



Working Effectively with Tribes to Meet ICWA Requirements

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Outline

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2. California Indian History
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1. Background and History

573 federally recognized Tribes in the United States

- Terminology
 - ◆ Indians v. Native Americans v. Indigenous People
- Indian - defined in different ways
- Tribes - "designated group with political recognition or relationship with U.S. Government"
- All Tribes are Different
 - ◆ Languages, Cultures, Beliefs

- 109 federally recognized Indian Tribes
- Approximately 45 tribal communities of formerly recognized tribes that were terminated in the 1950s or were never recognized
- 78 entities are petitioning for federal recognition
- Numerous other Tribes residing in California due to relocation



2. California Indian History

Pre-Contact

- Est. Pop. of 300,000
- Over 100 tribal groups and 500 bands
- More than 8 language families spoken
- Significant diversity between groups.

Post-Contact

Conservative estimates suggest 80-90% decline

- Theft of land
- Forced removals
- Boarding schools
- Assimilation policies
- Relocations

California History

1542: First explorer lands

1769: Southern California settled by the Spanish

1828: Indian Pop est. 125,000

1849: 40k settlers/prospectors arrive in CA

1850: CA admitted as a State

California History

1851-52: Treaties negotiated w/ 8.5 mil. acres reserved.

1852: State pressured Senate not to ratify treaties

Onward: Boarding schools - CA: Sherman, St. Boniface, Ft. Bidwell

3. Federal Indian Policy

- **1820s -1887: Marshall Trilogy; then the Removal, Reservation, and Treaty Period**
- **1887 - 1934: Allotment and Assimilation Period**
Push to assimilate Indians. Under the Dawes Act, forced the conversion of communally held tribal lands into small parcels for individual Indian ownership.
- **1934-1945: Indian Reorganization Act**
Ended the policy of allotment and attempted to help tribes reform their governments.
- **1945 - 1968: Termination Period**
Congress decided to terminate federal recognition and assistance to more than 100 tribes. Passage of PL-280. Physical relocation of Indians to urban areas. Indian Adoption Act (1958-1967).



1968-Present: Self-Determination Period: Resurgence of tribal government involvement in federal policy. Prompted policies encouraging that tribes have tribal control over their own communities.

4. ICWA Background

→ Purpose

Since the 1850 with CA's passage of the "Act for the Government Protection of Indians," Indian children were being removed from their homes due to poverty, illiteracy, failure to assimilate, or lack of spiritual support.

- ◆ 1971: BIA estimated that 35,000 Indian children were in boarding schools or placed away from their parents.
- ◆ Congressional testimony from April 1974, 25% of all Indian children were in foster care, adoptive homes, or boarding schools.

→ Congressional Findings:

- ◆ No resource more vital to continued existence and integrity of Indian tribes than their children.
- ◆ Removals require a response because of the special relationship between the United States and the Indian tribes and their members
- ◆ The U.S. has a responsibility to protect Indian children who are members of or eligible for membership in an Indian tribe.

"An unconscionable crisis: the prevalence of abusive child-welfare practices by states..."

(Intervenor Tribe's Brief, Brackeen v. Texas (5th Circuit 2019) 1.)

5. Active Efforts

"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 those efforts have proved unsuccessful." 25 U.S.C §1912.

- Affirmative
- Thorough
- Active
- Timely

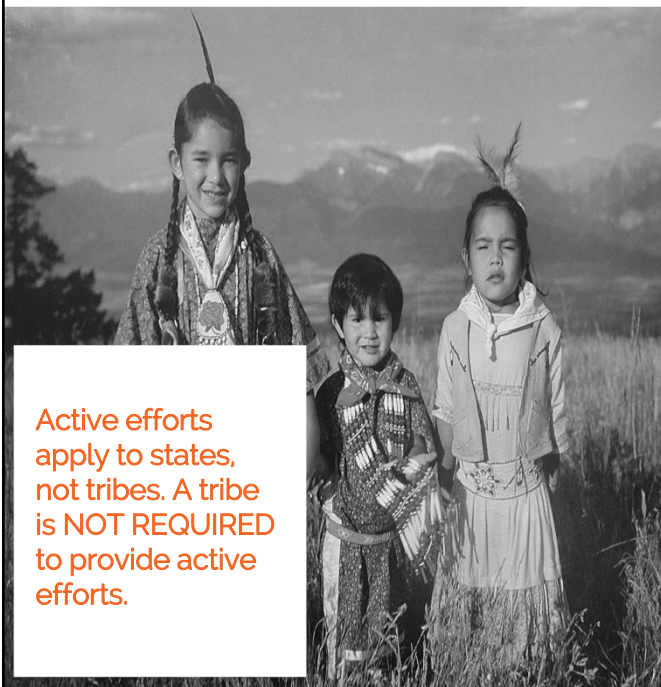


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- In 2016, the Department of Interior - Bureau of Indian Affairs promulgated a *Indian Child Welfare Act Proceedings: Final Rule*, one which now defines “active efforts.” (25 C.F.R. 23.2.)
- These regulations were needed because, “[s]tates are also inconsistent as to how to demonstrate sufficient “active efforts” to keep a family intact.” (81 FR 38782 (June 14, 2016).)
- In 2019, California cleaned up the Welfare & Institutions Code to come into full conformity with these regulations with a full definition of “active efforts.” (Assem. Bill No. 3176 (2017-2018 Regular Session).)



Tip:
Relationship Building is the first step.
Know your tribal partners.



Active efforts apply to states, not tribes. A tribe is NOT REQUIRED to provide active efforts.

Welf. & Inst. §224.1(f)

Active efforts are targeted efforts meant to be affirmative, active, thorough, and timely.

Further, “[i]f 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.” (Welf. & Inst. § 361.7.)

When are Active Efforts Required?

- Quick Answer: ALL THE TIME
- Federal Statute: ICWA applies where there is an ongoing Indian child custody proceeding which *may* culminate in:
 - *Foster-care placement, ... any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custody cannot have the child returned upon demand...* (25 C.F. R. §23.2).



Tip:
Perform Joint Investigations & Joint CFTs with Tribes and tribal agencies.

When are Active Efforts Findings Required?

- At detention (Welf. & Inst. § 319(active efforts prior to initiating “child custody proceedings” and orders made to initiate active efforts)
- Pre-Foster Care Orders- Welf. & Inst. § 361.7
- Family Maintenance Reviews - Welf. & Inst. Sec. 224.1 (“to maintain..”)
- Pre-Termination of Parental Rights
- Placement- The record shall document the active efforts to comply with the applicable order of preference (Welf. & Inst. § 361.31).

How to do Active Efforts?? 11 great starting points

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 & helping the parents overcome barriers, incl. actively assisting the parents in obtaining those services

Identifying, notifying, & inviting reps of the Indian child's tribe to participate in providing support & svcs to the child's family & in family team mtgs, permanency planning, and resolution of placement issues.

Conducting or causing to be conducted a diligent search for the Indian child's extended family members, & contacting & consulting with extended family to provide family structure & support for the Indian child and the parents.

Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial & rehabilitative services provided by the child's tribe.

Taking steps to keep siblings together whenever possible.

Monitoring progress and participation in services.

Providing post-reunification svcs and monitoring.

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

Identifying comm. resources, incl hsg, fin. assistance, transportation, mental health, & sub abuse svcs, and peer support services, and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing & accessing those resources.

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.

Why Does it Matter?

- Reasons for Active Efforts:
- Disproportionality/high rate of removal/overrepresentation in state child welfare proceedings
- Disparate treatment
- Bias/assimilation practices



Tip:

Develop dispute resolution & recognize "privilege" in all aspects of child welfare decision making.

Cultural Humility

- Be Aware of Historic Distrust
 - Fear of sharing beliefs
- Cultural Identity
 - Internal struggle
 - Personal property
- Respect for Elders
- Kinship ties
- Storytelling



<https://store.samhsa.gov/system/files/sma08-4354.pdf>

7. Working with Tribal Partners

- Build Relationships!
- Joint Investigations - Referrals
- Recalibrate SDM tools with input from Tribal Partners
- Develop mechanisms for effective dispute resolution
- Case Planning - often!

Active efforts are intimately tied to case plan development and implementation and require a higher level of engagement from CWS. (See *In re K.B.*, 173 Cal.App.4th 1275, 1287 (2009) citing *A.A. v. State* (“[a]ctive efforts ... is where the state case-worker takes the client through the steps of the plan rather than requiring that the plan be performed on its own.”))

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