expert witnesses” as defined in Welfare and Institutions Code section 224.6 and Family Code section 177(a), that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

Active Efforts



U.S. Department of the Interior, Bureau of Indian Affairs
Final Rule: Indian Child Custody Proceedings
25 CFR § 23.2, § 23.120

What are active efforts?

Active efforts are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family.

What must active efforts involve?

Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent(s) or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.

How should active efforts be provided?

To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and Tribe.

Are active efforts tailored to each case?

Yes, active efforts are to be tailored to the facts and circumstances of the case.

When are active efforts required?

The active efforts requirement applies in any foster-care or termination-of-parental-rights proceeding involving an "Indian child" (see 25 CFR 23). The court must conclude, prior to ordering an involuntary foster-care placement or termination of parental rights, that active efforts have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful.

Must active efforts be documented?

Yes, the court will require active efforts to be documented in detail in the record.

Active efforts may include, for example:

- (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
- (2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
- (3) Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;
- (4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;
- (5) 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;
- (6) Taking steps to keep siblings together whenever possible;
- (7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;
- (8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;
- (9) Monitoring progress and participation in services;
- (10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;
- (11) Providing post-reunification services and monitoring.



Reasonable and Active Efforts, and Substance Use Disorders

A TOOLKIT FOR PROFESSIONALS WORKING WITH FAMILIES IN OR AT RISK OF ENTERING THE CHILD WELFARE SYSTEM

This document was prepared by the National Quality Improvement Center for Collaborative Community Court Teams (QIC-CCCT) through cooperative agreement 90CA1854-01-03 with the Administration on Children, Youth and Families (ACYF), Children's Bureau. The QIC-CCCT is a national initiative to address the needs of infants and families affected by substance use disorders and prenatal substance exposure. The initiative is operated by the Center for Children and Family Futures and its partners, the National Center for State Courts, Advocates for Human Potential, American Bar Association Center on Children and the Law, the Tribal Law and Policy Institute. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the position, opinions, or policies of ACYF. For more information about this initiative, please visit our website at www.cffutures.org/qic-ccct.

“When we fail to take reasonable efforts seriously, we do real harm to children and families.”¹

Reasonable and active efforts findings allow juvenile or family courts to determine whether a child welfare agency has satisfied its statutory requirement to prevent removal of a child from his or her family or to reunify the family if a child has been placed in out-of-home care. Reasonable efforts findings also encourage state agencies to achieve timely permanency for the child. Judicious application of reasonable and active efforts statutes can assist parents and children in receiving needed services that may improve permanency outcomes.

“The reasonable efforts/no reasonable efforts findings are the most powerful tools given to the courts by the federal legislation. These findings enable the court to determine whether the agency has done its job to prevent removal, assist in reunifying families, and achieve timely permanency for the child.”²

Unfortunately, these findings can be difficult to make and less than one percent of appellate case law addresses reasonable efforts to prevent removal. Reasons for this lack of attention include:

- No concrete definitions of reasonable or active efforts exist
- The services available vary depending on the community
- Reducing child welfare funding as a remedy to inadequate services is not appealing

¹ [It's Time to Follow the Law and Take Reasonable Efforts Seriously](#), David Kelly, Blog, Special Assistant to the Associate Commissioner of the Children's Bureau, rethinkingfostercare.blogspot.com (2018).

² Edwards, L. (2018, December 5). “Ignoring Reasonable Efforts: How Courts Fail to Promote Prevention.” *The Chronicle for Social Change*. Retrieved from judgeleonardedwards.com.

- Attorneys are overburdened and, in some states, parents’ or children’s attorneys may not be knowledgeable about reasonable and active efforts requirements and their role in child dependency cases
- Attorneys may enter cases late in the reasonable efforts/active efforts cycle
- There is no adequate appellate remedy for an error made by the court at a shelter care hearing
- The jurisdiction of a family/dependency court does not automatically extend beyond the child welfare system to external agencies where many of the needed services are based

The challenges increase with substance use disorders because of the complex nature of the disease, varying permanency timelines that conflict with treatment and recovery timelines, and ineffective screening practices that fail to timely identify a potential substance abuse issue.

The QIC-CCCT developed the Reasonable Efforts, Active Efforts and Substance Use Disorders Toolkit to help address some of the challenges presented in making reasonable and active efforts and related judicial findings in cases involving substance use. The toolkit provides definitions, statutory requirements, examples of reasonable and active efforts, and a resource guide for further reading.

REASONABLE EFFORTS DEFINED:

- Federal: Federal statutes fail to define “reasonable efforts.” In fact, Congressional legislative history suggests providing a definition would be contrary to the intent of the reasonable efforts provisions, which should be considered on a case-by-case basis. Therefore, reasonable efforts may gain a different meaning depending on the circumstances of the case, geographic location, and other factors.
- States: Some states have further elaborated on the definition through statutory language.³
- Children’s Bureau/Child Welfare Gateway Information: Reasonable efforts refer to activities of state child welfare agencies to provide the assistance and services needed to preserve and reunify families, and generally include “accessible, available and culturally appropriate services that are designed to improve the capacity of families to provide safe and stable homes for their children.”⁴
- Judicial Perspective: While judges retain discretion,⁵ some states have created guidelines for judges to follow when determining whether reasonable efforts have been achieved.⁶

³ [Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children](#) (March 2016) (defining reasonable efforts using state statutes as well as describing when reasonable efforts may or may not be required).

⁴ Ibid.

⁵ See Edwards, *supra* note 2, at 21-22.

⁶ [Title IV-E for Judges – MN Bench Card](#); [Oregon Findings Guide](#)

ACTIVE EFFORTS DEFINED:

- Federal: The Indian Child Welfare Act (ICWA), which codified the active efforts requirement in cases involving “Indian children,” does not define “active efforts.” In 2016, federal regulations and guidelines that clarify the statute were issued and 25 CFR § 23.2 provided both a definition and examples. The regulation stated that efforts should be “affirmative, active, thorough, and timely” and noted that “...active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.”
- The regulations specified that “...to the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe.”
- As with reasonable efforts, active efforts should be tailored to the facts and circumstances of the case.
- Section E.1 of the 2016 BIA Guidelines noted that the federal government decided against defining active efforts by comparing them to reasonable efforts, stating “Instead of focusing on such a comparison, the rule defines ‘active efforts’ by focusing on the quality of the actions necessary to constitute ‘active efforts’ (affirmative, active, thorough, and timely) and providing examples and clarification as to what constitutes ‘active efforts.’”
- States: A number of states have codified ICWA into state law. Prior to the issuance of the 2016 BIA regulations, many states courts provided guidance through case law about active efforts requirements. This case law may change as new appeals are heard and the 2016 guidelines are applied.
- Judicial Perspective: Judges retain discretion to consider the specific facts and circumstances of the case before the court when determining whether the active efforts requirement is met.⁷

REQUIRED REASONABLE EFFORTS DETERMINATION AT VARIOUS STAGES:

Preventing Removal

- When an in-home safety plan is sufficient, feasible, and sustainable: reasonable efforts to prevent removal should be required. (Adoption and Safe Families Act (ASFA), 45 C.F.R. 1356.21(b)(1)).

“Emergency Removal”

- Courts may find that an emergency existed that required timely removal in lieu of a reasonable efforts determination.

⁷ December 2016 - Guidelines for Implementing the Indian Child Welfare Act Section E1

- If a child is removed from the home due to an emergency, the state has 60 days or until disposition to take action to prevent removal. The agency should provide reasonable efforts to prevent removal.

Permanency Plan

- Courts should make a finding as to whether the agency has or has not made reasonable efforts to finalize a permanency goal, whether the plan is reunification, adoption, legal guardianship, or other alternative (45 C.F.R. 1356.21(b)(2)).
- If the child is in foster care, the finding should be made within 12 months of the child’s entry to foster care; however, it can be made earlier. Additional findings are required at least every 12 months thereafter while the child is in foster care.

REQUIRED ACTIVE EFFORTS DETERMINATION AT VARIOUS STAGES:

Preventing the Breakup of an Indian Family

- ICWA states that active efforts must be provided prior to foster care placement or termination of parental rights.⁸

“Emergency Removal”

- State agencies may affect an emergency placement to prevent imminent physical damage or harm to the child.⁹ “Imminent physical damage or harm,” is generally understood to “reflect the endangerment of the child’s health, safety and welfare, not just bodily injury or death.”¹⁰
- Emergency removals or placements should be as short as possible. The state authority, official or agency must either initiate a child custody proceeding subject to the provisions of the ICWA, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

REASONABLE EFFORTS NOT REQUIRED UNDER CERTAIN CIRCUMSTANCES:

Under ASFA, reasonable efforts may not be required under some circumstances and the court would need to make a judicial determination to that effect. These circumstances include:

- The parent subjected the child to aggravated circumstance as defined by State law (may vary by jurisdiction) (45 C.F.R. 1356.21(b)(3)(i)).
- The parent committed murder or voluntary manslaughter of another child of the parent (45 C.F.R. 1356.21(b)(3)(ii)(A)-(B)).
- The parent aided or abetted, attempted, conspired, or solicited to commit such a murder or voluntary manslaughter (45 C.F.R. 1356.21(b)(3)(ii)(C)).

⁸ 25 U.S.C. § 1912(d)

⁹ [25 U.S.C. § 1922](#).

¹⁰ FAQ Bureau of Indian Affairs Final Rule: Indian Child Welfare Act (ICWA) Proceedings

- The parent committed a felony assault resulting in serious bodily injury to the child or another child of the parent (45 C.F.R. 1356.21(b)(3)(ii)(D)).
- Parental rights of the parent to a sibling of the child were terminated involuntarily (45 C.F.R. 1356.21(b)(3)(iii)).
- State law may also provide additional grounds.¹¹

ACTIVE EFFORTS TO REUNIFY UNDER THOSE CERTAIN CIRCUMSTANCES:

ASFA did not amend ICWA, so arguably, in the presence of the above listed circumstances, the court should still make an active efforts determination given the specific facts of the case. Each child’s case should be examined individually and a serious inquiry into the reasons for removal, the risk for further harm to the child, and the ability of the parent or Indian custodian to safely care for the child should occur in consultation with the Indian child’s tribe to decide what and how active efforts should be provided.¹²

GENERAL EXAMPLES OF SERVICES PROVIDED TO MEET THE STANDARD OF REASONABLE EFFORTS:

Federal statute does not specify that a state offer a specific set of services to meet the standard of reasonable efforts. States make these decisions and often include family therapy, parenting classes, drug and alcohol abuse treatment, respite care, parent support groups, and home visiting programs. The federal government did issue general guidelines for state legislatures on factors to consider in making “reasonable efforts” findings.¹³ These factors include:

- The dangers to the child and the family problems that precipitate those dangers;
- Whether the services the agency provided relate specifically to the family’s problems and needs;
- Whether case managers diligently arranged services for the family;
- Whether the appropriate services for the family were available and timely, and, the results of the services provided.¹⁴
- Visitation or family time between children and parents

¹¹ [Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children, March 2016](#) (listing when reasonable efforts are and are not required in certain jurisdictions).

¹² Active Efforts Principles and Expectations, Oregon Tribes, Oregon Judicial Department Citizen Review Board, Oregon Department of Human Services 7/30/2010

¹³ Duquette, D. & Hardin, M., *Guidelines for Public Policy and State Legislation Governing Permanence for Children*, Department of Health and Human Services, ACF, Children’s Bureau, Washington, DC 1999.

¹⁴ Edwards, L. P. (2014). Reasonable efforts: A judicial perspective. Leonard Edwards. Page 13. Available at judgeleonardedwards.com.

GENERAL EXAMPLES OF HOW SERVICES PROVIDED CAN MEET THE STANDARD OF ACTIVE EFFORTS:¹⁵

The Regulations provide specific examples of how active efforts standards can be met by child welfare workers. It is the consensus of appellate decisions that active efforts require more services and attention by the social worker than reasonable efforts.¹⁶ The examples provided reflect best practices but are not meant to be an exhaustive list and the minimum actions required under active efforts will depend on the specific “facts and circumstances of the case.” Examples provided in the regulations include:

- Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal
- Identifying appropriate services and helping parents overcome barriers, including actively assisting the parents in obtaining such services
- Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues
- Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents
- 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

The full list of examples can be found on the [Cornell Legal Information Institute website](#).

USING REASONABLE EFFORTS TO SUPPORT FAMILIES AFFECTED BY SUBSTANCE USE DISORDERS

Given the requirements to provide reasonable efforts, child welfare agencies must develop and manage case plans that identify the problems presented in a case and the services offered to alleviate the problems. Federal funding (Medicaid expansion, State Targeted and State Opioid Response) has expanded in recent years to improve access to substance use disorder (SUD) treatment, particularly for opioid use disorders. However, timely access to comprehensive treatment services remains a challenge in many communities. Additional challenges in meeting reasonable efforts include:

- Child welfare agencies may not appropriately screen for and identify the problem
- For parents, a component of the disorder is concealing it for fear of losing access to the substance and/or losing custody of children

¹⁵ 25 C.F.R § 23.2

¹⁶ [Defining Active Efforts in the Indian Child Welfare Act](#), *The Guardian*, NACC, Volume 41, No. 1, Jan/Feb. 2019, at pp 1-8, at p. 7. National Association of Counsel for Children.

- The timetables set forth by ASFA are often not compatible with recovery timelines
- SUDs are often co-occurring with other risk factors including mental health disorders, domestic violence, and environmental instability and poverty
- Families involved in the child welfare system may not be a priority population for treatment providers

Thus, in accordance with understanding SUD as a chronic, recurring disease, reasonable efforts to address the problem may include timely access to the following treatment services:

- The right level of care (using American Society of Addiction Medicine criteria)¹⁷ and based on the unique needs and resources of individual families
- Evidence-based treatment, including Medication Assisted Treatment
- Continuing care and recovery support, even after court jurisdiction has ended.
- Family-centered treatment that is supportive of the needs of the family affected by substance use disorders, including residential treatment that can accept mothers and infants and young children
- Comprehensive and culturally responsive treatment services
- Gender and age responsive treatment services
- Services that are coordinated across multiple systems (mental health, child welfare, primary and infant/maternal healthcare)

For more information on the standards of comprehensive, family-centered treatment services, see [Family-Centered Treatment for Women With Substance Use Disorders](#).

REASONABLE EFFORTS AND PLANS OF SAFE CARE

The [2016 Comprehensive Addiction and Recovery Act \(CARA\) amendments to CAPTA](#) require that each state must have “policies and procedures (including appropriate referrals to child protection service systems and for other appropriate services) to address the needs of infants born and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder including a requirement that health care providers involved in the delivery or care of such infants notify the child protective services system of the occurrence of such condition of such infants....”¹⁸ The statute further requires the development of a Plan of Safe Care for affected infants that addresses the health and substance use disorder treatment needs of the infant and affected family or caregiver. Judicial officers may consider these questions in applying the Reasonable Efforts standard to Plans of Safe Care:

1. For an infant with prenatal substance exposure, would reasonable efforts require the development and implementation of a Plan of Safe Care, as specified in federal law?

¹⁷ *The ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions*, Third Edition. <https://www.asam.org/resources/the-asam-criteria>

¹⁸ Child Abuse Prevention and Treatment Act of 2016, Pub. L. 114-198, 130 Stat. 729, codified as amended at 42 U.S.C §§ 5106a.

2. Do services and supports to families to meet the reasonable efforts requirements include health care services for the infant and parent or caregiver, as specified in federal law?
3. Do reasonable efforts require strategies to actively engage parents or caregivers in services and supports identified in the Plan of Safe Care?

Considering the legislative intent of applying reasonable or active efforts to prevent children being removed from their families, reunify the family, and achieve timely permanency for the child, implementing effective Plans of Safe Care is a critical, statutorily required strategy for achieving these outcomes for infants and families affected by prenatal substance exposure.

ROLE OF THE JUDGE

Retired Judge Leonard Edwards, author of *Reasonable Efforts: A Judicial Perspective*, explains the role of judicial officers in making reasonable efforts determinations and how judges should respond in child welfare cases affected by substance use disorders:

- Create a list or inventory of services in your jurisdiction, including the capacity of the services providers to provide timely services.
- Consult with local hospitals and social service agencies. Additionally, this should include health care providers involved in the delivery or care of infants affected by prenatal substance exposure
- Create and/or expand a Family Drug Treatment Court
- Discuss the importance of remaining drug-free during pregnancy when presiding over court hearings

ROLE OF ATTORNEYS

Attorneys for parents, children and the child welfare system play a pivotal role in advocating for families affected by substance use disorder. At each stage in the process, attorneys should:

- Emphasize timely access to services
- Highlight the need for companion services such as transportation
- Advocate for family-centered practice
- Underscore the continuum of care, including continuing care and recovery supports
- Support frequent visitation and unsupervised family time
- Advocate for services for children as well as parents
- Advocate for engagement with the tribe and native service providers who can partner in the effort to promote family healing
- Advocate for the role of foster placements as supports for the biological parents
- Prepare to take appellate action if reasonable efforts are not provided

CONCLUSION

The legislative purpose of reasonable efforts requirements is to encourage states to increase preventive and reunification services for families in need.

“... the law provides an incredibly powerful tool for keeping families together and preventing trauma to children – a judicial determination that reasonable efforts were made to prevent removals. Where out-of-home placement is necessary, reasonable efforts determinations to finalize the permanency plan are the second critical tool for expediting reunification or other safe permanency options and minimizing trauma to parents and children.”¹⁹

Attorneys, judges and other child advocates should advocate for services that benefit the family and, if unavailable, champion efforts to see that systems are improved, and appropriate and effective services are developed. However, having services available falls short of making reasonable efforts to prevent child removals or achieve permanency. As state appellate decisions have written, “Family reunification services are not ‘reasonable’ if they consist of nothing more than handing the client a list of services and then putting the entire responsibility on the client to find and complete the service.”²⁰ Court teams should implement strategies and supports that provide families a reasonable opportunity to successfully engage in those services.

For more information or to request technical assistance, please review the resource guide below or contact:

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¹⁹ [It's Time to Follow the Law and Take Reasonable Efforts Seriously](#), David Kelly Blog, Special Assistant to the Associate Commissioner of the Children's Bureau (2018)

²⁰ [Defining Active Efforts in the Indian Child Welfare Act](#), *The Guardian*, NACC, Volume 41, No. 1, Jan/Feb. 2019, at pp. 1-8, at p. 7. National Association of Counsel for Children.

Reasonable Efforts Resource Guide

Resource (click to access)	Description/Summary
45 C.F.R. 1356.21	Section (b) of this federal code identifies the agency’s obligation to maintain reasonable efforts at various stages of the child welfare process. For example, the agency should make reasonable efforts to prevent removal and/or to satisfy the permanency plan. Section (b)(3) also indicates when reasonable efforts may not be required.
<i>Florida’s Dependency Benchbook 2012 – Chapter 5-11 Service and Treatment Considerations (for parents)</i> Florida Courts (2012)	This chapter discusses the role judges may play when assessing mental health, substance use, and co-occurring disorder treatment options for parents and families and suggests questions and considerations to pursue.
<i>A Planning Guide: Steps to Support a Comprehensive Approach to Plans of Safe Care</i> , National Center on Substance Abuse and Child Welfare (2018)	This guide supports stakeholders to improve outcomes for infants with prenatal substance exposure and their families. It offers steps and suggestions for state and local planners and practitioners to develop a comprehensive approach to Plans of Safe Care.
U.S. DHHS – ACYF-CB-IM-18-05 , Administration for Children and Families (2018)	This information memorandum encourages all child welfare agencies and Children’s Bureau (CB) grantees to work together with the courts and other appropriate public and private agencies and partners to plan, implement and maintain integrated primary prevention networks and approaches to strengthen families and prevent maltreatment and the unnecessary removal of children from their families. This memorandum also identifies key parties that should work together for the benefit of families such as state agencies, community partners, courts, and many more. Lastly, the memorandum describes programs around the country that “support families through primary prevention” and report available results.
<i>Understanding Substance Use Disorder Treatment in Your Community</i> , National Center on Substance Abuse and Child Welfare (2005)	This discussion guide (1) provides an overview of effective treatments to addressing substance use disorders and the importance of family centered care and (2) raises discussion questions that child welfare professionals may use to create a dialogue with community treatment providers.
<i>Clinical Guidance for Treating Pregnant and Parenting Women with Opioid Use Disorder and Their Infants</i> , SAMHSA (2018)	This document provides comprehensive, national guidance for optimal management of pregnant and parenting women with opioid use disorder and their infants. The Clinical Guide helps healthcare professionals and patients determine the most clinically appropriate action for a particular situation and informs individualized treatment decisions.

<p><u>Ignoring Reasonable Efforts: How Courts Fail to Promote Prevention</u>, Judge Leonard Edwards (2018)</p>	<p>This is an article by Judge Leonard Edwards that describes how dependency law does not fit well within the legal system. Dealing with young children requires the court system to be prepared to move more quickly than in other types of cases. Judge Edwards describes structural changes to the court system required effectively to address prevention issues.</p>
<p><u>Reasonable Efforts: A Judicial Perspective</u>, Judge Leonard Edwards (2014)</p>	<p>In his book for juvenile and family court judges, Judge Edwards discusses the statutory scheme on reasonable efforts, the existing case law, and commentary from judges and other child welfare system stakeholders. This book is available online for reading or for free downloading.</p>
<p><u>A Collaborative Approach to the Treatment of Pregnant Women with Opioid Use Disorders</u>, National Center on Substance Abuse and Child Welfare (2016)</p>	<p>This manual offers best practices to states, tribes, and local communities on collaborative treatment approaches for pregnant women living with opioid use disorders. It provides evidence-based recommendations for treatment approaches from leading professional organizations and an in-depth case study. It also includes guidance tools to help facilitate a careful, in-depth analysis of a community's current policies, practices, resources, and training needs.</p>
<p><u>It's Time to Follow the Law and Take Reasonable Efforts Seriously</u>, David Kelly (2018)</p>	<p>A blog post by David Kelly, Special Assistant to the Associate Commissioner of the Children's Bureau. David Kelly describes challenges with the current child welfare system and makes the case for more meaningful interpretation and utilization of reasonable efforts.</p>
<p><u>Representing Parents in Child Welfare Cases</u>, Martin Guggenheim & Vivek S. Sankaran (2015)</p>	<p><i>Representing Parents in Child Welfare Cases</i> is a guide for attorneys representing parents accused of parental unfitness due to abuse or neglect. Competent legal representation is often the sole support a parent has when working with the child welfare system. This book provides practical tips for attorneys at each stage of the process.</p>
<p><u>Child Safety: A Guide for Judges and Attorneys</u>, Therese Roe Lund & Jennifer Renne (2009)</p>	<p>This guide details a process of critical thinking and analysis that will enhance child safety decision-making. The guide's decision-making framework requires child welfare professionals to establish higher standards for information quality and processing. Judges, attorneys, agency workers, and CASAs will be well-served by the principles and methodology set out in the guide.</p>
<p><u>Healing the Youngest Children: Model Court-Community Partnerships</u>, Practice & Policy Brief, Lucy Hudson, et al., (2007)</p>	<p>This brief describes four model court-community partnerships that apply research to court practices to improve outcomes for maltreated infants, toddlers, and their families.</p>

Active Efforts Resource Guide

<p><u>The Indian Child Welfare Act</u></p>	<p>The federal Indian Child Welfare Act of 1978 (ICWA) (Pub.L. 95–608, 92 Stat. 3069, enacted November 8, 1978), codified at 25 U.S.C. §§ 1901–1963) governs jurisdiction over the removal of Native American (Indian) children from their families.</p>
<p><u>Bureau of Indian Affairs ICWA Resource Page</u></p>	<p>This page includes links to a number of resources, including links to the regulations, the guidelines, the Final Rule, frequently asked questions, and a quick reference sheet on active efforts.</p>
<p><u>The Indian Child Welfare Act Handbook: A Legal Guide to the Custody and Adoption of Native American Children, Third Ed.</u></p>	<p>Now fully revised and updated, <i>The Indian Child Welfare Act Handbook</i> is a one-of-a-kind guide to the Indian Child Welfare Act of 1978 written by leading scholars in the field.</p>
<p><u>The Capacity Building Center for Tribes - Tribal Information Exchange ICWA</u></p>	<p>This page collates a number of resources, including links to state codifications of the act and quick reference sheets for courts</p>
<p><u>Defining Active Efforts in the Indian Child Welfare Act</u> Judge Leonard Edwards (ret.)</p>	<p>This paper in the Jan/Feb 2019 edition of the Guardian addresses the question, What Are Active Efforts, and how states have responded to active efforts. It also explains the relationship between active efforts and reasonable efforts, reviews appellate decisions regarding the active efforts mandate, and the role of the courts in reviewing state efforts to meet the active efforts mandate.</p>
<p><u>Active Efforts Principles and Expectations</u> Oregon Tribes, Oregon Judicial Dept. Citizen Review Board</p>	<p>Publication created by Oregon’s nine recognized tribes to provide guidelines for use by courts, child welfare staff, and local Citizen Review Boards to implement the active efforts mandate of the ICWA.</p>
<p><u>Indian Child Welfare, Child Law Practice Today</u></p>	<p>This compilation of articles addresses multiple issues related to the Indian Child Welfare Act and how attorneys can work with state and tribal court professionals to improve outcomes for children and families in Indian child welfare cases.</p>

The National Association of Counsel for Children is dedicated to advancing the rights, well-being, and opportunities of children impacted by the child welfare system through high-quality legal representation.

Defining Active Efforts in the Indian Child Welfare Act

by Judge Leonard Edwards (ret.)

INTRODUCTION

The text of Indian Child Welfare Act (the ICWA) includes the term ‘active efforts’.¹

(d) Remedial services and rehabilitative programs; preventive measures - Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.² (emphasis added)

The United States Supreme Court affirmed the controlling legality of the ICWA in the case of *Mississippi Band of Choctaw Indians v. Holyfield*.³

Reasonable
≠
Active

1. The Indian Child Welfare Act, 25 U.S.C. §§ 1901-63
2. *Id.* §1912(d)
3. 490 U.S. 30; 109 S. Ct. 1597 (1989)

What this statute means is that the state has an obligation to provide services and other types of interventions to prevent the necessity of removing a child from parental care and, if removed, to assist in the reunification of the child with family. It can be argued that this obligation is the most important aspect of the ICWA. The state removes a child when there is a crisis in the family, a crisis that endangers the health or well-being of the child. The ICWA makes clear that the major purpose of the law is to retain Indian children with their family.⁴ The ICWA emphasizes that the state has a duty to intervene in the family with support and services to prevent the removal of the child and to provide services that will permit a child safely to return home.⁵ What is unclear is what kinds of services

4. Congressional Findings: (3) "...that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;" 25 U.S.C. §1901(3).
5. "The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs." 25 U.S.C. §1902.



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and interventions must be provided to accomplish these goals. Put another way, what does active efforts mean?

In the original act, the statute did not define the term ‘active efforts.’ That is understandable as active efforts will depend on the unique facts of each case. Different states have had various approaches to defining the term. When the Bureau of Indian Affairs (BIA) issued Regulations in 2016, a definition was included in the Regulations.⁶ While that definition still lacks precision, it generally delineates specific steps that should be taken to satisfy the active efforts mandate. The Regulations outline a process the state agency must follow in each case.

State appellate courts have struggled to define ‘active efforts,’ and since the publication of the new

[See ICWA on page 2 →](#)

6. A copy of the definition is contained in the text below.

regulations, there has been very little clarification.⁷ This paper will address the ways that states have responded to the 'active efforts' concept. First, the paper will recite that part of the ICWA where 'active efforts' appears. Second, it will explain the relationship between 'active efforts' and 'reasonable efforts,' the latter concept created by the Adoption Assistance and Child Welfare Act of 1980.⁸ Third, the paper will review some of the most important appellate decisions from different states that discuss the 'active efforts' mandate. Fourth, the paper will discuss the few cases that discuss 'active efforts' after the regulations have come into effect. Fifth, the paper will discuss the concept of "passive efforts." Sixth, the paper will address the question: What are Active Efforts? The conclusion will argue that many state agencies are failing to provide 'active efforts' when Indian children are the subject of child welfare proceedings, that most states should update their laws so they are consistent with the new regulations, that trial courts should carefully review in detail the efforts expended by the state, and that appellate courts should require that active efforts be provided by state agencies when dealing with the removal and return of Indian children.

7. An exception is the case of *In the Interest of L.M.B.*, 54 Kan. App. 2d 285; 398 P. 3d 207 (2017) discussed below.

8. The Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272

I. ACTIVE EFFORTS AND THE ICWA

Section 1912(d) states in part that "any party ...shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and these efforts have proved unsuccessful."

The active efforts in this section refers to the actions taken by the state, usually by a child protection or social worker, to provide services and programs to prevent the breakup of the Indian family.

II. ACTIVE EFFORTS AND REASONABLE EFFORTS

Federal law created the term 'active efforts' in 1978 as a part of the ICWA. Two years later, in 1980, the Adoption Assistance and Child Welfare Act was signed into law. That legislation created the term 'reasonable efforts.' That legislation mandated states to provide reasonable efforts to prevent removal of a child from parental care and reasonable efforts by the state to facilitate reunification should a child be removed and placed in out-of-home care.

...reasonable efforts will be made to prevent the removal of a child from his or her home and to make it possible for a child to return home.⁹

The Adoption and Safe Families Act of 1997¹⁰ added that reasonable efforts must be made by the state to help a child achieve a permanent home. The

9. *Id.*

10. Adoption and Safe Families Act of 1997 (ASFA), Public Law 105-109.

penalty for not providing reasonable efforts is a loss of federal funding.¹¹

Both active efforts and reasonable efforts place demands on state agencies when working with a family when their child is about to be removed or has been removed from parental care. The primary monitor of the state's actions is the juvenile or family court judge, the judge who has legal responsibility for oversight of the process when a child is removed involuntarily from parental care. →

11. 42 U.S.C. §671(a)(15)(B) & (b) (1989); 45 Code of Federal Regulations §1356.21(b) (1) & (2).

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The primary monitor of the state's actions is the juvenile or family court judge, the judge who has legal responsibility for oversight of the process when a child is removed involuntarily from parental care.

Are active efforts and reasonable efforts the same or does one make greater demands upon the state? This issue has been discussed in several of state appellate opinions (described below), and almost all state appellate opinions agree that active efforts require more “effort” than reasonable efforts.

The federal law did not define reasonable efforts, but some states have attempted a definition.¹² These definitions are general at best. For example, the Georgia legislature declared that

Reasonable efforts are measures taken by the Division of Family and Children’s Services of the Department of Human Services and other appropriate agencies to preserve and reunify families.¹³

South Carolina laws describe reasonable efforts as

Reasonable efforts include services that are reasonably available and timely, reasonably adequate to address the needs of the family, reasonably adequate to protect the child, and realistic under the circumstances.¹⁴

Federal Regulations have given active efforts a much more detailed definition.

§ 23.2 Definitions.¹⁵

Active efforts means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child-custody

12. For a list of those states and the legislative definitions, see Edwards, L., *Reasonable Efforts: A Judicial Perspective*, (2014), Appendix B, pp 363-372. A copy of the book is available online at judgeleonardedwards.com. It can be downloaded at no cost.

13. Georgia Ann. Code §115-11-58.

14. South Carolina Ann. Code §63-7-1680

15. Pub. L. 95-608, 92 Stat. 3069, 25 U.S.C. 1912 *et seq.*

proceeding, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child’s Tribe and should be conducted in partnership with the Indian child and the Indian child’s parents, extended family members, Indian custodians, and Tribe Active efforts are to be tailored to the facts and circumstances of the case and may include, for example:

1. Conducting a comprehensive assessment of the circumstances of the Indian child’s family, with a focus on safe reunification as the most desirable goal;
2. Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
3. Identifying, notifying, and inviting representatives of the Indian child’s Tribe to participate in providing support and services to the Indian child’s family and in family team meetings, permanency planning, and resolution of placement issues;
4. Conducting or causing to be conducted a diligent search for the Indian child’s extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child’s parents;
5. 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;

6. Taking steps to keep siblings together whenever possible;
7. Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;
8. Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child’s parents or, when appropriate, the child’s family, in utilizing and accessing those resources;
9. Monitoring progress and participation in services;
10. Considering alternative ways to address the needs of the Indian child’s parents and, where appropriate, the family, if the optimum services do not exist or are not available;
11. Providing post-reunification services and monitoring.

Based on this definition and the typical state definitions, it is clear that ‘active efforts’ involves more attention and work on the part of the state than reasonable efforts when the state considers removing a child from parental care involuntarily and after a child has been removed. ‘Active efforts’ has a distinctively Indian character. This is evidenced throughout the definition above. While the regulation lists some examples of what the state agency should consider, the opening paragraph sets the tone for all of the following →

sections: the state must engage in “affirmative, active, thorough, and timely efforts,” and “must involve assisting the parent, parents, or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.”

III. STATE APPELLATE DECISIONS

Not all states have addressed the active efforts issue, but most of the appellate court cases that have conclude that active efforts require more “efforts” by the state than reasonable efforts. For example, the Court of Special Appeals of Maryland stated that “the ‘active efforts’ standard requires more effort than a ‘reasonable efforts’ standard does.”¹⁶ In that case two Indian children were removed from parental care and placed with an aunt because of neglect. A reunification plan was prepared. At a permanency planning hearing the parents were making little progress and the children were doing well with the aunt. The trial court changed the permanency plan from reunification to custody and guardianship with the aunt. The trial court made findings that the agency provided reasonable efforts and specifically monitored the placement, supervised visitation, and provided referrals to parenting, evaluations, mental health treatment and more.¹⁷ However, the trial court made no reference to active efforts and used the reasonable efforts standard to determine whether the social service agency had complied with the law. The appellate court noted that referrals were not active efforts and that the active efforts standard requires more effort than the reasonable efforts standard

16. *In re Nicole B.*, 175 Md.App.450, at p. 472. (2007)

17. *Id.* at 462.

Numerous other appellate courts across the country have taken the position that active efforts require a higher degree of effort than reasonable efforts.

does. The appellate court vacated the trial court’s finding and remanded the case for further proceedings consistent with their opinion.

The Michigan Supreme Court found “...that ‘active efforts’ require more than ‘reasonable efforts’ required by state law.”¹⁸ In that case the mother and children were all members of the Sault Ste. Marie Tribe of Chippewa Indians. The mother’s parental rights had been terminated to three of her four children before this case arose. The child in this case (JL) was born when the mother was 16 years of age and living in foster care. Based on mother’s abusive and neglectful behavior, the child was removed from her care. The social worker provided wraparound services until the case was transferred to the Sault Ste. Marie Tribe of Chippewa Indians Tribal Court. That court released JL to the mother when she was 18. The wraparound coordinator and others worked with mother to help her with budgeting and obtaining social security benefits. However, the mother continued to demonstrate that she could not safely parent her children and her parental rights were terminated as to JL, the trial court finding that the 6 years of services including the services provided in the early cases involving three siblings satisfied the “active efforts” requirement of the ICWA.¹⁹

18. *Dep’t of Human Servs. v. Lee (in re JL)*, 483 Mich. 300, at p. 321 (2009). A similar conclusion was reached by the following courts: *In re D.S.B. and D.S.B.*, 2013 MT 112 (2013) at pp. 5-6; *State v. Jamison M., and Shinai S.*, 18 Neb. App. 679 (2010) at p. 685; *In re S.A.D. Jackson County Circuit Court*, A156322 (2014) at p. 5; *People ex rel. P.S.E.*, 2012 SD 49 (2012) at pp. 58-59; *P.D.C. v D.J.C.R.*, Utah Court of Appeals, 2001 UT App 353 at pp 356-357; *In re Welfare of Children of S.W.*, 727 N.W. 2d 144 (2007)

19. *Id.* In re JL at p.328.

No state has more appellate decisions regarding the ICWA than Alaska.²⁰ That is likely since Native Americans comprise over 14% of the Alaska population.²¹ In the case of *Denny M. v State of Alaska, Department of Health & Social Services, Office of Children’s Services*,²² the mother appealed a termination of parental rights, arguing that the state did not provide active efforts to prevent the breakup of her family. The mother was seriously mentally ill and resided in a care home. The Supreme Court affirmed the trial court finding that the state OCS made active efforts toward reunification, as the mother received extensive resources directly from OCS, including case planning, frequent and in-person support from caseworkers, monthly therapeutic visits with the children, and referrals for neuropsychological and psychological evaluations. Moreover, after the mother had moved, the state assigned a second social worker to ensure that the mother’s visits would take place and provided cab vouchers since the mother could not navigate the bus system.²³ Numerous other appellate courts across the country have taken the position that active efforts require a higher degree of effort than reasonable efforts.²⁴ →

20. An annual summary of cases involving The ICWA can be found in the *American Indian Law Journal* in its “Indian Child Welfare Act Annual Case Law Update and Commentary” written by Kathryn Fort and Adrian T. Smith, Volume 6, Issue 2 (2018).

21. Alaska Population 2017 World Population Review.

22. 365 P.3d 345 (2016).

23. *Id.* at 350.

24. *Winston J. v. State*, 134 P.3d 343, 347 n.18 (Alaska 2006); *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 150 (Minn. Ct. App. 2007); *In re A.N.*, 2005 MT 19, 325 Mont. 379, 106 P.3d 556, 560 (Mont. 2005); *In re Interest of Walter W.*, 274 Neb. 859, 744 N.W.2d 55, 61 (Neb. 2008); *In re J.S.*, 2008 OK CIV APP 15, 177 P.3d 590, 593 (Okla. Civ. App. 2008); *Dep’t of Human Services v. K.C.J.*, 228 Ore. App. 70, 207 P.3d 423, 425 (Or. Ct. App. 2009); *People in Interest of P.S.E.*,

Only one state takes the position that active efforts are equivalent to reasonable efforts.²⁵ California appellate courts have consistently held that active efforts are the same as reasonable efforts.²⁶ The leading California case is *In re Michael G.*²⁷

Under California law there is no significant difference between active efforts and reasonable efforts. Reasonable services and active efforts are essentially undifferentiable under California law.²⁸ and therefore the finding that the agency failed to demonstrate reasonable services were provided, it follows that no “active efforts” were made to prevent the breakup of the family.

After the *Michael G.* case, in 2007, the California legislature re-defined “active efforts” by adding section 361.7 to the Welfare and Institutions Code.

361.7(b): What constitutes active efforts shall be assessed on a case-by-case basis. The active efforts shall be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe. Active efforts shall utilize the available resources of the Indian child’s extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.²⁹

Despite this legislative change other California appellate cases have followed the holding in the

Michael G. case.³⁰ That California appellate courts have continued to insist that the two terms are the same is surprising given the publication of the definition of active efforts in the BIA regulations.³¹ Those regulations make it clear that there are more efforts and services that the state must provide than any reasonable efforts requirements,³² and that these efforts must be delivered in an “affirmative, active, thorough, and timely” fashion.³³ Colorado appellate courts issued one opinion stating that active efforts were the same as reasonable efforts.³⁴ However, subsequent Colorado cases have declined to follow the *K.D.* case.³⁵

IV. CASELAW AFTER THE NEW ICWA REGULATIONS

In June of 2016 the Bureau of Indian Affairs (BIA) published regulations regarding the ICWA. These regulations took effect as of December 2016, and they are law. However, if state laws provide greater protection than the new regulations, the state law will prevail. Otherwise, the new regulations are binding on the state. For the purposes of this paper, section 23.2 (Definitions) is the critical change in the law. The definition of active efforts is listed above in Part III. These regulations list 11 examples of active efforts, emphasizing the engagement of family and Indian tribes in accessing services. ‘Active efforts’ means affirmative, active, thorough

and timely efforts intended primarily to maintain or reunite and Indian child with his or her family. The definition emphasizes using culturally appropriate services and working with the child’s Tribe to provide services. Prior to ordering involuntary foster care placement or termination of parental rights, the court must conclude that active efforts have been made to prevent the breakup of the family and that they have been unsuccessful.

Active efforts must be documented in the court records before requesting foster care or termination of parental rights.³⁶ The Guidelines recommend that the documentation include the following in addition to any other relevant information. (1) The issues the family is facing that the State agency is targeting with the active efforts (these should be the same issues that are threatening the breakup of the Indian family or preventing reunification); (2) A list of active efforts the State agency determines would best address the issues and the reasoning for choosing those specific active efforts; (3) Dates, persons contacted, and other details evidencing how the State agency provided active efforts; (4) Results of the active efforts provided and, where the results were less than satisfactory, whether the State agency adjusted the active efforts to better address the issues.³⁷ Courts that simply check a box on a pre-printed form that active efforts have been provided would not be following the law.

In 2017 the Kansas Court of Appeals in the case of *In re L.M.B.* found “...that ‘active efforts’ means something more than the ‘reasonable efforts’ standard that may apply in non-Indian-child termina- →

36. ICWA Regulations §§23.120(a) and 23.120(b). “Active efforts must be documented in detail in the record.”

37. ICWA Regulations §23.120(b) Guidelines.

2012 SD 49, 816 N.W.2d 110, 115 (S.D. 2012); *J.S.B.*, 691 N.W.2d at 619; *State ex rel. C.D.*, 200 P.3d 194, 205, 2008 UT App 477 (Utah Ct. App. 2008); *In re M.L.M.*, 388 P.3d 1226 (2017).

25. *In re Adoption of Hannah S.*, 142 Cal.App.4th 988, at 998 (2006).

26. *People ex rel. K.D.*, 155 P.3d 634 (2007).

27. 63 Cal. App. 4th 700 (1998).

28. *Id.* at 714.

29. California Welfare and Institutions Code §361.7, West, 2018.

30. *In re T.W.*, 9 Cal.App.5th 339 (2017); *Adoption of Hannah S.*, 142 Cal.App.4th 988, at 998 (2006); *In re C.F.*, 230 Cal.App.4th 227 (2014).

31. 25 CFR PART 23.2 – Definitions.

32. See Edwards, L., “Active Efforts” and “Reasonable Efforts”: Do They Mean the Same Thing? Spring 2015, *The Bench*, the official magazine of the California Judges Association on pages 6 and 34. A copy of this article is available at no cost at judgeleonardedwards.com.

33. *Op.cit.*, footnote 15.

34. *People ex rel. K.D.*, 155 P.3d 634 (2007)

35. See *People ex rel. A.R.*, 2012 COA 195M (2012); *People ex rel. T.E.R.*, 2013 COA 73, 305 P.3d 414 (2013).

tion proceedings.”³⁸ In that case all family members were members of the Citizen Potawatomi Nation. The Nation was involved with the case from the outset. The children were removed from parental care because of parental drug abuse and sexual abuse by the father. The parents were granted reunification services, but visited the children infrequently, were using drugs extensively, and were homeless. Over the next year the parents were in and out of jail and out of contact with the social worker. They completed some of the services offered by the agency. The trial court found that the state used active efforts to prevent the breakup of the family, including involving the tribe and keeping the children with family members in line with the cultural traditions of the tribe. The trial court finally terminated parental rights.

The Court of Appeals affirmed the trial court’s decision. In its ruling the appellate court noted that “active efforts” means something more than “reasonable efforts.”³⁹ In reaching this conclusion the appellate court cited the Bureau of Indian Affairs Guidelines and included in its decision a recitation of the guidelines as they appear in this paper (supra).⁴⁰ The appellate court noted the details of the efforts provided by the state. They included: (1) the tribe participated in the creation of the case plan; (2) relatives who were members of the tribe participated throughout the case; (3) the social worker met regularly with the relatives and children; (4) the children were placed with maternal relatives which was consistent with the cultural tradition of the Citizen Potawatomi Nation; (5)

38. *In the Interest of L.M.B.*, 398 P.3d 207, at p. 218 (2017)

39. *Id.*

40. *Id.* at pp 219-220.

As numerous state appellate decisions have written, “Family reunification services are not ‘reasonable’ if they consist of nothing more than handing the client a list of services and then putting the entire responsibility on the client to find and complete the services.”

the social worker attempted to facilitate parent-child visits, conditioned on clean drug tests by the parents, but the parents only showed up for one visit, (6) and the state provided therapy for the children when needed. The state also provided referrals for a parenting class and for a drug-and-alcohol assessment. The court found some of the efforts provided by the social worker “hazy” because it was so difficult to contact the parents, “let alone provide them with additional help.”⁴¹ The court concluded that it was highly probable that the State used active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the family.⁴²

V. ACTIVE EFFORTS AND PASSIVE EFFORTS

Some commentators and appellate courts have suggested that active efforts should be contrasted with passive efforts. As a Montana appellate court stated: “[t]he term active efforts, by definition, implies heightened responsibility compared to passive efforts.”⁴³ Apparently the term ‘passive

efforts’ was created by Craig J. Dorsey in his book, “The Indian Child Welfare Act and Laws Affecting Indian Juveniles.”⁴⁴ An Alaskan appellate court cited Dorsey as stating that “passive efforts are where a plan is drawn up and the client must develop his or her own resources towards bringing it to fruition.”⁴⁵ The appellate court went on to explain that “[a]ctive efforts, on the other hand, include tak[ing] the client through the steps of the plan rather than requiring the plan to be performed on its own.”⁴⁶ The National Indian Law Library discusses “active efforts” in its Online Guide. It provides a Practice Tip:

A rule of thumb is that “active efforts” is to engage the family while “reasonable efforts” simply offers referrals to the family and leaves it to them to seek out assistance.⁴⁷

These approaches to an analysis of the meaning of “active efforts” are inaccurate. First, nowhere in the law is there reference to “passive efforts.” That →

41. *Id.* at p. 221. A similar conclusion was reached by the following courts: *In re D.S.B. and D.S.B.*, 2013 MT 112 (2013) at pp. 5-6; *State v. Jamison M., and Shinai S.*, 18 Neb. App. 679 (2010) at p. 685; *In re S.A.D.*, Jackson County Circuit Court, A156322 (2014) at p. 5; *People ex rel. P.S.E.*, 2012 SD 49 (2012) at pp. 58-59; *P.D.C. v D.J.C.R.*, Utah Court of Appeals, 2001 UT App 353 at pp 356-357; *In re Welfare of Children of S.W.*, 727 N.W. 2d 144 (2007).

42. Other appellate courts have made similar findings. *In the Matter of A.N. and M. N.*, 325 Mont. 379, 384, 106 P.3d 556, 560 (Montana Supreme Court, 2005); *Sandy B. v State, Dept. of Health & Social Services*, 216 P.3d 1180 (Alaska, 2009); *M.W. v Dept. of Health and Social Services*, 20 P.3d 1146 (Alaska Supreme Court, note 18, 2001).

43. 2005 MT 19, 23, 325 Mont. 379, 384, 106 P.3d 556, 560. See also the Alaska appellate decisions, *Sandy B.*, 216 P.3d at 1188 and *A.A. v State*, 982 P.2d 256 at 261 (1999).

44. Dorsey, Craig, “The Indian Child Welfare Act and Laws Affecting Indian Juveniles,” Legal Services Corporation, Window Rock, Arizona, Native American Rights Fund, 1984, at pp. 157-158.

45. *Sandy B.*, 216 P.3d at 1188. (2009). See also *Sylvia v State, Dep’t of Health & Soc. Servs., Office of Children’s Servs.*, 343 P.3d 425, 432 (Alaska, 2015) “Generally OCS makes active efforts...when it helps the parents develop the resources necessary to satisfy their case plans, but its efforts are passive when it requires the parents to perform these tasks on their own.” Also cited in *Denny M. v. Dep’t of Health & Social Servs., Office of Children’s Servs.*, 365 P.3d 345, 350 (2016) and *Dale H. v State* 235 P. 3d 203 (2010).

46. *Id.*

47. “A Practical Guide to the Indian Child Welfare Act,” National Indian Law Library, Topic 12, Active Efforts Requirement. See also *In re K.B.*, 173 Cal. App.4th 1275, (2009) “Passive efforts are where a plan is drawn up and the client must develop his or her own resources towards bringing it to fruition. Active efforts ... is where the state caseworker takes the client through the steps of the plan rather than requiring that the plan be performed on its own.” At p.1287.

is a term apparently created by Mr. Dorsey. It is true that in the dictionary “passive” is the opposite of “active,” but there is no legislative support for using the term. Second, “passive efforts” is not the same as “reasonable efforts.” As numerous state appellate decisions have written, “Family reunification services are not ‘reasonable’ if they consist of nothing more than handing the client a list of services and then putting the entire responsibility on the client to find and complete the services.”⁴⁸ When the agency writes up a case plan and encourages the parent to follow it, an Alaskan appellate court that such action is insufficient to meet the active efforts requirement.⁴⁹

Several appellate decisions confirm this statement. In a Delaware case, the agency’s drug treatment professionals made clear that the substance abusing mother needed more than referrals to outpatient services. When the agency failed to provide those services, the Family Court denied a petition to terminate parental rights.⁵⁰ Two other appellate courts ruled that the agency has a responsibility to ensure that visitation takes place and that transportation is provided for the child and parents.⁵¹ Numerous cases require the agency to ensure that visits take place when a parent is incarcerated.⁵² For example, in one case the social worker provided only stamped envelopes and failed to respond to

48. See *In re Taylor J.*, 223 Cal.App.4th 1446 (2014).

49. *A.M.I.*, 891 P.2d at 826-7.

50. *Division of Family Services v N.X.*, 802 A.2d 325 (Del. Fam. Ct. 2002).

51. *In re David D.*, 28 Cal.App.4th 941 (1994). *In re Precious J.*, 43 Cal. App. 4th 1463; (1996).

52. *In re Shaylon J.*, 782 A.2d 1140 (Rhode Island, 2001); *In re Brittany S.*, 17 Cal. App. 4th 1399 (1993); *In re Monica C.*, 31 Cal. App. 4th 296 (1995).

father’s request for visits. The appellate court found that reasonable efforts had not been provided.⁵³

Some state definitions of reasonable efforts indicate that they are not passive. For example, the Arkansas legislature’s definition states as follows:

[T]he “agency shall exercise reasonable diligence and care to utilize all available services.” “‘Reasonable efforts’ are measures taken to preserve the family and can include reasonable care and diligence on the part of the department or agency to utilize all available services related to meeting the needs of the juvenile and the family. Reasonable efforts may include the provision of ‘family services,’ which are relevant services provided to a juvenile or his or her family, including, but not limited to:

- Child care
- Homemaker services
- Crisis counseling
- Cash assistance
- Transportation
- Family therapy
- Physical, psychiatric, or psychological evaluation
- Counseling or treatment.”⁵⁴

A California appellate court describes reasonable efforts as:

Reunification services will be found to be reasonable if the child welfare department has ‘identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service

53. *Robin V. v Superior Court*, 33 Cal.App.4th (1995)

54. Ark. Code Ann. Section 9-27-303(43)(A)(iv).

plan, and made reasonable efforts to assist parents in areas where compliance proved difficult (such as helping to provide transportation.)⁵⁵

VI. WHAT ARE ACTIVE EFFORTS?

Except for the California cases,⁵⁶ it is also clear that active efforts involve more than reasonable efforts. First, by their very definition, “active” means more activity than “reasonable.” Second, the ICWA Regulations and Guidelines discuss steps that a social worker must take to satisfy the “active efforts” mandate. The social worker must engage “the Indian child, the Indian child’s parents, the Indian child’s extended family members, and the Indian child’s custodian(s).”⁵⁷ The social worker must actively assist the parents obtaining services.⁵⁸

For example, if the parent encounters difficulties with long waiting lists for services, challenges in finding employment or housing, long distances to maintain visitation, mental health disabilities that prevent the parent from taking aggressive action to complete services, or any of a myriad of problems that prevent full participation in the case plan, the social worker must take action to assist the parent overcome those challenges.⁵⁹ That may mean that the social worker goes with the parent to service providers to ensure that the parent is enrolled and →

55. *In re Riva M.*, 286 Cal. Rptr. 592,599 (1991).

56. It should be noted that California has more reversals on the reasonable efforts issue than all other states combined. The appellate courts take a careful look at social worker activity on each case and often reverse the trial court finding. For a list of all California cases involving reasonable efforts, go to the website: judgeleonardward.com

57. 23.2, ICWA Regulations.

58. *Id.*

59. In one case the appellate court opined that “...rather than requiring that a client find a job, acquire new housing, and terminate a relationship with what is perceived to be a boyfriend who is a bad influence, the Indian Child Welfare Act would require that the caseworker help the client develop job and parenting skills necessary to retain custody of her child.” *In re K.B.* 173 Cal. App. 4th 1275, 1287 (2009).

understands how he or she will participate in the program. It may involve the social worker transporting the child and/or parent so that visitation takes place. It may be that the social worker takes the parent to employment interviews. It may mean providing temporary housing for a parent and child. It should mean that the social worker is working closely with relatives and tribal members urging them to provide support for the parent. It certainly means that the social worker is in regular contact with the parent to determine how the parent is working on the case plan. Depending on the situation, the social worker must be ready to take whatever action is necessary to keep the parent fully engaged in the reunification process.

As Justice William Thorne (ret. Utah Appellate Court) has said: "active efforts' means the social worker should treat the child as you would your own child and do whatever it takes." Judge April Attebury of the Karuk Tribal Court tells social workers they "should hold the client's hand from start to finish."

CONCLUSION

The active efforts requirement places great demands on the social worker. Yet that is what Congress intended when it wrote the ICWA. It was the "wholesale separation of Indian children from their families..." that led to its passage.⁶⁰ Active efforts means just that — Active. Social workers must work aggressively with the parents to accomplish the congressional goals "to prevent the breakup of the Indian family."

60. *Establishing Standards for the Placement of Indian Children in Foster Care or Adoptive Homes, to Prevent the Breakup of Indian Families, and for other Purposes*, H R Rep. 96-1368, at 9 (July 24, 1978).

Attorneys must be ready to raise the active efforts throughout the pendency of the case. Ask questions of the social worker. Put on the record all of the steps the social worker took to prevent removal of the child, to facilitate reunification, and to stay in contact with the parents. Ask the judge to make specific findings about the efforts expended by the social worker. In other words, make a record.

Judicial oversight is just as critical to implementation of the ICWA and to the requirement that social workers provide active efforts to prevent removal of Indian children from their families and facilitate reunification when they have been removed. Judges must monitor the actions of social workers to ensure that they are following the law.

In some jurisdictions the judicial officer is only required to check a box that indicates that active efforts have been provided to the child's family. The law requires more. The judicial officer must make specific findings on the record including detailing the services and the method those services were delivered.⁶¹ Judges should be ready to ask the social worker questions regarding the efforts taken to meet the legal requirements.⁶² Only through careful enquiry can the judge accurately determine whether the social worker followed the law. Only then can the judge make a finding that active efforts were provided to the family before the court. ■

61. *Op.cit.* footnotes 35 and 36 and related text.

62. Edwards, L. "Should Judges Ask Questions: The Enquiring Magistrate," *The Bench*; a publication of the California Judges Association, Fall, 2016 at pp. 6 and 27.



New Articles Courtesy of the ABA Children's Litigation Committee

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[Leveraging the FFPSA for Older Youth: Reduction of Group Care Provisions](#)

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[Leveraging the FFPSA for Older Youth: Improving Transitions](#)

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[Is it Lawyers' Job to Change the System?](#)

By Cathy Krebs

[Can We Change Our Foster Care System? \(Blog Post\)](#)

By Cathy Krebs



California Indian Legal Services (CILS) Community Legal Education Self-Help Series

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Active Efforts in ICWA Cases During the Pandemic

Indian Child Welfare Act (ICWA) cases are being severely impacted by the COVID-19 pandemic: courts are delaying time sensitive hearings, tribal family's visits are being disrupted or canceled altogether, and case plan services are being put on hold. This raises concerns of whether active efforts tribal families need in order to reunite with their children can still be provided during the pandemic. As an advocate for ICWA compliance, you may be asking yourself, should I hunker down for now and deal with all efforts and services issues once the pandemic is under control? **NO!** Do ANY services even exist in a time like this, let alone active efforts or reasonable services? **YES!** What can I do to make sure active efforts continue to be provided to tribal families?

► **Here are some ideas to get your cases back on track with active efforts!**

1) Ensure That Your Tribal Families Have the Technology to Access to Their Children, Services, and Support Networks.

During the pandemic, while face-to-face contact is limited, tribal families *must* have access to the internet, computers, and phones in order to access their children, case plan services, and support networks. It is essential to check in with families to make sure all children, parents, foster parents, and key support persons have access to these crucial items. The county agency has a responsibility to ensure parents have access their children, case plan services, and their safe support network. It is also the county child welfare agency's responsibility to make sure foster children can maintain connections with their parents and siblings as well as other important persons to them. In order for the county agency to fulfill these responsibilities during the pandemic, the county agency must assist tribal families with technology.

► **Active Efforts**

While advocating for tribal families, you may need to remind county social workers that active efforts require more than just the passive efforts of providing information to parents and children on how to obtain internet, computers, phones, and other resources. Active efforts require the county agency to take an *active role* in locating, accessing, and using appropriate resources. This includes aiding parents and children in following the necessary steps to obtain these resources, to use them, and to continue to have access to these resources.

Active efforts may require the county social worker to assist with filling out and following up on applications on behalf of the tribal family. Additionally, it may require a social worker to assist a parent or child with learning to set up and use their voice mail or computer. It may require assistance with setting up internet or phone service, determining a safe place to store the items, and coming up with a plan to pay bills.

For youth, social workers should check in with foster families and the youth around the use of communication devices in the home at this time. It is unacceptable for any foster family to entirely take away necessary means of connections as a form of punishment during the pandemic. Instead, wherever possible, appropriate boundaries and rules around communication devices should be established.

► Resources

Information on low or no cost phones and phone plans can be found at the following websites:

<https://www.obamaphone.com/get-obama-phone>

<https://www.whistleout.com/CellPhones/Guides/free-government-cell-phones>

Information on low cost computers or internet service can be found at:

http://www.internetforallnow.org/get_affordable_internet_today - Low cost computers and internet.

<https://www.everyoneon.org/> - National program to connect families to internet/computer resources.

<https://m.att.com/shopmobile/internet/access/> - Low cost AT&T Access for limited income households.

<https://www.human-i-t.org/request-internet> - Low cost internet and free Chromebook.

<https://www.alticeadvantageinternet.com/> - Free internet for students, low cost internet for low income seniors and veterans.

Information on free laptops, cell phones, and internet for foster youth can be found at:

<https://www.jbaforyouth.org/covid-19-resources/>

2) Ensure That Tribal Children and Parents Have Meaningful, Frequent Family Time.

Visitation is legally required to occur *as frequently as possible*, consistent with the well-being of the child.¹ Active efforts requires in addition, that the county agency to support regular visits in the *most natural setting possible* consistent with the need to ensure the health, safety, and welfare of the child.² These standards apply even during the pandemic! At this time, while people are sheltering in place and courts are issuing blanket orders to limit family visitation, it is important to make sure visitation is continuing for tribal families. Visitation must continue to be appropriate in amount and duration, and it must occur in the least restrictive manner and natural setting that is safe and healthy for the child.

► Active Efforts for Meaningful Visitation

Active efforts require some creativity to ensure visitation can continue as frequently as possible and in the most natural setting possible. In your advocacy of your tribal families, consider if visitation can continue in-person, what that could safely look like, and how possible exposure to COVID-19 can be limited. Consider the use of family members or foster families to provide transportation and supervision of family time to limit multiple person contact and possible exposure to COVID-19. Can in-person visitation safely occur outdoors in nature? Can you borrow ideas from family law cases and consider what families with joint custody of children are doing during the pandemic to limit exposure from custody exchanges and can visitation in the

¹ Cal. Welf. and Inst. Code § 361.2

² Cal. Welf. and Inst. Code § 224.1(f)(7)

Child Welfare matter function in a similar manner? Consider if visitation can be arranged through a window outside the parent's or child's home with the assistance of a cell phone, or if visitation can be arranged keeping a distance of six feet away if direct contact would not be appropriate or safe. Consider whether children may be reunified with their parents in an expedited manner if the child's safety would not be jeopardized. During this pandemic, it is essential to think outside the box to support tribal families.

If no other preferred alternatives are available, phone or video visitation should be arranged. Parents and children should receive assistance with ideas to make the most out of any phone or video time together and deal with the separation. This may include suggesting activities for the tribal family such as reading together, singing or dancing together, and playing games together during phone or video visitation. It may also include suggesting other methods to maintain family ties that can be used in addition to visitation such as writing letters or sending cards, looking through family pictures or albums, creating a family tree, and having discussions about family ancestry and tribal heritage.

It is also imperative to remember that while dealing with the stress and isolation of the pandemic, children may require even more visitation. Consider if visitation should be more frequent to provide for the same number of hours of visitation pre-pandemic and consider adding more visitation time if appropriate to meet the family's needs.

► Resource

Guides on having successful phone or video visitation can be found at:
<https://haralambie.com/wp-content/uploads/2016/10/When-You-Cant-Be-There-in-Person.pdf>
<https://www.nccdglobal.org/blog/successful-video-visits-young-children>

► Understanding Current Authorities for Visitation

While many courts have passed blanket orders or other mass orders restricting visitation at the request of the county agency, these orders are contrary to federal and state authority and guidance. Instead, a case-by-case assessment of visitation is required, and total visitation time should continue at the previously ordered pre-pandemic amounts.

Federal guidance from the Children's Bureau on March 27, 2020, asks courts to discourage or refrain from issuing blanket court orders to reduce or suspend family time. The California Department of Social Service issued guidance to County Child Welfare Agencies in All County Letter 20-25 dated March 21, 2020 requiring county child welfare agencies to work to maintain face-to-face visits, particularly for children under the age of three (3) years old while these young children are developing critical early bonds with their parents. Effective April 6, 2020, the Judicial Council of California issued Emergency Rule of Court, Rule 6(c)(7), giving a county child welfare agency the discretion to change the manner of how visitation will occur (i.e. move from in-person visitation to phone or video conferencing) after performing a case-by-case assessment, including a balancing of any recent health directives, the best interest of the individual child, and consideration of whether in-person visitation can take place safely for each child. The county child welfare agency is required to provide five (5) court day notice to all attorneys and parties before making any change in the manner of how visitation will be provided.

► Active Efforts for Modifying Visitation

While advocating for tribal families, it is important to hold the county child welfare agency to the required case-by-case assessments, the critical need to maintain face-to-face visits for children under the age of three (3) years old, and required notice prior to any modification in visitation. It is also important to reject attempts at mass blanket modifications for visitation orders. Active efforts require the county agency to conduct their efforts in a partnership with the tribe and tribal family, to notify and invite the tribe to participate in important aspects of the case, and to ensure decisions are consistent with the prevailing social and cultural conditions and way of life of the tribe.³ For the sake of active efforts and a culturally appropriate assessment, insist on the tribe being included during the county agency's visitation assessment, or ask to hold a virtual family team meeting to work through the visitation assessment before any modifications are made, (or as soon as possible if you find out modifications were already made).

► Authorities and Guidance

Information on federal guidance for visitation during the pandemic can be found here:
https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/news_items/march_27_2020_letter_from_a.pdf
<https://www.naccchildlaw.org/page/CoronavirusCOVID-19>

Information on state guidance for visitation during the pandemic can be found here:
<https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2020/ACL20-25.pdf>

Emergency Rules of the California Rules of Court can be found here:
<https://jcc.legistar.com/View.ashx?M=F&ID=8234474&GUID=79611543-6A40-465C-8B8B-D324F5CAE349>

3) Assess Whether Case Plans Need to be Updated and Tailored for Your Tribal Family's Current Situation.

Your tribal family's needs and situations have changed with the pandemic. Some services may no longer be available and other service providers may have changed the way they offer services. Families may have new or different needs at this time. Therefore, a family's case plan needs to be changed and updated, and a new case planning meeting must be set up to ensure reunification continues on track. Active efforts require the county child welfare agency to continue to actively guide families through the steps required to make progress in their case plans.⁴ It also includes identifying appropriate and available services, helping the parents overcome any barriers, and assisting with utilizing and accessing resources.⁵ Active efforts further requires considering alternative ways to address the needs of the family, if the optimum services do not exist or are not available.⁶ This is crucial when services must be modified to overcome barriers caused by the pandemic. Case plans must continue to be practical and

³ Cal. Welf. and Inst. Code § 224.1(f)

⁴ Cal. Welf. and Inst. Code § 224.1(f)

⁵ Cal. Welf. and Inst. Code § 224.1(f)(2), (8)

⁶ Cal. Welf. and Inst. Code § 224.1(f)(10)

possible and include services that are actually available to the family and that will result in timely reunification.

► Active Efforts

In advocating for your tribal families and working with the county child welfare agency to update the case plan, consider if telephone/online or other alternative services can meet each case plan component. Consider whether current local services can continue by phone or video. Consider if therapy should increase due to added stress and isolation from the pandemic or decrease due to progress. Or, does additional therapy need to be put in place to cover services such as domestic violence or substance abuse that parent previously received in-person and no longer has access? Does telemedicine need to be arranged for the family?

If substance abuse treatment programs are not available, consider if the parent attending 90 AA or NA online meetings in 90 days and working the twelve steps could be an alternative way to meet a substance abuse treatment goal. If drug testing continues to be necessary, are there mobile services or services outside of healthcare facilities that can provide those tests? Do social workers have the training to administer oral or urine testing at the parent's home or alternative settings? (It is standard practice for social workers to administer drug tests in some counties.) If not, can social workers request authorization to receive training to administer drug tests and continue offering drug tests? As suggested by the American Society of Addiction Medicine, can oral or home breathalyzer tests be offered, self-administered and monitored via telehealth or by the social worker through video conferencing?

► Resource

Guidelines on adjusting drug testing protocols during the pandemic can be found here: <https://www.asam.org/Quality-Science/covid-19-coronavirus/adjusting-drug-testing-protocols>

► Samples of Some Online Services Currently Available

Online Substance Abuse Meetings and Services:

12 Step: <https://www.12step.org/social/online-meetings/>

In the Rooms: https://www.intherooms.com/home/?fbclid=IwAR0jah6iT17Is-QFa_WQbz9d9I-bXv92Qgxt0RYOqIPyXhYVsrp2ngHKm-4

Smart Recovery: https://www.smartrecovery.org/smart-recovery-toolbox/smart-recovery-online/?fbclid=IwAR1WYJ_y_YKdYglurQ2r3L1MlaNAZ-ihdq6Lz6Mux-u8GGsTLDsdINUCWSk

AA: <http://aa-intergroup.org/directory.php>

NA: <https://virtual-na.org/>

Alanon: <https://al-anon.org/al-anon-meetings/electronic-meetings/>

Online Mental Health chat rooms, forums, online meetings and phone in support groups and meetings:

<https://namimainlinepa.org/online-and-telephone-support-groups/?fbclid=IwAR0QZnWSDebKDTYZM6I1nhPA0G7xZKkJi3AJ-YK-NiZIGkQhRFksAoo1DiADepression>

Online Therapy:

<https://www.verywellmind.com/best-online-therapy-4691206>

Online Parenting:

<https://www.parentmap.com/article/theres-an-online-parenting-class-for-that>

<https://courtoorderedclasses.com/ParentingOnline.html>

Online 52 Week Batterer Intervention Program:

<https://courtclasses.org/products/batterer-intervention-program-52wk>

<https://mentalhealth.openpathcollective.org/batterers-intervention/>

<https://s2sdvonline.com/classes/domestic-violence-52-week-class/>

<http://www.courtorderedclasses.com/battery.html>

4) Evaluate if Alternative Placement is Available if Your Tribal Children Are in Congregate Care.

Congregate care placements (such as group homes or residential treatment facilities) place tribal children at extreme risk of exposure to the COVID-19 outbreak. Congregate care facilities don't typically have the resources to provide adequate cleanliness and isolation to protect children in the facility. Additionally, crowding, close contacts with various individuals, and various staff members entering and exiting the facility, contribute to the increased exposure risk. Some congregate care facilities have closed due to the pandemic. While jails and prisons with similar risk factors are currently working to alleviate the risk by releasing inmates who meet certain criteria, similar considerations should be made regarding whether it is appropriate to move children out of congregate care facilities.

► ICWA Compliant Placements

Active efforts require an ICWA compliant placement unless there is good cause to deviate from ICWA placement preferences and this requirement is ongoing for children in non-ICWA compliant placements.⁷ Active efforts also require a diligent search for the Indian child's extended family members and includes contacting and consulting with extended family members.⁸

Work with the county agency to renew family finding efforts and efforts to find tribal or other foster homes. It is more important than ever to try to get youth into family settings. Ask the child, parents family friends and relatives if they know of an alternative place for the child during the pandemic. Consider if it would be safe to reunify the family. Consider if the placement is meeting the current needs of the child and is the least restrictive placement, or if the placement is no longer necessary. However, keep standards high and make sure the county agency is looking for the right placement for the child and not just a placement for the child.

► Tribal Foster Families

Additionally, work with the county child welfare agency and your tribe to increase tribal foster parent recruiting efforts. More people are staying at home and thus have more availability to foster a child right now. Many people are looking for a way to give back to the community while sheltering in place during the pandemic. Foster parenting is a rewarding way to give back to the community while making good use of additional time spent at home. Make sure that potential

⁷ 25 U.S.C. Section 1915(b)

⁸ Cal. Welf. and Inst. Code § 224.1(f)(4)

foster parent recruits are aware that foster care funds are a subsidy for the support of the child and will not be considered income to the foster family when filing tax returns and applying for most public benefits programs. Becoming a foster placement will not affect a family's ability to apply for or continue to receive unemployment or other income-related benefits.

► **Active Efforts for Children who Must Remain in Congregate Care**

If a child must remain in congregate care, talk to the facility about what will happen if there is an outbreak at the facility. Ask what will happen if staff members are sick and unable to work. Find out what measures have been put in place to keep the facility clean. Find out if there are ways to isolate a child if a child becomes ill at the facility and what that isolation will look like for that child. Have a specific plan in place for the child should the facility need to close, and also a plan for the care and wellbeing of the child should the child become exposed to COVID-19 while at the facility.

► **Resource**

Ideas for making emergency plans with youth in congregate care can be found here: <https://ylc.org/wp-content/uploads/2020/03/YLC-Toolkit-for-Emergency-Planning-with-Youth-in-Congregate-Care.pdf>

5) **Act Now! Do Not Wait Until the Next Review to Address Active Efforts.**

With court closures, continuances of regularly scheduled review hearings, and county court blanket orders in place, you may be frustrated with the lack of active efforts a family is receiving and confused about what legal recourse the tribe has. The pandemic is not an excuse for county child welfare agencies to stop providing active efforts or to put reunification on hold. Do not accept any responses from the county child welfare agency that families will have to wait until the pandemic is under control to complete a necessary component of their case plan. Timelines for reunification are short. Childhood is a critical time for tribal children's development and will affect whether they grow into safe, happy, and healthy adults and elders. Childhood only lasts for a short while and does not wait for the pandemic to end; the reunification of tribal children and families cannot be put on hold, even during a pandemic.

Waiting for a "no active efforts" finding at the next status review hearing is never an appropriate remedy for the family. Even if the court makes a "no active efforts" finding at the next status review hearing and extends services, a lot of damage can be done to the family in the meanwhile that might not be repairable with an extension of services. Early intervention is critical. See if things can be resolved by some informal discussions with the county agency social worker or by having virtual or telephonic Family Team Meetings. A little effort and creativity now may go a long way to getting a family back on track and getting active efforts back on track. However, if the county child welfare agency has stopped providing active efforts in a case or will not consider creative online or alternative services to meet case plan goals, contact your attorney immediately. Your attorney will help you determine if filing a motion with the juvenile court now to get compliance with active efforts is appropriate.

► File a Motion with the Court

Filing an objection or motion with the court can be very useful to gain court oversight of an issue and highlight the importance of the issue. The filed motion will direct the court and counsel's attention to the appropriate authorities and guidance that should be applied during the pandemic and allow legal standards to be cleared up. It will provide an opportunity for the court and parties to take corrective action. A filed motion will also preserve the record should the issue need to be appealed and reviewed by a higher court. Ultimately, a filed motion can help maintain the family's relationship and bond when visitation orders are not being followed or visitation legal standards are not being adhered to. It can get a family back on track to reunify when adequate services are not being provided.

A motion may also be necessary to prevent irreparable damage and unintentional waiver of legal rights. During this pandemic, failing to object quickly to visitation modifications may lead to irreparable damage to the family bond. Further, failing to object quickly could also be considered "consent" to the blanket visitation modifications and waive the tribe's right to object to the modification of visitation. Under Emergency Rule 6(c)(7) of the California Rules of Court, objections to modifications in visitation should be brought to the court's attention within 14 days with the party challenging the modification to bear the burden at the hearing. Get in contact with your attorney right away to discuss any visitation and active effort issues!

The pandemic calls for everyone to go above and beyond their typical work on ICWA cases. While technology is more important than ever before, services and visitation may need to be modified, and placements may need to be re-assessed, by taking quick action to work with the county agency on a case-by-case basis and using creativity, active efforts can continue to be provided.

► Resource

A sample "Motion to Resume Visitation" can be found at: https://www.naccchildlaw.org/resource/resmgr/policy/motion_to_address_visitation.docx (This motion is based on Colorado law.) Please talk to an attorney to assist in drafting a motion based on the appropriate authorities for your case.

6) Links to Additional Resources for Providing Active Efforts and Reasonable Services

The website hosted by Alliance for Children's Rights contains information on food assistance, health care, housing and emergency aid, education, employment, and more: <https://kids-alliance.org/covid-19/>

The website hosted by the National Association of Counsel for Children contains many links to helpful resources such as tip sheets for dealing with various COVID-19 issues, links to federal communication and guidance for CWS cases during the pandemic, news related to how foster youth and child welfare systems are affected by COVID-19, and more: <https://www.naccchildlaw.org/page/CoronavirusCOVID-19>

The website hosted by John Burton Advocates for Youth contains many links to helpful resources such as food support, healthcare, childcare, unemployment benefits, higher education resources online, financial aid, resources by county and more:

https://docs.google.com/document/d/1AMR6VLFrIGcFyJkzFcum1O8pwWJZzwijsFdlq0_G7i5M/edit#

The website hosted by John Burton Advocates for Youth contains resources for teens and Non-Minor Dependents: <https://www.jbaforyouth.org/covid-19-resources/>

The website hosted by California Department of Social Services contains state guidance to county agencies: <https://www.cdss.ca.gov/inforesources/2020-all-county-letters>



Judge Leonard Edwards
Santa Clara Superior Court (Ret.)

“Active Efforts” and “Reasonable Efforts”: Do They Mean the Same Thing?¹

Active efforts is a term included in the Indian Child Welfare Act (ICWA). It refers to the amount of effort a social worker must devote to providing services to a parent in order to prevent state removal of an Indian child from parental care and to assist a parent rehabilitate so a child may safely be returned. “Reasonable efforts” is a term taken from federal and state law governing the effort a social worker must exert for the same tasks for non-Indian children.

Starting with the case of *In re Michael G.*, (1998) 63 Cal. App.4th 700, California appellate courts have consistently held that the two terms mean the same thing. In the most recent case, *In re C.F.*, (2014) 230 Cal. App.4th 227, the appellate court repeated the California position, stating that “the standards for determining whether active efforts were made are ‘essentially undifferentiable’ from those for assessing whether reasonable services under state law were provided.” (at p. 239). The appellate court goes on to write that “[n]either ICWA nor section 361.7 defines active efforts.” (at p. 239).

California courts are in the minority in their interpretation of the meaning of “active efforts,” being joined only by Colorado.

The majority of state appellate court opinions and legal commentators conclude that the two terms are different and that “active efforts” requires a higher standard of social worker conduct. (See *In the Interest of P.S.E.*, (2012) 816 N.W.2d 110 [Supreme Court, South Dakota] and the cases cited therein).

In 2006 (after the *In re. Michael G.*, decision) the California legislature enacted SB 678 (Stats. 2006 ch. 838) which addressed the Indian Child Welfare Act in California statutory law. SB 678 included a specific definition of “active efforts” in section 361.7 of the Welfare and Institutions Code. Although section 361.7 does not expressly say that active efforts must be to a higher level than reasonable efforts, it is significant that the legislature felt the need to include a distinct definition of active efforts. Further, section 361.7 does make it clear that active efforts must be of a different nature than reasonable efforts. In keeping with ICWA’s recognition of the potential for cultural bias in the child welfare system as well as the need to acknowledge the importance of the relationship of an Indian child and family’s community and tribe in the child welfare process, section 361.7 requires that:

The active efforts shall be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe. Active efforts shall utilize the available resources of the Indian child’s extended family, tribe, tribal and other Indian social service agencies and individual Indian caregiver service providers. (emphasis added)

At a minimum then, section 361.7 requires that active efforts draw in the child and family’s extended family and tribe, that they include tribal service providers, and that they be tailored to the cultural values of the child and family’s tribe. As discussed in more detail below, the requirements of section 361.7 are reflected in California Rule of Court, Rule 5.484(c) and are consistent with the recently enacted *Bureau of Indian Affairs Guidelines*.

The Department of the Interior, Bureau of Indian Affairs, recently issued *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings (Guidelines)*. The updated *Guidelines* provide “a framework for State courts and child welfare agencies to follow, as well as best practices for ICWA compliance.”

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They are effective as of February 25, 2015.

The *Guidelines* make it clear that “active efforts” “constitute more than reasonable efforts” as required by the federal law. The *Guidelines* spell out what “active efforts” means. In 15 separate paragraphs the *Guidelines* define “active efforts” and detail what is required of a social worker when working with an Indian child. These paragraphs instruct the social worker to engage “the Indian child, the Indian child’s parents, the Indian child’s extended family members, and the Indian child’s custodian(s).” They require the social worker to identify appropriate services and to help “the parents to overcome barriers, including actively assisting the parents in obtaining such services.” Further, the *Guidelines* require that the social worker take “into account the Indian child’s tribe’s prevailing social and cultural conditions and way of life,” and request “the assistance of representatives designated by the Indian child’s tribe with substantial knowledge of the prevailing social and cultural standards.” Under the *Guidelines* the social worker must offer and employ “all available and culturally appropriate family preservation strategies” and notify and consult with “extended family members of the Indian child to provide family structure and support for the Indian child, to assure cultural connections, and to serve as a placement resource for the Indian child.” The social worker must also identify community resources “including housing, financial, transportation, mental health, substance abuse, and peer support services,” and actively assist “the Indian child’s parents or extended family in utilizing and accessing those resources.” These requirements are only a

selection from the *Guidelines*. The *Guidelines* conclude with the statement that “Active efforts” are separate and distinct from requirements of the Adoption and Safe Families Act (ASFA) and that ASFA’s exceptions to reunification efforts do not apply to ICWA proceedings.

California Rule of Court, Rule 5.484(c) is consistent with the *Guidelines* and the interpretation of the meaning of “active efforts,” although it does not include the extensive list of required services and actions contained in the *Guidelines*.

Compare the *Guidelines* careful description of “active efforts” to the California Rule of Court, rule 5.502(33) and the California definition of “reasonable efforts.”


‘Reasonable efforts’ or ‘reasonable services’ means those efforts made or services offered or provided by the county welfare agency or probation department to prevent or eliminate the need

for removing the child, or to resolve the issues that led to the child’s removal in order for the child to be returned home, or to finalize the placement of the child.”

Clearly the two definitions refer to a different level of social worker efforts required depending on whether the child is an Indian child.

It is apparent that California appellate law needs to be adjusted to comply with the federal *Guidelines*. They make clear that “active efforts” are separate and distinct from “reasonable efforts” and require much more of a social worker than the legal requirements for “reasonable efforts.” As Justice William Thorne (ret. Utah Appellate Court) has said: “active efforts’ means the social worker should treat the child as you would your own child and do whatever it takes,” while Judge April Attebury of the Karuk Tribal Court tells social workers

they “should hold the client’s hand from start to finish.”²

“Active efforts” has been carefully defined by the California Legislature and more recently by the *Bureau of Indian Affairs’ Guidelines*. These definitions demonstrate a higher and more sophisticated degree of services than the definition of “reasonable efforts.”³ The time has come for California law and practice to reflect these changes. 

Endnotes:

- 1 The author thanks Ann Gilmour Esq. for her assistance with this article.
- 2 See Chapter V (The Indian Child Welfare Act and Active Efforts) in *Reasonable Efforts: A Judicial Perspective* by Judge Leonard Edwards (ret.) at footnote 96.
- 3 *Id.*, at p. 364.

Word Jambalaya Answers

V	R	G	N	A	O
G	A	V	R	O	N

A	R	E	E	R	P	I
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When the judge asked her colleagues to go to the greasy spoon diner again for lunch, her request was:

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Minneapolis Lawyers Rely on ‘Gold Standard’ Law to Keep Native American Families Together

BY [ELIZABETH AMON](#)



The ICWA Law Center focuses on legal services for Native American families. Photo by Jillian Lenser.

A federal law enacted 43 years ago designed to protect Native American families from separation is now under threat like no time in recent history.

A

Last month, the Indian Child Welfare Act, widely considered to be the “gold standard” of the field, was found to be constitutional by a federal appeals court. But the justices nevertheless chipped away at key provisions that make the law known as ICWA successful. The lengthy, complicated decision could well be reviewed by the Supreme Court, placing the indigenous communities of the United States at further risk.

To examine the law and its impact, The Imprint reviewed summaries of 40 cases handled last fall by a leading nonprofit law firm in Minnesota, where Native American children are removed from their parents at a rate unseen elsewhere in the country. The review revealed that the federal law has a clear benefit for the children it is designed to protect — and without it, those rights would be greatly diminished.

In the cases examined, the Indian Child Welfare Act made a difference in ways both big and small: A child was removed from an unrelated guardian who’d lied to gain custody, another child was reconnected to her tribal relations. Parents received a phone to stay in touch with their children in foster care, and bus fare to help them make court appointments.

The Minneapolis nonprofit ICWA Law Center, in operation for 28 years, is one of a handful of organizations around the country that focuses predominantly on cases where the federal Indian Child Welfare Act law applies. Working from a building owned by the White Earth tribe, the center takes a holistic approach. In addition to four lawyers who handle cases, the firm has three parent advocates on staff, as well as an elder-in-residence who is a national expert on trauma issues for adoptees. Lawyers work in tribal and state courts in Minnesota and in some tribes beyond state borders, representing members of the Leech Lake Band of Ojibwe, White Earth Band of Ojibwe, Red Lake Nation, Mille Lacs Band and others.



Shannon Smith is the executive director of the Minneapolis-based nonprofit, ICWA Law Center. Photo by Jillian Lenser.

At any given time, the office has 200 open cases, and the federal law is applied from the onset, said Shannon Smith, executive director of the ICWA Law Center. Smith found last month’s ruling in the Fifth U.S. Circuit Court of Appeals that chipped away at ICWA’s impact “concerning,” but said for now, it won’t affect cases outside of Texas, Louisiana and Mississippi.

“ICWA is absolutely still as important today as it was when it was passed,” she said. “One of the most critical pieces in it is the focus on a child’s connection to who they are and the child’s connection to their tribe.”

C

ongress passed ICWA in 1978 to stop the cultural genocide of Native Americans and to rectify the years of harm the federal government and child welfare agencies had caused by wrenching indigenous children from their families and tribal land and forcing them to attend boarding schools. That historic injustice led to the [permanent removal](#) of between 25% and 35% of children from their families, according to [surveys](#) done in 1968 and 1974 by the Association on American Indian Affairs.

Among ICWA’s key stipulations are that parents and tribes must be notified and included in children’s legal proceedings. If a child must be removed from their parents due to abuse or neglect, officials need to prioritize a placement with relatives or a Native American family. Child welfare workers must also provide “active efforts” to prevent the family’s breakup and promote reunification. That includes providing parents with drug and alcohol treatment, counseling and domestic violence prevention and recovery courses, as well as practical, basic items they may need such as cribs and gas money. In non-ICWA cases, the standard is “reasonable efforts” which requires that a lower level of services be provided.

The Imprint reviewed the 40 cases that the ICWA Law Center handled during October 2020. To protect the privacy of their clients, the center’s attorneys provided summaries of the cases and answered a limited number of follow-up questions.

The cases involved everything from court check-ins on parents’ progress and children’s permanency plans, to emergency protective custody orders and attempts to terminate parental rights.

In one case, two children had been removed from their parents and were living with someone who was not a relative. Their mother had a history of drug use that had affected her memory. The tribe had initially supported the children’s placement in a non-Native foster family because the mother’s relatives were too elderly to care for the children and a tribal foster family wasn’t available.



MaryJo Wiatrak, attorney with ICWA Law Center.
Photo by Jillian Lenser.

“Active efforts” in this case meant child welfare officials helped the mother create a schedule, and they gave her a wall calendar to keep track of important dates. Soon, the mother proved she could remember her appointments, even when the social worker forgot the dates, said MaryJo Wiatrak, her ICWA Law Center attorney.

The law’s special provisions, including active efforts, were described as the “gold standard” for child welfare practices by 18 advocacy groups in a 2013 U.S. Supreme Court case challenging ICWA’s

constitutionality. The high-profile case centering on a girl referred to as Baby Veronica, involved a white family attempting to adopt a child whose father was an enrolled member of the Cherokee Nation. The Supreme Court ultimately decided the case was not eligible for ICWA because the law

didn't apply to biological fathers who never had legal or physical custody. As a result, Baby Veronica did not go home to her people, but the justices did not strike down the law in her name.

The most recent challenge to ICWA was *Brackeen v. Haaland*, decided by the Fifth circuit appeals court. In it, the states of Texas, Louisiana and Indiana — along with the conservative think tank Goldwater Institute — joined the plaintiffs, which included another white family seeking to adopt a Native American child. They challenged federal law, arguing that it discriminates based on race.

On April 6, in a 325-page divided opinion, the court determined ICWA to be constitutional. But a majority of the judges agreed to strike several key provisions, most notably, the requirements that child welfare agencies engage in “active efforts” to prevent family separation before terminating a parents’ rights.

The challenges to ICWA brought in *Brackeen* were opposed by 486 federally recognized American Indian and Alaska Native tribes and 59 Native American organizations. Additionally, 26 states, 31 child welfare organizations and 77 members of Congress signed a statement of support for those defending ICWA.



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“It’s a threat,” Sarah Kastelic, executive director of the Oregon-based National Indian Child Welfare Association said of *Brackeen*, in an interview before the decision. “Tribes are powerful governments. Taking down ICWA could be the first domino to undermine the sovereign authority of tribes.”

Kastelic said her organization and their partners are still sorting out the lengthy, complicated decision and its implications, but that the “underlying constitutionality of ICWA and the power for Congress to enact legislation like ICWA remains intact.”

Its application is ever-apparent in the cases handled by the ICWA Law Center. In one reviewed by *The Imprint*, attorney Marlee Torrence became involved after a family court granted third-party custody of a child to a man who was facing child and sexual abuse allegations. He had forged an affidavit from the mother saying she wanted him to have custody, and he claimed to be the child’s grandmother’s ex-boyfriend.



ICWA Law Center Attorney Marlee Torrence.
Photo by Jillian Lenser.

Torrence learned that the family court had not applied the ICWA provisions. The tribe was not notified of the custody hearing and there were no efforts to provide services or support to the child’s mother. With the Law Center’s advocacy, the man was removed as custodian and the tribe found a Native American foster family that they believed could offer the child a safe and loving home.

Torrence said there remains some tension between the mom, who would like to reunify with the child, and the tribe, which is supportive of the foster family. This kind of dispute can and does arise, given the number of parties often involved in child custody cases, but still the tribe and the child’s community remain central.

“That’s why we have ICWA,” Torrence said, to prevent situations where people are “basically stealing children without anyone having accountability or knowledge.”

Services for parents must be provided from the beginning of a case, which director Smith described as the aspect of the law most consistently violated.

“There has been an equation that foster care equates to safety — without the recognition that it is flawed, that there is trauma created by it,” she said.

Andrea Braun, another lawyer with the ICWA Law Center, said active efforts like providing parents with bus fare or phones that would be the norm in Minneapolis, where the firm practices most often, are not always provided across the state. “In smaller counties, I spend a lot of time fighting for them,” she said.

Sheldon Spotted Elk, program director of tribal justice partnerships at the National Council of Juvenile and Family Court Judges, said data show the law works. According to a report last year conducted

by the national [Center for Courts](#), a partnership of private and governmental organizations representing attorneys and judges, the application of ICWA at the earliest stages of a child welfare case in state court makes a critical difference.

“When the tribe was present at the first hearing, the average time to return home was 158 days compared to 379 days when the tribe was not present at the first hearing,” he said.

In another case the law center handled that illustrates the importance of tribal involvement, ICWA made it possible for a visitation agreement to be worked out with the tribe and the various parties to ensure the child’s connection to the tribe. Two grandmothers, one who was Native American, were fighting over custody of a child whose mother was incarcerated. “The court process started out super

Andrea Braun, attorney with the ICWA Law Center. Photo by Jillian Lenser.

contentious,” said Wiatrak, who handled the case, “but by the time we got to our last hearing, they were fast friends.”

The judge gave the parties time to reach an agreement, and while the court established custody with the Native American family, the child’s other grandmother was satisfied with the visitation she was granted. “It was a healing process,” Wiatrak said.

Despite ICWA’s lofty goals over more than 40 years, Native American children are removed from their families and communities at disproportionate rates unseen in any other racial groups. Federal [data](#) from 2015 show that American Indian and Alaskan Native children were overrepresented in foster care at nearly [2.7 times](#) their rate in the general population. This is in part because of institutionalized racism and in part because of haphazard compliance with ICWA.

Advocates argue that ICWA can’t work if it’s not applied.

A recent case in Washington highlighted this issue. In a unanimous decision last September, the Washington State Supreme Court took the state to task for its narrow definition of who is and isn’t an “Indian child” under ICWA. The Court ruled that tribal membership and eligibility vary widely among tribes and that it was the tribe’s exclusive role, and not the state’s, to determine who is a member.

Kastelic said when her Oregon organization trains people on ICWA, they suggest child welfare workers ask about tribal identity in more than one way. “They need to be asking continuously and with different terminology. Are you Indian? A member of a tribe? Native? Where did you grow up? Who is family?”

Spotted Elk said courts can and should consider ICWA from the start of a child welfare case, where there is a possibility that the child may be American Indian.

“ICWA is an anti-racist practice,” he said. “It provides all the tools for courts to get it right.”

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Yet adherence to the law varies within states and from state-to-state. Nationwide, [no federal data track](#) how often and how well ICWA is applied. There is also no federal oversight of compliance with the law and no sanctions for failing to comply.

In its last months, the Obama administration issued a rule that would have required states to gather ICWA data for the federal government, an effort that would have strengthened its foundation. But last May, the Trump administration replaced that action with one that required far less information

to be collected. A coalition of tribes, foster youth and advocacy groups sued the previous administration in August in Northern California over the rescinded rule, and that litigation is still pending.

As ICWA faces growing challenges in the high courts, the standard that the decades-old federal law set for child welfare practices — for families of all races — has been profound, experts interviewed for this article noted.

Minnesota, like several other states, including Washington, has passed a state version of ICWA, which could prevent future U.S. Supreme Court rulings from eroding protections for Native American families in that state.

“In most of our cases, we’re representing moms who are struggling with extreme poverty, chemical health and mental health issues or domestic violence,” said ICWA Law Center director Smith. “But they are also moms who are resilient and committed. When they have an opportunity to access services and work toward a path of healing and address trauma, they can heal from the trauma and reunite their families.”

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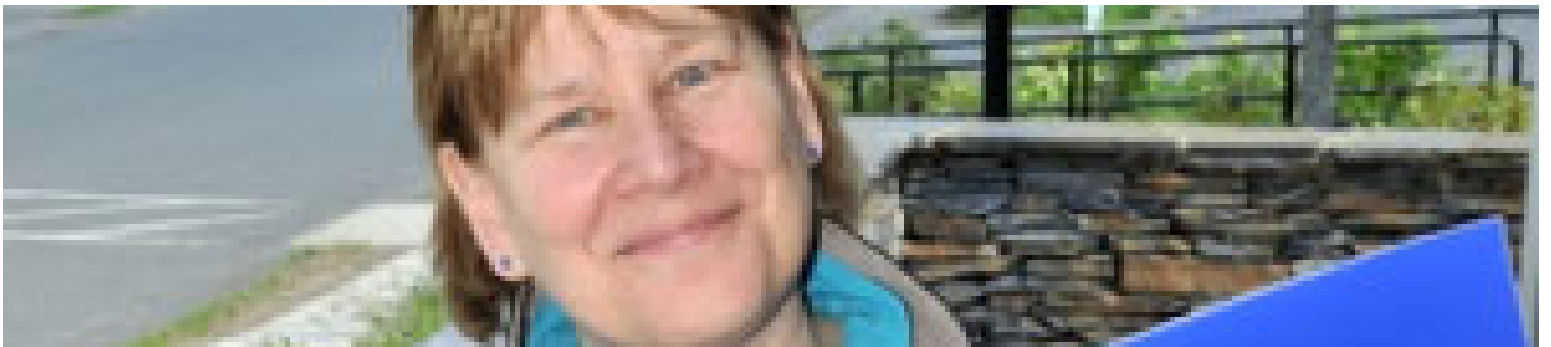
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Language as a Facilitator of Cultural Connection

Miigis B. Gonzalez, Benjamin D. Aronson, Sidnee Kellar, Melissa L. Walls, and Brenna L. Greenfield

Abstract

Understanding culture as a means of preventing or treating health concerns is growing in popularity among social behavioral health scientists. Language is one component of culture and therefore may be a means to improve health among Indigenous populations. This study explores language as a unique aspect of culture through its relationship to other demographic and cultural variables. Participants ($n = 218$) were adults who self-identified as American Indian, had a type 2 diabetes diagnosis, and were drawn from two Ojibwe communities using health clinic records. We used chi-squared tests to compare language proficiency by demographic groups and ANOVA tests to examine relationships between language and culture. A higher proportion of those living on reservation lands could use the Ojibwe language, and fluent speakers were most notably sixty-five years of age and older. Regarding culture, those with greater participation and value belief in cultural activities reported greater language proficiency.

Keywords

Indigenous; American Indian; language; culture

Ojibwe people call themselves “Anishinaabe,” which has been given various meanings by historians and linguists. Contextually, “Anishinaabe” can mean American Indian or, more specifically, Ojibwe. Most importantly, the term “Anishinaabe” unites people and, for our purposes, unites Indigenous people in the struggle and persistence to revitalize Indigenous languages and Indigenous culture for the health of all human beings.

Indigenous people make up roughly 5 percent of the world’s population. They speak thousands of different languages in over seventy different countries (United Nations Secretariat 2009). Traditional activities within and across Indigenous nations vary significantly. It could be argued that many of these activities, although different, are embedded in similar cultural value systems. Health-based researchers have studied and are studying the connection between culture and improved health (Rowan et al. 2014), yet we have not fully explored how language fits into the broader umbrella of cultural values and activities—an important undertaking that can direct efforts to promote cultural and language revitalization efforts. This paper explores the connection between Indigenous language proficiency, participation in traditional and spiritual activities, and cultural values within two Anishinaabeg communities representing a shared cultural group in the United States.

Ojibwe People

Based on the 2010 U.S. census, there are over 5.2 million people who self-identify as American Indian/Alaska Native (AI/AN) (U.S. Census Bureau 2012). Of these people, 170,742 self-identify as Ojibwe, which is the fifth largest AI tribal grouping in the United States. Ojibwe people reside in urban, rural, and reservations settings across the United States and Canada. In the United States, Ojibwe communities make up over a dozen smaller reservations owing to various treaty negotiations in the nineteenth and early twentieth centuries that depleted land-bases and defined reservation boundaries (Treuer 2010). While Ojibwe reservations are small in comparison to other tribal territories, Ojibwe reservations span a large geographical region that includes North Dakota, Minnesota, Wisconsin, Michigan, and southern Canada.

Although the Ojibwe language is considered severely endangered, as are many Indigenous languages (Moseley 2010), it is also considered capable of revitalization based on the number of first- and second-language speakers (Norris and MacCon 2003). With more than eight thousand speakers, over half (61%) of whom live outside of AI/AN reservations, Ojibwe ranks ninth in the number of Indigenous speakers in the United States (Siebens and Julian 2011). While the census gives details on speakers by age and percentage of Indigenous language spoken in the home, information on Ojibwe speakers is limited because statistics are combined for all Indigenous languages in the United States, obscuring different historical and contemporary circumstances.

Indigenous Language Revitalization

Indigenous people across the globe are revitalizing their native languages. The Maori of New Zealand and Native Hawaiians have paved the way for language revitalization efforts, modeling abilities to improve endangered language when most first-language speakers have passed on. Communities in the Southwest United States have maintained a great deal of their first-language speakers but continue to support efforts to preserve language proficiency among the younger generations. Language revitalization efforts are receiving growing attention within Ojibwe communities, as well, as language immersion primary education programs, adult language nests, and local public policy declaring Ojibwe as the official language of tribes emerge (Gunderson 2010; Hermes, Bang, and Marin 2012; Fahrlander 2015). Community members and linguists alike share in the urgency and importance of revitalizing languages and preserving local dialects, especially because time with elders—overwhelmingly the first-language speakers—is uncertain.

The Importance of Indigenous Languages

Language is important to community operation and therefore to community well-being. Language transmits ideas, beliefs, and knowledge, thereby enhancing social support, interpersonal relationships, and shared identity (Chandler and Lalonde 1998). Speaking and understanding one's Indigenous language has more significance than communication alone. Indigenous languages preserve important concepts and epistemologies that shape entire belief systems, and they define how people formulate ideas and make decisions (Royal

Commission on Aboriginal Peoples 1996; Crawford 1995; Norris 2004). Some scholars stress that less variety in languages equates to less variety in ideas, stifling personal and political progress (Crawford 1995).

Songs, prayers, and ceremonial activities are often delivered strictly in the Indigenous language. Therefore, language preservation is critical to communication between generations, communication with the spirit world, and the transmission of teachings (concepts, symbolism, oral stories) within cultural, spiritual, and religious practices. Language use within these practices affects the identity, culture, and health of Indigenous populations (King, Smith, and Gracey 2009). Without language, the intergenerational transmission of values and belief systems would be obstructed (Indigenous Language Institute 2002), affecting the health of our future generations.

Indigenous Languages and Health

Researchers have looked increasingly to culture to improve health behaviors, compiling more evidence that culture may prevent and treat health outcomes such as depression and substance abuse (Walters, Simoni, and Evans-Campbell 2002; Stone et al. 2006; Rieckmann, Wadsworth, and Deyhle 2004). How we use and define culture in studies varies—from cultural activities to cultural values to cultural symbols. Language is sometimes but not always used, and rarely is it considered as a separate construct.

Despite community emphasis on language revitalization, there is limited research highlighting Indigenous languages as a separate and distinct concept from culture. Within the available literature, discrepancies exist that fail to explain the full effect of language on health. The 2008 National Aboriginal and Torres Strait Islander Social Survey reported that Aboriginal youth aged fifteen to twenty-four years who spoke an Indigenous language were less likely to consume alcohol at risky levels or to have used illicit substances in the previous twelve months (Australian Bureau of Statistics 2012). Hodge and Nandy (2011) reported that significantly greater percentages of individuals with the ability to speak their tribal language were in the “good wellness” group versus the “poor wellness” group, with “wellness” defined as feeling good and taking care of oneself physically, emotionally, mentally, and spiritually (17% vs. 29%). Two reports found positive relationships between language and health in Indigenous communities in Canada by measuring community-wide language preservation and community-wide measures of health behaviors. Hallett, Chandler, and Lalonde (2007) found that tribal groups with lower levels of language knowledge had six times more youth suicides than those with higher language knowledge. The study also measured other factors related to what Chandler and Lalonde (1998) consider cultural continuity factors, which determine whether a group of people maintains control over their communities. For the tribal groups that had all other cultural continuity factors, language still decreased youth suicide by almost 50 percent. Similarly, Oster and colleagues (2014) found that higher Indigenous language knowledge rates predicted lower prevalence rates of type 2 diabetes, even after adjusting for socioeconomic factors.

Whereas these statistics are promising, other studies have found negative relationships between Indigenous languages and health. A cross-sectional survey of Indigenous people of

Australia found that speaking and understanding an Indigenous language and having an Indigenous language as the main language spoken in the home was associated with increased sadness (Biddle and Swee 2012). Similarly, in Canada, Indigenous language was negatively associated with community well-being. Community well-being was defined through community level education, labor force, income, and housing conditions (Capone, Spence, and White 2013). Indigenous-only language use in the home has also been associated with decreased access to health care (Bird et al. 2008; Hahm et al. 2008; Schumacher et al. 2008).

If taken literally, these results might discourage revitalization attempts. However, there are numerous contextual factors to consider when interpreting results. Communities with high language preservation often are also isolated geographically, which is how they maintain Indigenous language use because they are less affected by assimilation. Geographical isolation is associated with poverty, poor housing, less educational opportunity, and less economic opportunity. These factors could also lead to sadness and diminished community well-being as defined by one study (Capone, Spence, and White 2013). Changing the way we define well-being impacts the interpretation of results. Having community members define well-being prior to using well-being as an outcome would be more meaningful. Geographic isolation combined with immersion in Indigenous languages may also hinder an individual's ability to speak the dominant language, an inability that has been shown to decrease access to health care and increase racial discrimination in other minority populations (Gee and Ponce 2010). Decreased access to health care and increased racial discrimination, especially in health-care settings, would impact health and well-being as it pertains to receiving routine check ups and specialty services. Individuals that use and learn their Indigenous language may also immerse themselves in traditional culture and find less meaning in Western education and Western economy (Capone, Spence, and White 2013). Straying from these societal norms would affect education, employment, and income—all factors measured by the community well-being score.

Measuring Language and Culture

Few researchers focus on Indigenous language as a separate concept from culture with unique qualities that may not only affect health outcomes but may also enhance the effects of other cultural variables (identity, traditional activities, beliefs, etc.) on health. Several researchers have found a positive relationship between cultural factors and improved mental health. These cultural factors had some similarities but often vary in definition. Participation in cultural activities included traditional food customs, traditional forms of socialization, and traditional forms of art (Whitbeck et al. 2002; LaFromboise et al. 2006; Kading et al. 2015). Cultural identity varied considerably. While some followed Oetting and Beauvais's (1990–1991) American Indian Cultural Identification Scale, which left the definition of identity open to the respondent (Whitbeck et al. 2002; LaFromboise et al. 2006), others modified or created their own scale based on community-specific definitions (Moran et al. 1999; Rieckmann, Wadsworth, and Deyhle 2004). Asking respondents whether they follow a specified way of life was also used to define enculturation or acculturation (Wolsko et al. 2007). Others (Moran et al. 1999; LaFromboise et al. 2006; Whitesell et al. 2014) incorporated language in their culture-based scales of cultural engagement, ethnic identity,

and enculturation. Therefore, it is difficult from these studies to predict the relationship between language and health outcomes.

Often, researchers assume language is built into cultural frameworks of health, minimizing the focus on the direct benefits of language use on health outcomes. Language is considered simultaneously with other measures of culture, as demonstrated in the lack of language-specific health research. Certainly, culture and language interact in ways that make it hard to differentiate the unique health benefits. Participants of one qualitative study describe Indigenous language as a critical and inseparable aspect of culture without which Indigenous people would be incapable of surviving because it is the foundation by which people collectively live and practice culture (Oster et al. 2014).

Given contradictions in the literature, this study intends to more clearly delineate the relationship between language, demographic variables, and other cultural variables in a study of Ojibwe adults. For both community members and researchers, this study advances our theoretical understanding of these constructs to better utilize community assets to improve the health and well-being of the people.

Method

The data for this paper are from the larger community-based participatory research study Mino Giizhigad (Ojibwe for “A Good Day”) that examined how mental health factors relate to diabetes treatment and outcomes for American Indian adults with type 2 diabetes (Walls et al. 2014). The Mino Giizhigad study included participants from two Ojibwe communities — the Lac Courte Oreilles and Bois Forte Bands of Chippewa.¹ The Mino Giizhigad study was approved by the Indian Health Service and the University of Minnesota Institutional Review Boards; tribal resolutions were also obtained prior to funding submission. Both tribes actively partnered with researchers from the University of Minnesota Medical School for this project, with regular meetings of the respective tribal Community Research Councils.

Study Participants

Potential participants were identified from health clinic records from each tribal clinic. Eligibility criteria included (a) being 18 years of age or older, (b) self-identifying as American Indian, and (c) having a type 2 diabetes diagnosis. Probability sampling was used to randomly select patients from each reservation clinic who met these inclusion criteria. Of the 289 identified and eligible individuals, 75 percent ($n = 218$) consented to participate in the study and completed the self-report and interview-administered measures described below. Participants were given \$30 and a pound of local wild rice for their time and effort. Further procedural details are provided in Walls and colleagues (2014).

¹NOTE “Chippewa” has been the legal term used by the federal government in major legal and treaty negotiations and is included in the names of multiple tribes (Satz 1991; Treuer 2010), but many members of this group prefer the terms “Anishinaabe” or “Ojibwe.”

Measures

Demographics—We asked participants to provide their age as a continuous variable, gender (male = 0, female = 1), and educational attainment (“less than high school,” “high school or GED,” “some college, vocational or technical training,” “college graduate,” or “advanced degree”). We collapsed educational attainment into two groups (high school or less, and some college or more). Annual household income was reported in \$10,000 ranges, and the midpoint of this range divided by the number of people living in the household was used to calculate the per capita income. Additionally, the federal poverty calculation was used to categorize participants as above or below the federal poverty level. We also asked if participants currently live on reservation land, or if they had lived on reservation land prior to age eighteen.

Language—We categorized Ojibwe language understanding and speaking proficiency based upon self-report from four questions. *Understanding* Ojibwe was determined by asking participants if they could understand any spoken Ojibwe, and if so, whether they could easily understand spoken Ojibwe. We categorized participants’ understanding based on responses, provided by the survey, as “None” (0), “Any” (1), and “Easily” (2). *Speaking* Ojibwe language was assessed by asking participants if they could speak some Ojibwe language, and for those that could, if they could speak fluently. We categorized individuals’ speaking proficiency as “None” (0), “Some” (1), and “Fluent” (2).

Culture—We queried several elements of Ojibwe cultural participation and values. Participation in *traditional activities* was measured with a seventeen-item traditional activities index (Whitbeck et al. 2004). Participants were asked if they had participated in each activity within the past twelve months, with either a “Yes” (1) or “No” (0) response, resulting in a sum total with a range from zero to seventeen. Example scale items included “done any beading,” “gone ricing,” and “listened to elders tell stories.” The traditional activities index had a Cronbach’s alpha of 0.811. Participation in traditional *spiritual activities* was measured with a nine-item spiritual activity index (Whitbeck et al. 2004) with similar prompt and response categories. The resultant scale had scores ranging from zero to nine, and included items such as “offered tobacco,” “gone to ceremonial feasts,” and “sought advice from a spiritual advisor.” The spiritual activities index had a Cronbach’s alpha of 0.791.

We asked how much the participant’s family does special things together that are based on Ojibwe culture, how much his or her family lives by or follows Ojibwe ways, and how much he or she lives by or follows Ojibwe ways. Response options for these questions were “A lot,” “Some,” “Not much,” and “None.” We collapsed “A lot” and “Some” into one category, and “Not much” and “None” into another category. We also asked how important traditional spiritual values are to the way participants lead their lives, with response categories of “Very important,” “Somewhat important,” “Not too important,” and “Not at all important.” We collapsed responses into “Very important” and all others.

Analysis

We used SPSS (Version 20) for data analysis. Chi-square tests were used to examine differences between categories of language proficiency and several demographic characteristics. We used chi-square tests to compare language proficiency by nominal groups, and ANOVA tests, with Bonferroni correction to adjust for multiple comparisons, to examine relationships between language and traditional and spiritual activities.

Results

Descriptive analyses revealed the mean age of participants in this study was 56.5 years (31.7% were aged 65 years or older), and the mean annual per capita income was \$10,331, 44.4 percent falling below the federal poverty limit. Over half of the sample was female (56.4%) and had completed some college or higher (60.4%). Most had lived on reservation lands prior to age eighteen (80.7%), and 77.5 percent now lived on reservation lands.

Regarding understanding spoken Ojibwe, 76 (34.9%) of the participants in this study could easily understand, 93 (42.7%) could understand some, and 49 (22.5%) could not understand any. Concerning speaking Ojibwe, 14 (6.4%) reported being able to speak fluently, 138 (63.3%) could speak some, and 66 (30.3%) could not speak any.

Tables 1 and 2 show the percent of participants understanding and speaking Ojibwe by demographic group. The proportion of respondents that understand any or easily understand spoken Ojibwe was significantly higher among people currently living on reservation lands ($p = 0.019$) and those who lived on reservation land before age eighteen ($p = 0.005$). The proportion speaking Ojibwe fluently was higher among individuals sixty-five years or older ($p = 0.003$) compared to those younger than sixty-five, and significantly more of those speaking some or fluent Ojibwe currently lived on reservation lands ($p < 0.001$).

ANOVA tests showed differences in mean number of traditional activities ($p = 0.001$; $p = 0.006$) and spiritual activities ($p < 0.001$; $p < 0.001$) across Ojibwe understanding and speaking categories, respectively. After applying the Bonferroni correction to p values, we saw significant differences between low and high Ojibwe proficiency, as shown in figures 1 and 2. Overall, higher proficiency in both understanding and speaking was related to higher reports of traditional and spiritual activities.

Of all participants in this study, 64.2 percent reported doing some or a lot of special things with their family based on Ojibwe culture. The majority of participants (66.4%) reported that their family lives by or follows Ojibwe ways some or a lot, and 70.8 percent felt that they lived by or followed Ojibwe ways some or a lot. Nearly half (46%) reported that traditional spiritual values are very important to the way they lead their lives. Comparisons of these variables by Ojibwe language proficiency groups are illustrated in figures 3 and 4. Significant differences were found between proficiency, both understanding and speaking, for all of these culturally salient variables. The clear trend here is that those understanding easily and speaking proficiently have the highest percent affirming these four culturally salient items.

Discussion

In this study, we examined Ojibwe language proficiency and its relationship to cultural variables in a sample of 218 Ojibwe adults with type 2 diabetes living in the northern Midwest United States. Thirty-five percent could easily understand the language, and six percent were fluent. Greater language proficiency was associated with living on the reservation (now as well as before age eighteen) and being older than sixty-five years of age. Language proficiency was associated with more participation in traditional and spiritual activities, as well as endorsing and living by traditional spiritual values. These findings highlight and further delineate the strong connection between Indigenous language and cultural values and participation, and they provide the basis for future investigations considering the relationship between language, cultural involvement, and health.

Results indicated individuals currently living on the reservation spoke and understood the language more than those who lived outside the reservation. This distinction is particularly of note given that individuals in this study were recruited based on their use of a tribal health clinic. In other words, even those that did not live on reservation lands lived close enough to access tribal health services on tribal lands. Living on the reservation connects community members with cultural opportunities not afforded to many off-reservation residents. The distance from reservation cultural and community assets (i.e., attendance at nontribal schools) may decrease the likelihood of language involvement enough to lead to a negative correlation between living off the reservation and language proficiency. Cultural activities, as we have also found in this study, were related to proficiency in the language.

We found that understanding the language was associated with living on the reservation before the age of eighteen; however, speaking the language was not associated. This result matches with how people develop language. People tend to understand a language before they are able to produce it, much like an infant. In that respect, if one grew up in the language, which might be linked to living on the reservation before the age of eighteen, and then moved away, it is likely that one would understand some but produce less.

Being a fluent speaker was associated with being aged sixty-five years or more. This fits with UNESCO's Language Vitality and Endangerment framework, in which the most significant factor is intergenerational language transmission. Languages are termed more endangered as the younger generations stop using the language. It is most common in Indigenous communities that the first-language speakers and fluent speakers are elders. In a report from the 2006–2010 American Community Survey and Puerto Rico Community Survey, older people reported speaking their Indigenous language in the home at a much higher rate than the young people (11% of 15- to 17-year-olds vs. 22.3% of 65+ year-olds) (Siebens and Julian 2011).

We measured culture by asking about participation in the last year in specific traditional activities such as spearfishing, making blankets, and listening to elder stories, but we also asked more general questions that allowed the participants to self-identify what Ojibwe culture meant to them. We asked about following life standards and living by traditional life ways. In both specific and broad ways of wording the questions, we found that culture was

associated with proficiency in the language. This finding strengthens anecdotal literature that maintains that culture cannot exist without language and vice versa (McIvor, Napoleon, and Dickey 2009).

Similar to the findings with traditional activities, participating in spiritual activities and considering spiritual values important were both associated with greater language proficiency. Language is a critical aspect of traditional spiritual activities. While many spiritual advisors and ceremonial leaders provide interpretation for those they are helping, much of the spiritual meaning is lost because concepts do not always translate into the dominant culture's language. Because of this, greater language knowledge may facilitate participation in traditional spiritual activities. On the other hand, participation in spiritual activities conducted in the language may lead to greater language acquisition, or an increased interest in learning the language.

Both spiritual and cultural activities have important implications for health and healing, which makes understanding factors associated with participation in these activities especially valuable. For example, participation in traditional spiritual activities has been found to be associated with a lower likelihood of past-year alcohol abuse (Whitbeck et al. 2004), and low enculturation has been found to be a strong predictor of alcohol problems (Currie et al. 2011). Culture has been shown to be connected to positive mental health (Kading et al. 2015), positive psychological well-being (Moran et al. 1999), resiliency factors among adolescents such as positive attitude toward schools and reaching academic goals (LaFromboise et al. 2006), greater happiness, and the use of religion or spirituality (versus substances) to cope with stress (Wolsko et al. 2007). Health benefits of culture and spirituality have always been understood by tribal communities and often requested within treatment programs (Legha and Novins 2012). Recently, scientific studies have also recognized this important relationship.

Limitations

The generalizability of these findings is limited to adults living with diabetes sampled from clinic records. The fact that these adults had at some point sought services at tribal clinics potentially suggests some degree of community involvement or may be an indicator of tribal enrollment or eligibility for IHS services.

Self-report questions were used to measure language, and more thorough or extensive measures would help improve our understanding of language and its relationship to culture and health. Our survey instrument, along with other health-based research methods, underestimates the complexity of Indigenous languages. Using an oral interview would be more sufficient but has its drawbacks as well, especially for endangered languages. The interviewer, even if trained in oral interview methods, must be consistent to make the test reliable across all subjects. The interviewer must also be well versed in the language in order to converse with each subject on contexts relevant to the subject's life.

Survey questionnaires cannot capture the many contexts in which language is used. Because many individuals do not have the ability to use the Indigenous language to its fullest extent, individuals might not be aware of the complexities of using language within all aspects of

life, from everyday conversations with family and peers to classroom use when studying complex mathematical or scientific concepts to sending prayers through spiritual realms.

One strength of this study is that it provided participants with a broad range of questions to dig into spirituality and culture. Participants were asked about their involvement in very specific and locally relevant traditional and spiritual activities. In addition, they were asked questions that allowed them to include their own interpretation of culture and spirituality. We used both types of measurement items within analyses.

There may also be deficits in the way we, as researchers, perceive and measure health. Ideas of community well-being and health can be much different than the dominant culture, and researchers should consider finding new ways to measure positive health variables. For example, while American Indians have disproportionately higher rates of depression when compared to national averages, over half (51.5%) of one study population also experienced flourishing positive mental health (Kading et al. 2015).

Summary and Future Directions

Our findings from Ojibwe community members highlight the strong connection between culture and language proficiency and provide a point estimate of language proficiency among community members. Language and cultural participation are closely connected, and both are seen as key mechanisms for improving health and wellness in Indigenous communities. Because the data were cross-sectional, we do not know if language use facilitates participation in the cultural and spiritual activities, or if these activities encourage the development of the language. Both are likely occurring. Before relying heavily on quantitative research methods to understand language's role in health, it would be beneficial to first seek qualitative knowledge that deciphers the role language plays in healthy behaviors. In addition, future research should investigate how language knowledge or acquisition may lead to improved health. Our findings suggest that language and cultural involvement complement each other. Language programs that include cultural teachings and cultural involvement may be more successful in language revitalization and language preservation. Because elders were most likely to be fluent, and because a minority of participants could easily speak the language, this study underscores the critical need for language revitalization efforts across Ojibwe communities to tap into the vital resources of our elders.

Biographies

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SIDNEE KELLAR, community research council member for the Mino Giizhigad study, was born in Washington the day after her dad discharged from the army. After moving to Wisconsin, she lived by her mom's family's cranberry marsh and her dad's reservation. An Ojibwe elder would come over for coffee. He'd ask, "Sid'nee, how do you say horse?" Years later she started working at the tribal college and that same elder was there, teaching Ojibwe. Now his question was, "Sid'nee, when are you going to take my class?" She did, eventually graduating with an interdisciplinary studies degree. She currently teaches high school Ojibwe.

MELISSA L. WALLS, Ph.D., is an associate professor in the Department of Biobehavioral Health and Population Sciences at the University of Minnesota Medical School, Duluth campus. Dr. Walls is affiliated with the Bois Forte and Couchiching First Nation Anishinaabe. She is a social scientist committed to collaborative research with tribal communities in the United States and Canada. Her involvement in community-based participatory research (CBPR) projects to date includes mental health epidemiology; culturally relevant, family-based substance use prevention and mental health promotion programming and evaluation; and examining the impact of stress and mental health on diabetes.

BRENNAL GREENFIELD, Ph.D., is a psychologist and assistant professor in the Department of Biobehavioral Health and Population Sciences at the University of Minnesota Medical School, Duluth campus. Her research is strengths-based and focuses on identifying and intervening on determinants of substance use and misuse among Native Americans.

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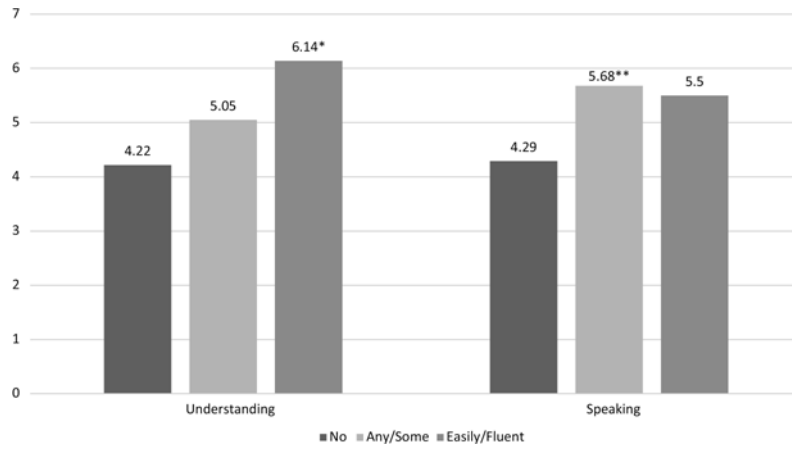


Figure 1. Mean traditional activities by Ojibwe proficiency category
ANOVA test with Bonferroni correction; * Significantly different than “No” and “Any” understanding groups; ** Significantly different than “No” speaking group

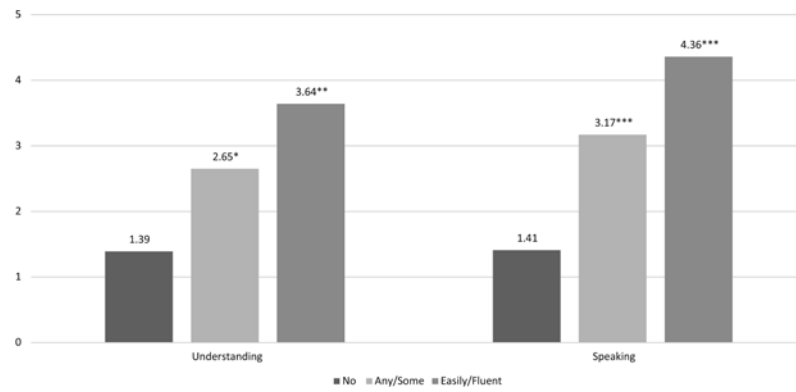


Figure 2. Mean spiritual activities by Ojibwe proficiency category
 ANOVA test with Bonferroni correction; *Significantly different than “No” understanding group; **Significantly different than “No” and “Some” understanding groups; *** Significantly different than “No” speaking group

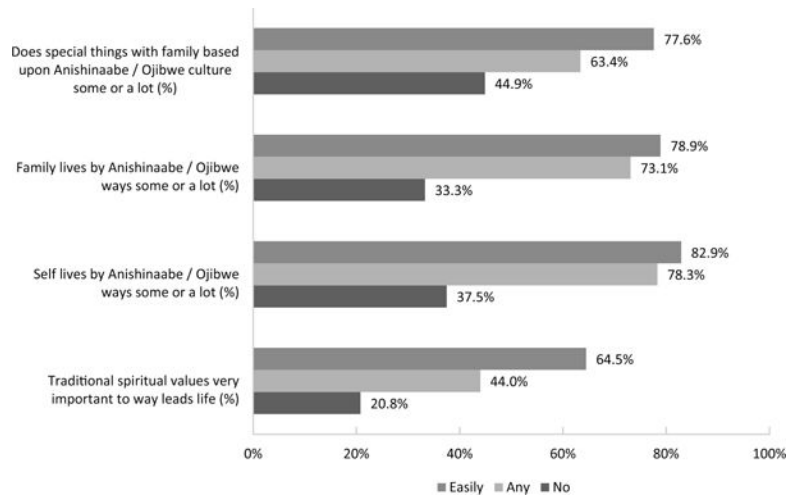


Figure 3.
Percent within understanding proficiency category

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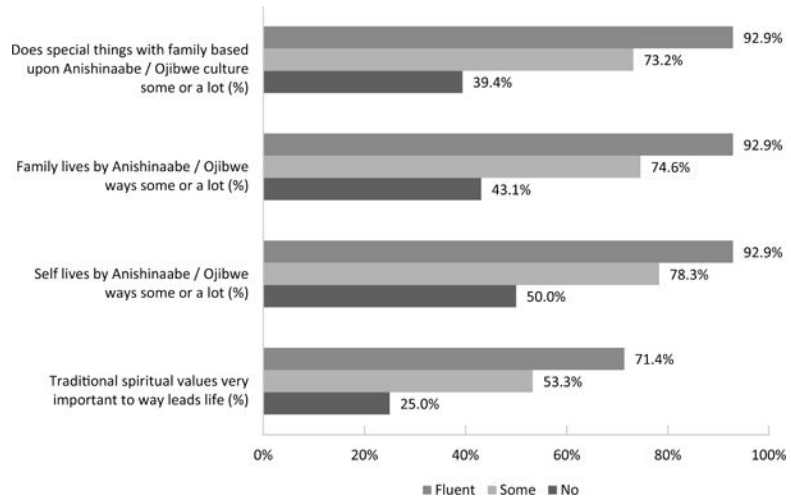


Figure 4.
Percent within speaking proficiency category

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Table 1

Percent understanding proficiency by demographic categories

	Percent Understanding			<i>p</i>
	None	Any	Easy	
Total	23%	43%	35%	
Gender				
Male	24%	48%	36%	0.212
Female	21%	39%	40%	
Age				
Less than 65 years	25%	44%	31%	0.165
65 years or older	17%	29%	43%	
Currently live on reservation lands				
No	37%	31%	33%	0.019
Yes	18%	46%	36%	
Lived on reservation lands before 18				
No	41%	38%	21%	0.005
Yes	18%	44%	38%	
Educational attainment				
High school or less	22%	35%	43%	0.095
Some college or above	22%	48%	30%	
Household income				
Below federal poverty limit	22%	39%	40%	0.466
Above federal poverty limit	23%	45%	32%	


Table 2

Percent speaking proficiency by demographic categories

	Percent Speaking			<i>p</i>
	None	Some	Fluent	
Total	30%	63%	6%	
Gender				
Male	34%	61%	5%	0.567
Female	28%	65%	7%	
Age				
Less than 65 years	33%	64%	3%	0.003
65 years or older	25%	61%	15%	
Currently live on reservation lands				
No	53%	41%	6%	0.000
Yes	24%	70%	7%	
Lived on reservation lands before 18				
No	41%	57%	2%	0.181
Yes	28%	65%	7%	
Educational attainment				
High school or less	33%	57%	11%	0.088
Some college or above	28%	68%	4%	
Household income				
Below federal poverty limit	29%	62%	9%	0.301
Above federal poverty limit	32%	64%	4%	

For the love of our children: an Indigenous connectedness framework

Jessica Saniguq Ullrich

AlterNative
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Abstract

This article draws on Indigenous literature to develop a conceptual framework that makes visible Indigenous child wellbeing. A process of qualitative content analysis identified and examined the core concepts and mechanisms of Indigenous wellbeing. Central to the framework is the concept of connectedness. The premise of this article is that deepening our understanding of Indigenous connectedness can assist with the restoration of knowledge and practices that promote child wellbeing. When children are able to engage in environmental, community, family, intergenerational and spiritual connectedness, this contributes to a synergistic outcome of collective wellbeing. The Indigenous Connectedness Framework may be particularly useful to Indigenous communities that directly serve children. The hope is that communities can adapt the Indigenous Connectedness Framework to their particular history, culture, stories, customs and ways of life.

Keywords

connectedness, Indigenous wellbeing, child wellbeing, spirit

The past is not a burden; it is a scaffold which brought us
to this day. We are free to be who we are—to
create our own life out of our past and out of the present.

We are our ancestors. When we can heal ourselves,
we also heal our ancestors, our grandmothers, our
grandfathers and our children. When we heal ourselves,
we heal Mother Earth

Grandmother Rita Pitka Blumenstein, Yup'ik, Tununak, Alaska,
International Council of Thirteen Indigenous Grandmothers

Introduction

Indigenous peoples are not trapped in a traumatic past. Grandmother Rita tells us when we heal ourselves, we also heal our ancestors, relatives, children, future generations and Mother Earth. It's a reminder that we are all connected. The term *connectedness* is a concept used by the People Awakening Team and researchers from southwest Alaska that closely matches what Grandmother Rita is teaching in the quote above. Connectedness is “the interrelated welfare of the individual, one's family, one's community and the natural environment” (N. V. Mohatt, Fok, Burket, Henry, & Allen, 2011, p. 444). Awareness of connectedness has been found to be a protective factor for Alaska Native youth from alcohol abuse and suicide (Allen et al., 2014; G. V. Mohatt et al., 2004; N. V. Mohatt et al., 2011). Certain actions and activities create and nurture connectedness. In Grandmother Rita's quote, the process of healing ourselves cultivates connectedness. Deepening our understanding of connectedness and the mechanisms that uphold it may contribute to the

growing wellness literature that is advocating for transformational change (Hodge, Limb, & Cross, 2009).

It is incredibly humbling to see the ways Indigenous communities have maintained connectedness despite the onslaught of colonization. Indigenous peoples have endured and continue to endure the colonial traumas of child removal, assimilation, relocation, institutional racism, patriarchy, environmental degradation, stolen lands, neo-liberalism and hierarchical epistemologies (Bang et al., 2014; Evans-Campbell & Walters, 2006). Despite colonization, something has sustained Indigenous people. This article asserts that connectedness, the interrelated welfare of everyone and everything, has been one of the keys to Indigenous survival and wellbeing. In this article, I argue that concept of connectedness is worthy of exploration as we work to destabilize the impacts of colonial disruptions to Indigenous ways of knowing and being. Through the study of connectedness, we begin to see how the disruption of connectedness has been harmful to everyone, not just Indigenous communities.

Focusing on the promotion of connectedness for children is strategic because children can unify people. Many tribes view children as gifts from the Creator with a sacred

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purpose (Cajete, 2000; Day, 2016; Red Horse, 1997). Children are the “future keepers and practitioners of sacred knowledge” (Kawagley, 2011a, p. 298) and the “bringers of light and good fortune to the community” (Cajete, 2000, p. 96). Children change and create people’s roles in communities. With a birth of a child, you also have the birth of a mother, a father, a grandparent and multiple relationships. These roles and relationships are important because they influence the identity and development of a collective. The continued existence of families, tribes and communities rely on the presence of children (Indian Child Welfare Act, 1978). Setting an intention of raising healthy children is strategic because they will become healthy families, communities and just societies (Powers & Faden, 2006).

Through a comprehensive literature review and qualitative content analytical process, this article attempts to make child wellbeing visible through an Indigenous Connectedness Framework. This framework adds value to the already existing Indigenous wellbeing literature because it identifies mechanisms of connectedness in a purposeful way when explaining what the core concepts mean. It is important to acknowledge that children are as diverse as the beautiful landscapes of the earth. The intention is to identify commonality across groups so that the connectedness framework can be adapted to contain specific community values, histories, teachings and practices.

To follow the Indigenous research protocol of reflexivity, I recognize that my background completely influences the story I share. I am a descendant of the Native Village of Wales (Kingigin) on my mother’s side and a tribal member of Nome Eskimo Community (Sitnasuak). My father’s side of the family has ancestral roots in Switzerland, Germany and France. I have actively engaged in the recovery process of our Kingikmiut songs, dance, language and epistemology. The more I learn, the more I try to live a life of connectedness. Who I am as an Inupiaq woman, a social worker, a mother and previous child welfare worker influenced the organization, analysis and visual depiction of the Indigenous Connectedness Framework in this article. The hours spent studying this topic was for the love of our children.

Methods

Research questions and hypotheses

The research questions and hypotheses were developed after reading the N. V. Mohatt et al. (2011) article on connectedness and speaking with Terry Cross about his Relational Worldview Model, which identifies four domains and mechanisms of wellbeing that resemble a medicine wheel (personal communication, May 12, 2017). The research questions that guided the initial literature search were (a) How is Indigenous child wellbeing conceptualized and how does it align with the People Awakening Team’s description of connectedness? and (b) What are the key mechanisms for connectedness and Indigenous child wellbeing? My hypotheses included the conceptualization of Indigenous child wellbeing as an ecological framework of child, family or kinship, community and land or place connectedness with wellbeing

mechanisms that nurture a person’s mind, body, spirit and context as described by the Relational Worldview Model (Cross et al., 2011).

Literature selection

To narrow the scope, literature pertaining to Indigenous populations from the USA, Canada, Australia and New Zealand were included because of the shared history of boarding schools and colonial oppression that have affected generations of children. The University of Washington library and University of Alaska Anchorage consortium library databases, as well as Google Scholar were used to identify literature with the following combinations of search terms: Indigenous, American Indian, Alaska Native or Aboriginal AND wellbeing, wellness, resilience, child wellbeing, or connectedness. The literature review became an iterative process where chosen articles provided references that were subsequently searched, selected and reviewed. Another key piece to gathering literature was through consultation with fellow scholars, community members and research committee members. The initial database search resulted in a collection of approximately 20 articles, and expanded to over 65 books, articles and dissertations for analysis. Very few articles used the term “Indigenous connectedness” or solely addressed child wellbeing, so the first selected articles had to meet the following criteria: (a) the wellbeing knowledge was from and for Indigenous people, (b) focused on wellbeing, and (c) included multidimensional concepts that were dynamically connected.

Analytical approach

Qualitative content analysis (QCA) involves the examination of core concepts and aides in the descriptive conceptualization of the content (Drisko & Maschi, 2015; White & Marsh, 2006). QCA can be both deductive and inductive with established hypotheses and an analytical approach that expands upon the latent content and generates deeper meaning (Drisko & Maschi, 2015). The first 20 selected articles were organized in a table that identified the article, noted any referenced wellbeing frameworks and unpacked conceptualizations of wellbeing. Screenshots of wellbeing models were included in the table if they existed. To help identify core domains that should be included in the Indigenous Connectedness Framework, I analyzed all of the visual wellbeing models that were initially found in the literature search. Table 1 provides an overview of the common wellbeing concepts found in the literature.

Authors defined Indigenous wellbeing in holistic, collective and interconnected ways. Through a process of cross-comparison and content analysis, Indigenous wellbeing included the hypothesized concepts of family, community and environmental connectedness. The literature also had intergenerational, cultural and spiritual concepts that expanded upon the initial Indigenous Connectedness Framework. A decision was made to include cultural

Table 1. Qualitative content analysis of Indigenous wellbeing.

Wellbeing concepts	Absolon (2010) Indigenous wholistic theory	Blackstock (2011) Breath of life theory	Cross et al. (2011) Relational worldview	Hazel and Mohatt (2001) AK Native worldview	Kawagley (2006) Yupiaq worldview	Mark and Lyons (2010) Conceptual model of Maori health and illness	McGregor, Morelli, Matsuoka, and Minerbi (2003) Ecological model of Hawaiian wellbeing	Priest, MacKean, Davis, Briggs, and Waters (2012) Socioecological model of child wellbeing
Individual	X	X	X	X	X	X	X	X
Family	X	X	X	X	X	X	X	X
Community	X	X	X	X	X	X	X	X
Environment	X	X	X	X	X	X	X	X
Intergenerational	X	X				X		X
Spirit	X	X	X	X	X	X	X	X
Culture	X	X	X	X	X	X	X	X
Child focus								X
Collective	X	X	X	X	X	X	X	X

connectedness within the concept of spiritual connectedness because the way the authors described the concept and mechanisms of culture and spirit seemed to fully overlap. Spirit as a concept is preferred because culture is a newer concept linked to colonization (Duran & Duran, 1995). Overall, the examination of the first eight wellbeing articles aided the selection of the core connectedness concepts for the Indigenous Connectedness Framework. After identifying the core concepts, an additional literature search was completed to examine intergenerational, family, community, environmental and spiritual connectedness in greater depth. Connectedness concepts were interwoven with the mechanisms. The next analytical move unpacked the actions, activities, or mechanisms to underline the ways connectedness was fostered.

Results

Intergenerational connectedness

Intergenerational connectedness involves an embeddedness in a continuous history. Many kinship practices teach children about their connection to their ancestors and future generations (Absolon, 2010; Blackstock, 2011; McCubbin, McCubbin, Zhang, Kehl, & Strom, 2013). Naming practices, knowledge of ancient songs and spoken Indigenous languages are examples of historical practices that link children to past and future. Senungetuk (2017) stated, "Practicing the ways of the ancestors in the time of the present, ensures that the ancestors of the future will maintain their sense of interconnectedness with Inupiaq ways of being" (p. 237). This relationship with the past and future creates an awareness of responsibility to do the best we can, not just for ourselves, but for all generations.

History is about power (Smith, 1999). Colonial history has marginalized many Indigenous groups (Smith, 1999). Children need to know the truth of why things are the way they are today by learning about their history from an Indigenous perspective (Wexler, 2009). Knowledge of

family and community history can help youth understand where they fit in this cultural disruption and repair process (Fryberg, Covarrubias, & Burack, 2013). Knowledge of the real history can shift the gaze off individual struggles to the need for a community level response (Evans-Campbell, 2008; Kirmayer, Gone, & Moses, 2014; Schultz, Cattaneo, et al., 2016; Wexler, 2009). Truth can help people move past anger and fear and shift to love and determination. This is why changing the narrative is vitally important. Youth need to learn about their communal strength and resilience and that there is a reason they are here today.

Intergenerational connectedness develops through an awareness of a continuous history, an ability to speak the language of the ancestors and generational knowledge of the land. Children that have intergenerational connectedness will have a grounded identity, guidance on how to live a good life based on generations of experience and will lead to the passage of knowledge for the children to come. Intergenerational connectedness leads to an awareness that we are never alone in this universe.

Family connectedness

A family unit can be a biological and/or spiritual relationship between two or more people (Red Horse, 1997). The establishment of familial relationships happens through blood, clans, adoption, namesakes, marriage, friendship and community (Absolon, 2010; Day, 2016; Kawagley, 2006; Kral, Idlout, Minore, Dyck, & Kirmayer, 2011; Red Horse, 1997). Indigenous families share a nurturing bond and mutual interdependence that extends beyond the nuclear family (Hand, 2005; Kral et al., 2011; Lucero & Bussey, 2016). Being part of a family assigns certain responsibilities to persons based on role, generational standing and cultural values (Hand, 2005; Red Horse, 1997). "Every age cohort is accorded respect because each fulfills critical functions in the community" (Red Horse, 1997, p. 245). In many Indigenous communities, all Elders

are referred to as grandparents, all youth are brothers, sisters and cousins, all non-parental adults are aunts and uncles and everyone is responsible for the care and safety of the children (Bigfoot & Schmidt, 2010).

Families are essential to child wellbeing. The family structure provides the foundation for a child's cultural identity as well as a conduit for passing on values, beliefs and family traditions and practices (Hand, 2005; Martin & Yurkovich, 2014). Relationships with family members socialize children (Martin & Yurkovich, 2014). Grandparents provide an invaluable role of telling stories to children, which pass on tribal knowledge and values (Robbins, Scherman, Holeman, & Wilson, 2005). Cajete (2000) said all adults in a family were a child's parent because everyone was responsible for teaching and guiding children. Some of the tribal values taught by family members through stories and modeling include love and respect for nature, respect, showing appreciation, courage, unselfishness, hard work, balance and spirituality (Robbins et al., 2005).

The family connectedness develops in several ways. In one study, healthy families were "close-knit," spent time together, helped each other and provided a sense of belonging (Martin & Yurkovich, 2014). Another study found that good communication between family members, visits, going on the land together, sharing food and participation in many family activities promotes family connectedness and wellbeing (Kral et al., 2011). Naming ceremonies are another mechanism of family connectedness because they help children maintain connections to their ancestors, relatives and link families together whether they are blood related or not (Craig, 1996; Kawagley, 2006). The Indigenous concept of family connectedness indicates that children need to build strong relationships with family outside the parent-child dyad.

Community connectedness

The concept of community has been described as a social group that is based on location and/or social relationships and provide a sense of belonging to a collective (Cajete, 2000; Goodman, Bunnell, & Posner, 2014; Hill, 2006; McGregor, Morelli, Matsuoka, & Minerbi, 2003; Roffey, 2011; Schultz, Cattaneo, et al., 2016; Senungetuk, 2017). Communities shape both individual and collective identities (Hill, 2006; Kirmayer, Simpson, & Cargo, 2003; Priest, Mackean, Davis, Briggs, & Waters, 2012). Communities have a common history that supports relatedness (Haakanson, 2002). Most people are members of multiple communities (Goodman et al., 2014). For example, a child might belong to a tribal community, a school, a neighborhood, an athletic team or a LGBTQ community. Relationships grow within families and communities.

Cajete (2000) stated, "Through community Indian people come to understand 'personhood' and their connection to the 'communal soul' of their people" (p. 86). Cornassel (2012) describes personhood as the "interlocking features of language, homeland, ceremonial cycles, and sacred living histories" (p. 89). The core elements of sovereign nations also contain these features of personhood (McGregor et al., 2003). Individual and community

identities overlap, and communities provide the foundation for sovereign nations to thrive.

Community connectedness is the foundation of many Indigenous social structures (Schultz, Cattaneo, et al., 2016). Communities instill cultural values surrounding responsibility and accountability (Roffey, 2011) and define the rules and social norms (McGregor et al., 2003; Schultz, Cattaneo, et al., 2016). Healthy communities provide a support system and safety net (Finlay, Hardy, Morris, & Nagy, 2010; LaFromboise, Hoyt, Oliver, & Whitbeck, 2006). Many community organizations facilitate community connectedness for children (Priest et al., 2012). When families are unable to give children guidance and support then the community steps in because everyone has a part in uplifting the health and wellbeing of children (LaFromboise et al., 2006). Lucero and Bussey (2016) state that children who "continue living in their tribal community are often able to retain their family, kinship, clan, community and cultural bonds" (p. 116). Each member of a community has a role and gift to share that ensures each person's needs are met (Campbell, 2002). Prior to western education systems, youth connected with community members through apprenticeships that fostered their natural gifts and specialties (R. Atuk, personal communication, December 18, 2017; Ongtoogook, 2000). Children belong to families and communities and affect the wellbeing of both.

Several activities and common cultural practices support children's community connectedness. Communities host celebrations, ceremonies and gatherings (Mayo, 2002). Subsistence activities often bring communities together through ceremonial processes and sharing (Noongwook, 2002). The ability to speak tribal languages support a sense of belonging within a community (Cornassel, 2012). The creation of a sense of belonging is important for children because it teaches the interdependence and interrelatedness of everything (Hill, 2006). This awareness of community shapes children's choices, behavior and breaks down a barrier of false separation.

Evans-Campbell (2008) and Schultz, Walters, Beltran, Stroud, and Johnson-Jennings (2016) stress the importance of expanding our health and wellness interventions to include a person's family and community. Western ontologies focus too much on the individual alone. McGregor et al. (2003) stated, "What happens to an individual affects the family. This in turn, affects the community, and vice versa. Thus cohesive, healthy, functional families generally produce healthy individuals, who ultimately contribute to healthy communities" (p. 110). Within an Indigenous worldview, each person is vital to the community and is part of an interconnected whole. A community-centered approach to wellbeing recognizes the reciprocal relationships that exist between individuals and a collective. The implementation of multidimensional interventions that focuses on the whole may prove to be more successful in Indigenous communities.

Environmental connectedness

The environment is both a natural setting of land and water and a socially determined sense of place (Kemp, 2011; McMahan, Reck, & Walker, 2007). One place can have

several names that represent the “voice of the land” with exact descriptions and instructions on how to relate with that landscape (Anungazuk, 2007, p. 190). Herbert O. Anungazuk (2007) from Wales, Alaska said, “We have an alliance with the earth. Each one of us does and some of us as a people have continued to grasp this alliance and have anchored it into our hearts, our minds, and souls” (p. 189). The alliance that Mr. Anungazuk speaks of is the recognition that the earth provides the means for our life and survival through food, air, water and shelter. As Bang et al. (2014) emphasized, “The land is, therefore we are” (p. 9). This relational difference is very significant because the land is not a separate other.

For Indigenous Peoples, the land is inseparable from the concept of being and includes a physical and spiritual bond for the sustenance of life (Brown, McPherson, Peterson, Newman, & Cranmer, 2012; Kawagley, 2006; McGregor et al., 2003). Even when tribal people move to urban settings, they carry their connection to ancestral lands and ways of knowing with them (Senungetuk, 2017). In Alaska, the name of the land is within many tribal people’s collective name, which demonstrates the way land is at the core of Indigenous identity. The environment provides a foundation for human identity and way of life.

Indigenous connectedness to land is key to health and wellbeing (Gran-O’Donnell, 2016; Mark & Lyons, 2010). Indigenous language, culture and identity are constructed and learned through relationship with the land (Bang et al., 2014; Cajete, 2000; Goodkind, Gorman, Hess, Parker, & Hough, 2015; Kawagley, 2006). As elucidated by Walters, Beltran, Huh, and Evans-Campbell (2011),

The earth (or land) is both literally and figuratively the first and final teacher in our understanding of our world, communities, families, selves and bodies. With such understanding it can be argued that as the land or relationship to land is impacted—physically or metaphorically—so are bodies, minds, and spirits. (p. 167)

This connectedness to the land follows an eco-spiritual perspective that derives from Indigenous knowledge of the environment and spirituality (Coates, Gray, & Hetherington, 2006). Cajete explained, “The Native view of the landscape is a metaphoric map of place that is humanistic, sacred, feminine, in motion, creative, nurturing, and the source of all their kinship” (p. 186). The land is not simply a physical place or a separate “other.”

Land connectedness assists with efforts to revitalize and reclaim culturally specific knowledge and practices (Goodkind et al., 2015). Traditional ecological knowledge teaches the interrelatedness to all of creation (Schultz, Walters, et al., 2016). The environment provides histories, memories, meaning and ways to think and be in the world (Bang et al., 2014; Kemp, 2011; Mark & Lyons, 2010; Schultz, Walters, et al., 2016). Indigenous ways of life are highly specific to the land that their community has lived on for centuries (Cajete, 2000). The ceremonial practice of songs and dances represent a connection with ancestral lands and animals of a specific region and place (Senungetuk, 2017). Land contains Indigenous ancestral

knowledge (Schultz, Walters, et al., 2016). An example of ancestral knowledge on the land is the existence of inuksuit, which are giant rock formations that identify places to hunt, mark passageways, or ward off intruders (Hallendy, 2000). The ancestral presence in the land also exists within tools, homes, camps and technologies that were developed and passed on to future generations (Kawagley, 2006).

Many activities promote environmental connectedness. Children need to engage in outdoor play and exploration (Kawagley, 2011b). To have relationship with the land includes a kinship with animals and plants that co-exist with human beings (Absolon, 2010; Anungazuk, 2007; Brown et al., 2012; Kawagley, 2011a). Children are taught land-based knowledge through subsistence skills and activities in a spirit of love and respect (Kawagley, 2006). Environmental connectedness is so important for children because it acknowledges the source of life, the miracle of creation and shifts the worldview away from a belief that the environment is an object to extract, exploit or sell. The health of everybody and everything completely depends on the health of the earth.

Spiritual connectedness

The human spirit has been described as the “breath” (Napoleon, 1996) or life force energy (Cajete, 2000). Everything has spirit (Cajete, 2000; Wolsko, Lardon, Mohatt, & Orr, 2007). Feral (1998) stated that when we think about physics, there are not any “things,” only connections that exchange energy, which shows how we are all part of one “inseparable web of connections” (p. 253). While it is difficult to describe spirit in definitive ways, spirituality is generally understood to be a protective factor (Evans-Campbell & Walters, 2006; Grandbois & Sanders, 2009; Hovey, Delormier, & McComber, 2014) and spiritual practices help people achieve balance and harmony in their lives (Cajete, 2000; Cross et al., 2011; Hodge et al., 2009; Mark & Lyons, 2010). Spiritual connectedness is the “unity of mind, body, and spirit” (Mark & Lyons, 2010, p. 1757).

People’s cultural way of life and spiritual connectedness seem to be synonymous. Many cultural practices are spiritual practices. Spiritual activities include participation in ceremonies and rituals (Cross et al., 2011; McMahan et al., 2007; Red Horse, 1997), connection with the land (Coates et al., 2006; Kawagley, 2006; McGregor et al., 2003), and storytelling (Cajete, 2000; Cross et al., 2011; Rountree & Smith, 2016). At an Alaska Native child welfare conference, Yup’ik elder, Harold Napoleon shared that spirits need love, humor, truth and beauty and our ideas and ways of doing this are based on specific cultural beliefs and spiritual practices (personal communication, April 9, 2008). Culture includes natural laws, knowledge, set roles and day-to-day activities. Culture and spirit can be observed and experienced through art, names, beauty, dance, songs, music, history, foods, clothing, home structures, games, transportation, science, education, hairstyles, tattoos, subsistence lifestyle and language. Cultural and spiritual connectedness are interchangeable. While culture and spiritual practices change over time, culture and spirit never cease.

The revitalization of Indigenous languages is a mechanism for maintaining spiritual connectedness. Indigenous languages are spirit medicine, identity, life breath and connection to the ancestors (Twitchell, 2013). The foundation of a culture and community is in the language (Pingayak, 2003). Waziyatawin (2005) said,

In the beginning, the Great Mystery gave us our languages. Through our languages we were given a way to name, categorize, conceptualize, and relate to the world around us. Through our languages we were given a way of life . . . In saving our languages, we will be saving our ways of life and our ways of relating with the universe. We will save ourselves. (p. 109)

Language influences a person's ontology, axiology and epistemology (Leonard, 2011). Indigenous language speaking influences spiritual connectedness because it fosters the development of traditional knowledge, spirituality, communication skills and self-esteem (John, 2011). People learn how to relate with one another through language and culture (Martindale & Mork, 2011). For example, it is a common practice for Indigenous people to introduce themselves in their language by identifying their family and place where their family comes from and this process "makes their spirits stronger" (Martindale & Mork, 2011).

Language learning shapes who children are (John, 2011; Kawagley, 2011b; Martindale & Mork, 2011). Children that can speak their Indigenous language can communicate with Elders about traditional family ties, clans, ancient stories and songs, ceremonies, subsistence skills and traditional laws (John, 2011, p. 283). Speaking a language is the same as speaking a heritage (John, 2011). Indigenous languages preserve Indigenous histories (Sampson, 2011). Kawagley (2011b) stated, "By maintaining our languages, we are sustaining the ultimate standard of health and endurance of the human species" (p. 276). Children need to learn Indigenous languages to have easier access to cultural and spiritual teachings.

Language also comes from the land and nature (Anungazuk, 2007; Kawagley, 2011a). Kawagley (2011a) states, "As we lose our languages, more and more of us begin to take part in the misuse and abuse of nature" (p. 296). Children that learn their language and their connection to place will take better care of the earth (Kawagley, 2011a). Singing, dancing and drumming in the Indigenous language bring people to the spiritual level, and it is not just for the people, but also for the land and animals that make life possible (Kawagley, 2011b).

Spiritual connectedness includes the day-to-day activity and expression of love. Children need love, respect and belonging for their spiritual connectedness and wellbeing (Blackstock, 2011; Day, 2016; Hill, 2006; Priest et al., 2012; Red Horse, 1997; Robbins et al., 2005). Love and respect provide the energy and foundation for a good life. These expressions vary based on the cultural practices. The messages that children need to receive to build their spiritual connectedness are that their gifts, talents and contributions are valued and that families and communities care about them (Roffey, 2011). This process involves close observation, spending time with youth,

providing them with an education and acknowledgment of their contributions (Kawagley, 2011b). Kawagley (2011c) said that love balances the outer and inner ecologies of the young person (p. 307).

The balance of inner and outer ecologies is a shift from a false duality between "me" and "you" and sees the connectedness of "we" and "us" in everything. Spiritual connectedness is the integration of all the elements of Indigenous connectedness and provides a collective and holistic relationship with mind, body, spirit, family, community and environment. Spiritual connectedness is collectivist wellbeing (Coates et al., 2006; McCubbin et al., 2013). Kawagley (2006) states, ". . . time and time again the stories have said that all of the living and non-living parts of the Earth are one and that people are part of that wholeness" (p. 11). Making a worldview shift from the individual to a collective way of being changes the way we live. Collective living involves relationship, reciprocity and responsibility for the best interest of the land, community, family and children. To live and exist on this planet, we need to respect the interdependence and interconnectedness of all life.

Many Indigenous Peoples believe that life was made possible by a higher spiritual power that is often spoken in creation stories. Others have called this higher power a Great Spirit, Great Mystery, Creator, Universe, and God. This spirit is in everyone and everything. Elders have instructed Indigenous youth to "know who you are and where you come from," because their hope is that children will find their place within spirit and the web of Indigenous Connectedness.

Almost all of the cited authors in this article identify spirit and spirituality as a vitally important catalyst for wellbeing. Despite the stated importance of Indigenous spirituality, this is a topic that is frequently left out of social service discussions with families and communities (Cross, 2002; Hodge et al., 2009). Some people have lost the connection and understanding of what spirit and spirituality are. Other words are often used in place of "spirit," such as the word "culture," or "religion." Changing the word from spirit to something more westernized almost makes it seem like this element of who we are as spiritual beings is a choice or an option, when it's a fundamental part of what makes us *real human beings*.

Spiritual connectedness is found within all the other Indigenous connectedness concepts and brings connectedness together in a collective and holistic way. Spirit is the glue that binds everything together. This is where the epiphany shines through that the promotion of child wellbeing is collective wellbeing, and the promotion of collective wellbeing is what leads to child wellbeing. It's important to return to Indigenous knowledge and teachings about what makes us well so that ongoing harm ceases and restoration of wellbeing can take place. Each community has their own wisdom, practices and activities that assist with these efforts.

Connectedness mechanisms

The analysis of the connectedness concepts included an intentional search for the actions or activities that promote

Connectedness Mechanisms				
Family	Community	Land/Place	Intergenerational	Spirit
Language	Language	Language	Language	Language
Spending time together	Celebrations	Hunting	Part of a continuous history	Ceremonies
Relational Roles	Dancing/Singing	Gathering	Awareness of historical trauma	Cultural values
Responsibility	Ceremonies	Teaching children	Responsibility to future generations	Art
Namesakes & Nicknames	Service to others	Learning from Elders	Learning ancestral teachings to pass on to younger generations	Stories
Adoption	Mentoring	Exploration	Participation in cultural and community activities	Love, Humor, Truth
Togetherness	Rules, values, norms	Observation	Knowledge of family lineage	Beauty
Trust and safety	Safety nets	Travel		Dance
Sharing and support	Family relationships	Care for animals		Subsistence foods
Helping Elders	Social groups	Stories		Songs/Dance/Drum
Stories, family history	Collective belonging	Playing outside		Connection to ancestors and future generations
Recognition of personal talents	Cooperative Teams	Access to clean water		Collective mentality
	Subsistence sharing	Fish camp		Spiritual teachings
	Strong leadership	Survival skills		

Figure 1. Connectedness Mechanisms.

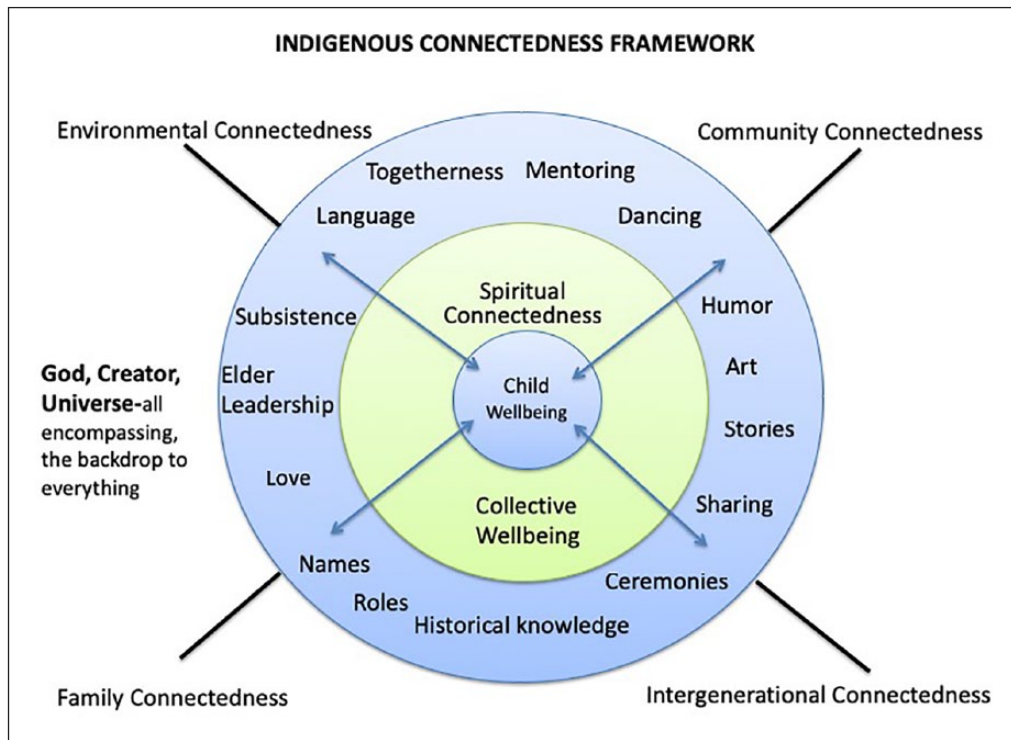


Figure 2. Indigenous Connectedness Framework.

connectedness. Figure 1 provides a detailed table of connectedness mechanisms. Language was a connectedness mechanism that applied to all five domains. Not all of these mechanisms may be applicable to diverse Indigenous communities, but they could help provide ideas for community-based wellbeing interventions. The practice of some mechanisms may be less strong due to colonization, so providing a sense of hope, overcoming shame and preparing to support community members with historical trauma response features may be important in revitalization efforts. What is most reassuring is that the connectedness practices

and activities are still strong and can remain strong for future generations.

Indigenous connectedness framework

The Indigenous Connectedness Framework represented in Figure 2 is an illustration depicting connectedness concepts, mechanisms of connectedness and the reciprocity that exists between child and collective wellbeing. It takes the form of a symbol that was found in old Inupiaq and Yup'ik tools, jewelry and artwork (Jones, 2003; Nelson,

1900). The intention of using this symbol is to represent Indigenous wellbeing in a holistic way. This circular symbol is similar to what is used in the Yup'ik Elluarrluteng Ilakutellriit model of healthy families (Association of Village Council Presidents, 2010), but the content of the framework is vastly different because their use of the circle is representative of a traditional life cycle.

In this model, God, Creator and Universe are the source of all of life, spirit and creation. The outer spokes represent intergenerational, family, environmental and community connectedness. The outer circle of the Indigenous Connectedness Framework represents some of the key mechanisms that build connectedness to environment, community, ancestors and future generations, family and spirit. The next inner circle represents what happens when connectedness is established and the false separation between all living things collapses. This second inner circle symbolizes the awareness of a spiritual and collective identity that remains central to who we are and where we come from. The innermost circle represents the individual child nested within everything. To live in an interconnected, interdependent world that places children in the center of all we do, promotes the wellbeing for all.

Discussion

The Indigenous Connectedness Framework is a representation of common concepts of wellbeing across Indigenous communities and epistemologies. By identifying common etic concepts of Indigenous wellbeing, the Indigenous Connectedness Framework could be a tool that communities fill in with their own emic stories, worldviews, history, spiritual practices, connectedness mechanisms and visual models (Hawkins, Cummins, & Marlatt, 2004). The ongoing discussion of adaptation will need further guidance from Elders and Indigenous communities, knowing that Indigenous knowledge and ways of life do not remain static over time. Elders, fellow scholars and community members provided feedback and contributed to the study of connectedness and the depiction of this framework over the course of a year.

As this work on the Indigenous Connectedness Framework has been presented in various venues, people have brought forward very poignant questions pertaining to language revitalization, tribal sovereignty, suicide prevention, education reform, climate change, ongoing historical trauma, urban and rural differences and community organizing. Having a theoretical orientation of Indigenous wellbeing may be of some assistance to communities that are facing current challenges. Many Indigenous researchers are already embarking upon this work. It will take a community of researchers to modify, adapt and deepen our understanding of Indigenous connectedness and collective wellbeing.

Limitations

This study of Indigenous connectedness has limitations. The initial search terms used for did not include Native American, which may have limited the number of articles

generated. The concepts chosen for the framework might not be the best fitting domains or terminology. For example, environmental connectedness includes both the land and place as important concepts, which may have limited the in-depth examination of each. Also, each connectedness concept could have been an entire article or book on its own, and this article provides more of an overview of the literature of that concept. Finally, some concepts such as spiritual connectedness are difficult to define and measure and yet they are a key component of wellbeing. By identifying some of the tangible mechanisms of connectedness, the Indigenous Connectedness Framework can assist with bringing theory back down to earth and provide something that is useful to Indigenous communities.

Conclusion

In presenting Indigenous Connectedness to diverse elementary school students, it's fascinating to see children light up and be proud of their unique differences and find their common humanity. All children need to "know who they are and where they come from" so they remember and maintain their connectedness to family, community, past and future generations, the environment and spirit. Indigenous teachings contain what it means to be collectively well and could provide guidance to everyone on the ways we can rise above trauma rather than succumb to it. Living a life of connectedness could dramatically change the way we care for children, which will lead to healthy families, communities and a healthy Earth, just as Grandmother Rita Blumenstein eloquently stated. The time has come for us to continue to build upon the wisdom of our diverse and collective ancestors, for the love of our sacred children.

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