

# **DISCRETIONARY TRIBAL PARTICIPATION IN JUVENILE DEPENDENCY & DELINQUENCY CASES INVOLVING NATIVE AMERICAN CHILDREN**

**THE IMPORTANCE OF A CHILD & FAMILY'S NATIVE AMERICAN  
IDENTIFICATION DOES NOT BEGIN & END WITH ICWA. THIS WEBINAR  
EXPLORES THE LEGAL BASIS FOR TRIBAL PARTICIPATION BEYOND ICWA.**

**APRIL 6, 2021**

**12:00–1:30 P.M.**

## **WEBINAR**

Speakers:

Hon. Devon Lomayesva, Chief Judge of the Intertribal Court of Southern California;

Hon. Dean Stout, Chief Judge of the Bishop Paiute Tribal Court, Judge of the Superior Court of California, County of Inyo (Ret.);

Pamela Villasenor, Indian Child Welfare Act Representative, Fernandeno Tataviam Band of Mission Indians

## **Additional Links and Resources**

**A brief history of Federal/California Indian Policies leading up to the passage of the ICWA**  
(additional resources and links)


[Short Overview of California Indian History](#) (Native American Heritage Commission)

[Early California Laws and Policies Related to California Indians](#) California Research Bureau, 2002


[TRIGGER POINTS: Current State of Research on History, Impacts, and Healing Related to the United States' Indian Industrial/Boarding School Policy](#)

## **An Historical and Cultural Perspective on ICWA**

This is a presentation on the background and purpose of ICWA by Justice William Thorne, Associate Presiding Judge of the Utah Court of Appeals and former tribal court judge in Utah, Idaho, Montana, New Mexico, Colorado, Arizona, Wisconsin, South Dakota, Nebraska, and Michigan.

- [Click here to view the video](#) 

## [Continuing the Dialogue](#)

This broadcast features discussions by state and tribal court judges on the history of Native Americans in California, U.S. government impact on Native American families, federal and state laws, the Indian Child Welfare Act, and application of the ICWA. [Transcript](#) .

**[California Social Work Education Center \(CalSWEC\) Title IV-E ICWA Modules](#)**

The California Social Work Education Center (CalSWEC) Title IV-E ICWA Modules have been developed to provide a foundation for all BASW and MSW students in the Title IV-E Program about California Indian History, Tribal Sovereignty and the Indian Child Welfare Act (ICWA).

**[Native American Holocaust. Exterminate Them! The California Story](#)** (38 Minutes)

**[Reclaiming our Children \(Documentary\)](#)** (28 minutes)

**[A Century of Genocide in the Americas: The residential school experience.](#)** Video (17 minutes)

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## DISCRETIONARY TRIBAL PARTICIPATION IN NON-ICWA 300, 601, & 602 CASES

Hon. Devon Lomayesva (*Iipay Nation of Santa Ysabel*),  
Chief Judge of the Intertribal Court of Southern California

Hon. Dean Stout, Chief Judge of the Bishop Paiute Tribal Court,  
Judge of the Superior Court of California, County of Inyo (Ret.)

Pamela Villasenor, Indian Child Welfare Act Representative,  
Fernandeno Tataviam Band of Mission Indians

April 6, 2021

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## Land Acknowledgment

*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.*

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## Issues

- The Indian Child Welfare Act (ICWA) does not apply to all cases involving Indian and Native American children in the Juvenile Court.
- Common situations where ICWA may not apply:
  - Child and family are affiliated with a tribe that is not federally recognized;
  - Juvenile delinquency case where child's conduct would be a "crime" if committed by an adult;
  - Child may not currently qualify for tribal membership, but child and family are Native American and part of the tribal community
- Determining when ICWA applies is important, but **not** the end of significance of Native American & tribal status – either legally or best practice in your case!!!!

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4 Objective for this training

Understand	Understand that ICWA is not the only relevance of child and family's tribal connection & Native status;
Appreciate	Appreciate the importance of tribal & cultural connections for all Native American children and families;
Recognize	Recognize the legal rights of all children in foster care to maintain their cultural identity and connections; and
Understand	Understand the legal basis supporting tribal participation in all juvenile case types, even if ICWA itself does not apply.

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5 California Indian History

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6 Historical Context

- U.S. policy and practice, historical context
  - Removal
  - Boarding Schools
  - Relocation
  - Indian Adoption Project

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7 Historical Context

- California Tribal Nations, historical context
- Time immemorial- governance and ways of knowing
- Mission System
- Gold Rush
- Genocide, enslavement, illegal extinguishment aboriginal land title
- Layered federal policies

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8 Spirit of ICWA

Why are there so many tribes without federal acknowledgment in CA?

What is the Spirit of ICWA?

Authorize by State Legislature for Indian children who are from:

- Non-federally recognized tribes, or
- Descendants of fed rec tribes but not eligible for membership

This legislation allowed for discretionary participation.

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9 Background to ICWA

- Child welfare practices throughout the country continuing assimilation project to breakdown Indian families and communities
- Based upon findings, Congress created ICWA:
  - Protect the best interests of Indian children
  - Promote the stability & security of Indian Tribes and families
- Congress provided the structure and approaches to accomplish purpose:
  - Set minimum federal standards regarding removal and placement
  - Assistance to Tribes

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**Indian Child Welfare Statistics (Pre-ICWA)**

- Congressional hearings in 1977 revealed pattern of wholesale public and private removal of Indian children
- At national level:
  - 3 times greater rate of removal than non-Indian children
  - 25-35% of all Indian children were removed and placed in foster or adoptive placements
- In California:
  - 8 times more likely to end up in adoptive placement
  - 2.5 times more likely to end up in foster care
  - Over 90% placed in non-Indian homes
- Indian children placed in non-Indian homes frequently suffer serious adjustment problems during adolescence

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**11 Congressional Findings**

Legal means were necessary to make sure these practices harming Indian children, families and tribes were stopped

In 1978, Congress passed the ICWA to remedy "abusive child welfare practices."

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**12 Specific Congressional Findings (25 USC 1901)**

<p>U.S., as trustee, has responsibility for the protection and preservation of Indian tribes and their resources</p>	<p>No resource more vital to continued existence and integrity of Tribes than their children</p>	<p>U.S. has direct interest in protecting Indian children who are members of or eligible for membership in an Indian Tribe</p>
<p>An "alarmingly high" percentage of Indian families are broken up by often unwarranted removal of children</p>	<p>An "alarmingly high" percentage of such children are placed in non-Indian foster and adoptive homes and institutions</p>	<p>State courts have often failed to recognize:</p> <ul style="list-style-type: none"> <li>• Essential tribal relations of Indian people</li> <li>• Cultural and social standards prevailing in Indian communities and families</li> </ul>

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### Understanding Transgenerational Trauma aka Generational or Historical Trauma

- CRITICAL TO UNDERSTANDING THE IMPORTANCE OF THE INDIAN CHILD WELFARE ACT (ICWA)
- CRITICAL TO UNDERSTANDING NATIVE AMERICANS, AND THE EFFECT THAT HISTORICAL TRAUMA MAY BE HAVING ON THEM
- ALL OF THESE CONSIDERATIONS APPLY EQUALLY TO UNRECOGNIZED TRIBES AND TO NATIVE AMERICAN CHILDREN IN OUR JUVENILE COURT SYSTEMS

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### Historical Trauma

*A cumulative emotional and psychological wounding over the lifespan and across generations, emanating from massive group trauma experiences*  
(Dr. Maria Yellow Horse Brave Heart, 1985-88)

*Historical unresolved grief: accompanies that trauma*  
(Brave Heart, 1998, 1999, 2000)

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### Transgenerational trauma, or Intergenerational Trauma

- A psychological theory which suggests that trauma can be transferred in between generations. After a first generation of survivors experience trauma, they are able to transfer their trauma to their children and further generations of offspring via complex post-traumatic stress disorder mechanisms. This field of research is relatively young but has expanded in recent years.

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## TRANSMISSION - ORAL HISTORY

- ACTUAL LESSONS AND TRAUMA HANDED DOWN
  - GENOCIDE
- BREAK-UP OF TRIBES - RELOCATION
  - 65% OF NATIVE AMERICANS RESIDE IN URBAN AREAS
- BREAK-UP OF NATIVE AMERICAN FAMILIES
  - 500 INDIAN BOARDING SCHOOLS - Sherman Indian School, Riverside
  - Assimilation: Prohibited their traditional dress; cultural activities, including mourning practices; religion, language; subject to cutting their hair, physical and sexual abuse; forced sterilization; unhealthy conditions and child deaths then buried in unmarked graves.....

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## OVERLAY OF THE EFFECTS OF "HISTORICAL TRAUMA" ON DOMESTIC VIOLENCE VICTIMS

- We know how difficult it can be for any victim of DV to come forward
- Overlay historical trauma and it's much harder
- Engrained fear "that the government is here to help" translates to CPS is here to break up your Indian family and remove your children on a theory of "failure to protect" from DV.
- Lack of Trust: Even young children distrust law enforcement and child protective services. They learn to not to answer the door; to hide, escape, and lie. In the Yurok language the word "police" translates to "one who takes."
- This can appear in PC section 148(a) and 148.9 cases

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## Connections for all children in Juvenile Court

- Research is increasingly showing us that maintaining and building connections for all children and families in our juvenile court system is essential for improving outcomes (<https://oijdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/family-engagement-in-juvenile-justice.pdf>)
- For Native American youth and families this means their tribes and their tribal culture and resources.

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### Trauma to Healing

- Native youth need to learn how their great grandparents' own pain and suffering can still be impacting them today.
- Dysregulated emotional responses
- The Wellbriety Journey to Forgiveness: <https://youtu.be/RyU8CSxieqA>
- Early Tribal participation in cases involving Native youth is critical

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### The First Steps

The child needs to be identified as an Indian child;

The Tribe(s) need to be identified;

Timely notice to the Tribe(s)

- Can be Informal Notice (Notice that would not comply with ICWA)
- To Tribal Chairperson or ICWA Representative
- This makes the mandatory "Inquiry" provisions of ICWA so important!

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### "INQUIRY" REQUIREMENTS IN WIC SECTION 300, 601 & 602 PROCEEDINGS:

- "The court, county welfare department, and the probation department have an *affirmative and continuing duty to inquire* whether a child for whom a petition under Section 300, 601, or 602 may be or has been filed, is or may be an Indian child. The duty to inquire begins with the initial contact ...." (WIC section 224.2(a))
- Inquiry required by probation required, even if the child comes into contact with the probation department as a result of conduct that would be considered a crime if the child were an adult. (In re W.B. (2012) 55 Cal.4th 30,40)
- Note: With respect to inquiry requirements in juvenile wardship cases, there is no longer any prerequisite that the child be "at risk of entering foster care or in foster care." Sections 224.2 and 224.3 were repealed and replaced by Stats. 2018, Ch. 833, Sec. 7, Effective Jan. 1, 2019.

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### INQUIRY CONTINUED....

- It doesn't matter if the child is enrolled or eligible for enrollment in a Tribe, or if any affiliated Tribe is a "Federally Recognized Tribe." It's simply a matter of inquiring about Native American heritage
  - JC Form ICWA-010 Attached to Petition
  - Meaningful inquiry...not just check the box
  - Inquire of child, parents, Indian custodian, extended family....
  - Court duty to remind Social Services & Probation of their affirmative and continuing duty – Keep on Calendar/Review
  - JC Form ICWA-020

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### PUBLIC POLICY FAVORS TRIBAL INVOLVEMENT

- "...The state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices, in accordance with the federal Indian Child Welfare Act of 1978...and other applicable state and federal law designed to prevent the child's involuntary out-of-home placement...and whenever placement is necessary...in a placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community." (WIC section 224(a))
- The Foster Care Bill of Rights (WIC section 16001.7) protects the rights of all children in foster care to cultural connections and rights - specifically protecting the rights of Indian children to access their Tribes and Tribal Representatives regardless whether in foster care through dependency or delinquency.
- WIC sections 727.1 & 16501.1(c)- If the child is at risk of entering foster care, Probation and Social Services are mandated to integrate into the case plan input from the child, child's family, and the child's identified Tribe.

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### Tribal Participation

- Lineal descendants of federally-recognized Tribes
  - Enrollment is exclusively under the governance of the Tribe
  - Eligibility varies; Required documentation, Enrollment periods, etc.
- Tribal involvement in delinquency cases: ICWA and non-ICWA
  - Tribe as a resource
    - Culturally appropriate programs, familiarity with youth and their family, access to family, additional funding for clothing, etc.
- Examples of why Tribal participation is necessary
  - Youth being placed with family that are not appropriate
  - Youth placement in facilities that don't allow meaningful family contact
  - Youth losing out on resources such as clothing, gifts
- San Diego Tribal Justice Collaborative: Example of how to improve systems and collaboration between Tribal and State/County justice partners

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## DISCRETIONARY ACCESS AND PARTICIPATION IN NON-ICWA CASES

Even if the "Notice" and other substantive provisions of ICWA do not apply, there is legal authority for the Court to authorize access and participation in non-ICWA 300, 601, and 602 cases.

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## Case plan development & implementation

- IF CHILD IS AT RISK OF ENTERING FOSTER CARE:
  - PROBATION OFFICER MUST SOLICIT AND INTEGRATE INTO THE CASE PLAN THE INPUT OF THE CHILD, THE CHILD'S FAMILY, AND THE CHILD'S IDENTIFIED TRIBE (WIC section 727.1(a); CRC, RULE 5.785.)
  - Placement Assistance
    - Especially if the child resides on the Reservation – Strong ties to the land
    - Increased likelihood of success if placed in a Native American residential placement
  - NREFM – "Aunties" may not be related
  - Great respect for Elders

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## DISCRETIONARY TRIBAL PARTICIPATION IN WIC 300 DEPENDENCY PROCEEDINGS UNDER WIC 306.6

- The Juvenile Court has broad authority to allow participation for the benefit of the child and family.
- In Dependency cases where ICWA does not apply as the child's Tribe is not federally recognized, the Court still has discretion to allow Tribal participation.
- WIC section 306.6 specifically allows participation of unrecognized Tribes – upon the Tribe's request - in dependency proceedings.
- WIC section 306.6 specifically provides how the Tribe may participate with the Court's approval.

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28 DISCRETIONARY ADMISSION TO 300, 601 & 602 PROCEEDINGS UNDER WIC 346 & 676

Notwithstanding the confidentiality provisions, WIC sections 346 and 676 expressly authorize the judge or referee to "...admit those persons he or she deems to have a **direct and legitimate interest** in the particular case or the work of the court..."

It doesn't matter if the Tribe is not federally recognized, that child may not be eligible for enrollment, or that the child is not at risk of entering foster care.

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29 Approaches To Obtaining Tribal Access To & Participation In Non-ICWA Proceedings

- STANDING ORDER/LOCAL RULE OF COURT:
- See Handouts: 2009 Order under WIC section 676(a). Better yet....see Draft Order for Discretionary Tribal Participation in Non-ICWA Cases
- Provides for early identification and informal notice to the Tribe
- Includes children from non-federally recognized Tribes in dependency (WIC section 300) cases, so the Tribe has prompt informal notice to request participation under 306.6.
- Provides for Tribal access and participation in Non-ICWA 300 (dependency), 601 (status offense), & 602 (delinquency/juvenile justice) cases under WIC sections 346 & 676(a); with participation akin to 306.6.
- Includes lineal descendants who are part of a tribal community, but not eligible for enrollment in 300, 601, and 602 cases

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30 Individual Case by Case Approach to Providing Tribal Access In Non-ICWA Cases

- County Counsel, District Attorney, Child's Counsel, and/or Parent's Counsel, request access under WIC section 346 or 676
- The Court on its own motion grants access under 346 or 676
- Court then grants participation akin to 306.6 in all case types

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**Participation in Practice**

- How the Tribe came to this work
- Tribal participation
  - Walking through: notice of hearing, icwa030, genealogical database to verify citizenship / eligibility
- Reducing harm
- Policy and practice

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**Participation and State law**

WIC 306.6

- (1) Be present at the hearing.
- (2) Address the court.
- (3) Request and receive notice of hearings.
- (4) Request to examine court documents relating to the proceeding.
- (5) Present information to the court that is relevant to the proceeding.
- (6) Submit written reports and recommendations to the court.
- (7) Perform other duties and responsibilities as requested or approved by the court.

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**31 BENEFITS OF TRIBAL PARTICIPATION**

- Much like the benefits we've experienced from the participation of a Court Appointed Special Advocate (CASA)...an additional perspective, insights, and information that promotes more informed decision making
- Having someone who is truly "culturally competent" involved in the case
- Child believes someone participating in his/her case understands them and where they are from—truly cares and is there to support them. In turn, promotes trust and cooperation
- The Tribe can be helpful in the development and implementation of case plans – even if the child is not at risk of entering foster care
- The Tribe may provide alternatives to Detention, as well as helping to fashion more informed and culturally appropriate Dispositional and other Court orders

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### Tribal Services & Cultural Activities

- Many Tribal programs do not require enrollment -
- Tribal Court available? Some tribes have expansive jurisdiction in Tribal Codes
  - Diversion Program? Native specific
  - Juvenile - Healing to Wellness Court? Prevention and cultural aspect
- Indian Health Project
  - Medical/Dental
  - Psychiatric and Psychological Services (Behavioral Health)
  - Alcohol & Other Drugs – Assessment & Treatment
  - Assistance with locating and obtaining funding for Native American residential treatment
- Education Centers – Academic Assistance
- Cultural Programs – Tribal and Urban
- Construction Trade Programs
- Tribal language classes

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### Conclusion

Thank you for attending today's webinar. If you have questions or comments, please contact:

Ann Gilmour: [ann.gilmour@jud.ca.gov](mailto:ann.gilmour@jud.ca.gov) or  
Vida Castaneda: [vida.castaneda@jud.ca.gov](mailto:vida.castaneda@jud.ca.gov)

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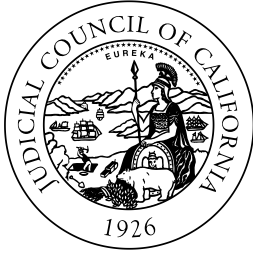
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# JUDICIAL COUNCIL OF CALIFORNIA

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

## **Why Is Notice Under The Indian Child Welfare Act (ICWA) So Hard To Get Right?<sup>1</sup>**

### **Introduction**

More Indian Child Welfare Act (ICWA) cases are overturned for failure to give proper notice than for any other cause. Given that ICWA has been around since 1978, why is this still such a problem?

The answer is that finding out where to send notice is much more complicated than many people realize. This is particularly true in California. California has more than 100 federally recognized Indian tribes, as well as unrecognized tribes, and more individuals with Indian ancestry than any other state in the nation. Many of these individuals trace their Indian ancestry to tribes outside of California; for an individual who does trace his or her ancestry to a historical California Indian tribe, finding out whether or not he or she is “a member or eligible for membership” in a federally recognized tribe, and if so which tribe, can be very difficult.

### **Historical Conditions and Policies in California**

There are a number of historical conditions and policies that make the application of ICWA in California very complicated and very difficult. These include:

- Comprehensive treaties with California Indians were never implemented the way they were in many other areas of the United States.
- In 1851 and 1852, representatives of the United States entered into 18 treaties with tribes throughout California that would have provided for more than 7.5 million acres of reserve land for the tribes’ use. These treaties were rejected by the U.S. Senate in secret session. The affected tribes were given no notice of the rejection for more than 50 years, and the promised reserve lands were never provided.
- Early California Indian law and policy provided that:

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<sup>1</sup> Prepared by the ICWA Initiative, Center for Families, Children & the Courts, Judicial Council of California.

- A justice of the peace had the legal authority to remove Indians from lands in a white person's possession
  - Any Indian could be declared vagrant (upon word of a white person) and thrown into jail, and his or her labor could be sold at auction for up to four months, with no pay (called "indenture" but, in effect, slavery)
  - Indian children could be kidnapped, sold, and used as indentured labor, which was effectively slavery slaves
  - Any Indian could be put into indentured servitude (one report mentioned 110 servants who ranged from ages 2 to 50, 49 of whom were between 7 and 12 years old)
  - Government-sponsored militias organized against Indian tribes were allowed<sup>2</sup>
- As a result, of these policies as well as disease brought by settlers, between 1840 and 1870, California's Indian population plummeted from an estimated 300,000 to an estimated 12,000.
  - Those who survived scattered into small groups and hid themselves and their identity because it was too dangerous to remain as a group and be identified as Indian.
  - No land base was set aside for most Indians in California.
  - Few California tribes have substantial "reservations."
  - Instead of substantial reserve lands for California's Indian population, in the early 1900s, small plots of land were set aside for "homeless California Indians."
  - When the federal government did recognize tribes, it tended to identify tribes not by their historical identity, but in terms of the locality in which lands were set aside for them.
  - Then, during the "termination period," in the 1950s and 1960s, the federal government "terminated" more than 40 California tribes; they were no longer recognized as Indians or tribes.
  - Also, during this same timeframe (ie. the 1960's), the federal government relocated 60,000–70,000 Indians from other parts of the country to California, mainly to the Los Angeles and San Francisco Bay areas.
  - Since the 1970s, many terminated tribes have been restored through litigation and legislation.<sup>3</sup>

This history makes compliance with ICWA requirements in California very complicated and difficult. ICWA requires that when a child is a "member of or eligible for membership in and the biological child of a member of" a federally recognized tribe, notice of most involuntary child custody proceedings must be sent to that tribe. Notice must be sent to the tribal chairman unless the tribe has designated another agent for service of ICWA notice. The Department of Interior is charged with maintaining and publishing a list of "Agents for Service of ICWA Notice" in the federal register. The list

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<sup>2</sup> For more information on early California Laws and Policies relating to Indians, please see Johnston-Dodds, Kimberly, *Early California Laws and Policies Related to California Indians* (California Research Bureau, Sacramento, CA, 2002).

<sup>3</sup> For further information on Termination, Restoration and Federal Acknowledgement of Unrecognized California Tribes, please see the Final Report of the Advisory Council on California Indian Policy, 1997.



was last published in March 8, 2017<sup>4</sup>. The Bureau of Indian Affairs (BIA) Regional Office in Sacramento acknowledges that the information in the federal register list is often out of date as soon as it is published.

Further, in California, as a result of the historical events described above, the way people with a Native American background identify themselves may not be consistent with the way in which tribes are identified by the federal government.<sup>5</sup>

This is a map of historic California tribal territories:



<sup>4</sup> As of March 2018. That list can be accessed here: <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/ois/pdf/idc2-061761.pdf>

<sup>5</sup> To a greater or a lesser extent, the same is also true of many tribes throughout the United States.

This is a map showing names and locations of federally recognized tribes in California:



As the reader can see when comparing these two maps, many of the names by which the federal government currently recognizes tribes bear no relationship to historical tribal identifications.

A similar situation is true, in differing degrees, for many tribes across the United States.

### **Sorting Through Tribal Lists**

At the time of writing, the most recent BIA list of federally recognized Indian tribes was published on January 17, 2017, and can be found at <https://www.gpo.gov/fdsys/pkg/FR-2017-01-17/pdf/2017-00912.pdf>.

This is an alphabetical list of federally recognized tribes throughout the country and contains no contact information.

At the time of writing, the most recent BIA list of Agents for Service of ICWA Notice was published in March 8, 2017 can be found at <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/ois/pdf/idc2-061761.pdf>

This lists the tribes, alphabetically, by BIA region (most California tribes are in the Pacific Region).

If an individual is an enrolled member<sup>6</sup> of a federally recognized tribe, he or she will likely be able to tell you the name of the tribe as it is identified in the federal register. Many people who identify as California Indians, however, may not be able to tell you the name of their tribe as it appears in the federal register. They may instead identify their tribe by its historic tribal name, for instance Pomo or Cahuilla. If someone states they have Pomo ancestry, it will not be possible to go to the federal register list of Agents for Service of ICWA Notice and look under “P” to find Pomo tribes. There are more than 20 federally recognized tribes whose members trace their ancestry to the historic “Pomo” tribe. Not a single one of these tribes’ federally recognized tribal names begins with the word “Pomo.” Only six of these tribes even have the word “Pomo” in their federally recognized tribal name.

Similarly, if someone states that he or she has Cahuilla ancestry, it is not possible to look up Cahuilla in the federal register and be certain you have found his or her tribe. Although there is a federally recognized tribe named “Cahuilla,” it does not include all people of Cahuilla ancestry. There are nine federally recognized tribes whose members trace their ancestry to the historic Cahuilla tribe. Of those, the federally recognized tribal name of only one (the Cahuilla Band of Mission Indians) begins with the word Cahuilla. Only three have the word Cahuilla in their federally recognized tribal name.

To further complicate matters, several tribes have traditional territories and reservation land bases that straddle the California border. For instance, the Colorado River Indian Tribes (“CRIT”) are recognized by the federal government as a single federally

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<sup>6</sup> Caution: Not all tribes require “enrollment” for membership. In many cases simple descent from an individual on a base roll or early member of the tribe may be sufficient for membership.

recognized tribe. CRIT is, however, composed of descendants of four distinct historic tribes—the Mohave, Chemehuevi, Hopi, and Navajo—who had land set aside in common for them by the federal government in 1865. The reserve straddles the California/Arizona border, with a substantial portion of the reservation lying within San Bernardino County. Nevertheless, because the primary community and tribal offices are located in Arizona, the Colorado River Indian Tribes are not even listed as a “California” tribe in the federal register of Designated Agents for Service of ICWA Notice. Instead, they are listed under the Western Region of BIA, which includes Arizona. The same is true of the Chemehuevi Indian Tribe, the Fort Mojave Indian Tribe, and the Fort Yuma Tribe and perhaps others that also have reserve lands that straddle the California/Arizona border.

The California Department of Social Services (CDSS) has attempted to address some of the difficulties state and local agencies have when trying to use the federal register of Designated Agents for Service of ICWA Notice to determine which tribes they need to send notice to, by creating their own list, which can be found at:

<http://www.childsworld.ca.gov/res/pdf/CDSSTribes.pdf> . Recently the federal Bureau of Indian Affairs has also created a list of tribes by tribal affiliation. That list was last updated 11/28/2015. It is available here: **Indian Child Welfare Act; Designated Tribal Agents for Service of Notice**

This list is updated regularly with information provided by tribes and agencies to the CDSS.<sup>7</sup> Further, it lists the tribes according to their historic tribal identification and affiliation rather than by their federal register name. This means that if an individual states he or she has Cahuilla ancestry, it is possible to look alphabetically on this list for Cahuilla and find the nine federally recognized tribes whose members trace their ancestry to the historic Cahuilla tribe. Although this list is generally recognized as being a more effective way of obtaining information about where ICWA notice must be sent and as containing more accurate and up-to-date information about tribal contact information, **it is not referred to or recognized in the federal statute or regulations.** ICWA and its implementing regulations refer only to the federal list of Designated Agents for Service of ICWA Notice. This means that if the contact information on the CDSS list for a particular tribe is different from the contact information contained in the federal register list for that tribe, to be protected from reversal on appeal notice will have to be sent **BOTH** to the address listed in the CDSS list and to the address listed in the most current federal register publication of Designated Agents for Service of ICWA Notice.

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<sup>7</sup> If in doing an ICWA noticing, you learn that any of the information contained on the list is out of date or incorrect, you should contact the individuals listed as contacts at CDSS so they can update the information.

## **Why Don't People Claiming Native American Ancestry Know Whether They Are a Member of a Federally Recognized Tribe or, If So, to Which Tribe They Belong?**

State and local agency personnel are sometimes frustrated that people claiming Native American ancestry may have very little information about their potential links to federally recognized tribes. Similarly, sometimes there is frustration that, when notice is sent to tribes, the tribes sometimes take a very long time to determine whether particular individuals are members or eligible for membership in their tribes.

Many of the historical factors discussed above contribute to the problem that people of Native American ancestry are sometimes disconnected from their tribal communities and do not know whether or not they are members of or eligible for membership in a federally recognized tribe. As discussed in the previous section, not all the historic California tribes currently have status as "federally recognized tribes." Reservations were not set aside for all the tribes in California, even the tribes that signed the eighteen 1851–1852 unratified treaties. The idea of a comprehensive "list" of federally recognized tribes is quite recent; one was first published in 1979. The "list" was primarily based on those groups for which the federal government held lands in trust, and thus left out many individuals and families that descend from historic California tribes and identify as Indian even though they might not be eligible for membership in a federally recognized tribe. These people's status as "Indian" has in many ways been confirmed by federal laws and policies. Federal legislation still contains a unique definition of California Indian that more people than just members of federally recognized tribes and that recognizes this broader category as eligible for health and education services from the BIA. This definition, from 25 U.S.C.A. § 1679, is given below:

### (b) Eligible Indians

Until such time as any subsequent law may otherwise provide, the following California Indians shall be eligible for health services provided by the Service:

- (1) Any member of a federally recognized Indian tribe.
- (2) Any descendant of an Indian who was residing in California on June 1, 1852, but only if such descendant--
  - (A) is living in California,
  - (B) is a member of the Indian community served by a local program of the Service, and
  - (C) is regarded as an Indian by the community in which such descendant lives.

(3) Any Indian who holds trust interests in public domain, national forest, or Indian reservation allotments in California.

(4) Any Indian in California who is listed on the plans for distribution of the assets of California rancherias and reservations under the Act of August 18, 1958 (72 Stat. 619), and any descendant of such an Indian.<sup>8</sup>

Further, there may be close historical family connections between people who are currently members of federally recognized tribes and those who are not. An individual's ancestors may primarily identify with a group that is not currently federally recognized, but they may still be eligible for membership in one or more federally recognized tribes. This is why notice must be sent to each tribe of which a child "may be eligible for membership,"<sup>9</sup> to allow each tribe to investigate and make a determination about the child's eligibility.

It is important to know that membership criteria vary from tribe to tribe and may change over time. Membership criteria for many California tribes is based on descent from a "base roll" that in many cases was established by the BIA and does not necessarily reflect any historic practice of the tribe. Following are several examples of membership criteria for several California tribes<sup>10</sup>:

Example 1:

(a) The membership of the XXXXXXXXXXXX Band of Mission Indians shall consist of all persons whose names appear on the last official per capita payroll of June 1954, and children born to such members as issue of a legal marriage, provided such children shall possess at least 1/8 degree of Indian blood.

(b) No new members may be adopted.

Example 2:

SECTION 1. The membership of the xxxxxxxx Band of Pomo Indians shall consist of-

(a) All persons of Indian blood whose names appear on the official census rolls of the band as of April 1, 1935;

(b) All children born to any member of the band who is a resident of the rancheria at the time of the birth of said children.

SEC. 2. The general community council shall have the power to promulgate ordinances, subject to review by the Secretary of the Interior, covering future membership and the adoption of new members, when the resources of the band make such adoptions feasible.

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<sup>8</sup> 25 U.S.C.A. § 1679

<sup>9</sup> Welf & Inst. Code § 224.2(a)(3)

<sup>10</sup> These examples are taken from tribal constitutions found online at the National Tribal Justice site, [www.tribalresourcecenter.org/tribalcourts/codes/constdirectory.asp](http://www.tribalresourcecenter.org/tribalcourts/codes/constdirectory.asp). We have removed the names of the tribes because we do not know whether the membership criteria are still current.

An individual may know that his or her ancestors identified as Cahuilla but may not know whether any such ancestors' names appeared on a "per capita payroll of June 1954." An individual may not know whether he or she or his or her children possess 1/8 degree Indian blood without completing a family tree (as required by the ICWA-030 form). An individual may know that his or her ancestors identify as Pomo but not know whether any of their names appear on a census roll from April 1, 1935. They may not know whether a particular ancestor was a "resident of the rancheria" at the time of the birth of their children. Similarly, a tribe may not be able immediately to determine whether a particular individual is a member of or eligible for membership in a given tribe without conducting extensive family background research, going back several generations or often beyond. This is why tribes require the detailed information required in the ICWA-030 form. This is why it is critical that this information be complete and accurate. Even with this information, it may take some time for a tribe to be able to check this historical information and make a determination about tribal membership.

§ 224. Legislative findings and declarations; Indian child custody proceedings

(a) The Legislature finds and declares the following:

(1) There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members or citizens of, or are eligible for membership or citizenship in, an Indian tribe. The state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices, in accordance with the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) and other applicable state and federal law, designed to prevent the child's involuntary out-of-home placement and, whenever that placement is necessary or ordered, by placing the child, whenever possible, in a placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.

(2) It is in the interest of an Indian child that the child's membership or citizenship in the child's Indian tribe and connection to the tribal community be encouraged and protected, regardless of whether the child is in the physical custody of an Indian parent or Indian custodian at the commencement of an Indian child custody proceeding, the parental rights of the child's parents have been terminated, or where the child has resided or been domiciled.

(b) In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act the court shall consider all of the findings contained in subdivision (a), strive to promote the stability and security of Indian tribes and families, comply with the federal Indian Child Welfare Act of 1978 and other applicable federal law, and seek to protect the best interest of the child. Whenever an Indian child is removed from a foster care home or institution, guardianship, or adoptive placement for the purpose of further foster care, guardianship, or adoptive placement, placement of the child shall be in accordance with the federal Indian Child Welfare Act of 1978 and other applicable state and federal law.

(c) A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member or citizen of an Indian tribe or (2) eligible for membership or citizenship in an Indian tribe and a biological child of a member or citizen of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act of 1978 and other applicable state and federal law to the proceedings.

(d) In any case in which this code or other applicable state or federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child, or the Indian child's tribe, than the rights provided under the federal Indian Child Welfare Act of 1978, the court shall apply the higher standard.

(e) Any Indian child, the Indian child's tribe, or the parent or Indian custodian from whose custody the child has been removed, may petition the court to invalidate an action in an Indian child custody proceeding for foster care or guardianship placement or termination of parental rights if the action violated Section 1911, 1912, or 1913 of the federal Indian Child Welfare Act of 1978.



**State of California**

**WELFARE AND INSTITUTIONS CODE**

**Section 16001.9**

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

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

(2) To be free from physical, sexual, emotional, or other abuse, corporal punishment, and exploitation.

(3) To receive adequate and healthy food, adequate clothing, grooming and hygiene products, and an age-appropriate allowance. Clothing and grooming and hygiene products shall respect the child's culture, ethnicity, and gender identity and expression.

(4) To be placed in the least restrictive setting possible, regardless of age, physical health, mental health, sexual orientation, and gender identity and expression, juvenile court record, or status as a pregnant or parenting youth, unless a court orders otherwise.

(5) To be placed with a relative or nonrelative extended family member if an appropriate and willing individual is available.

(6) To not be locked in any portion of their foster care placement, unless placed in a community treatment facility.

(7) To have a placement that utilizes trauma-informed and evidence-based deescalation and intervention techniques, to have law enforcement intervention requested only when there is an imminent threat to the life or safety of a child or another person or as a last resort after other diversion and deescalation techniques have been utilized, and to not have law enforcement intervention used as a threat or in retaliation against the child.

(8) To not be detained in a juvenile detention facility based on their status as a dependent of the juvenile court or the child welfare services department's inability to provide a foster care placement. If they are detained, to have all the rights afforded under the United States Constitution, the California Constitution, and all applicable state and federal laws.

(9) To have storage space for private use.

(10) To be free from unreasonable searches of personal belongings.

(11) To be provided the names and contact information for social workers, probation officers, attorneys, service providers, foster youth advocates and supporters, Court Appointed Special Advocates (CASAs), and education rights holder if other than the parent or parents, and when applicable, representatives designated by the child's Indian tribe to participate in the juvenile court proceeding, and to communicate with these individuals privately.

(12) To visit and contact siblings, family members, and relatives privately, unless prohibited by court order, and to ask the court for visitation with the child's siblings.

(13) To make, send, and receive confidential telephone calls and other electronic communications, and to send and receive unopened mail, unless prohibited by court order.

(14) To have social contacts with people outside of the foster care system, including, but not limited to, teachers, coaches, religious or spiritual community members, mentors, and friends. If the child is an Indian child, to have the right to have contact with tribal members and members of their Indian community consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe.

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

(16) To participate in extracurricular, cultural, racial, ethnic, personal enrichment, and social activities, including, but not limited to, access to computer technology and the internet, consistent with the child's age, maturity, developmental level, sexual orientation, and gender identity and expression.

(17) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity and expression, mental or physical disability, or HIV status.

(18) To have caregivers, child welfare and probation personnel, and legal counsel who have received instruction on cultural competency and sensitivity relating to sexual orientation, gender identity and expression, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender children in out-of-home care.

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

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

(21) To have recognition of the child's political affiliation with an Indian tribe or Alaskan village, including a determination of the child's membership or citizenship

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

maintaining political, cultural, and social relationships with the child's Indian tribe and Indian community.

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

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

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

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

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

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

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

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

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

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

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

(Repealed and added by Stats. 2019, Ch. 416, Sec. 3. (AB 175) Effective January 1, 2020.)



# JUDICIAL COUNCIL OF CALIFORNIA

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

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

### **Overview**

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

### **Duty of Inquiry**

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

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

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

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

### **When do ICWA requirements beyond inquiry apply?**

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

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

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

### **Services for Native American Children**

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

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

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

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

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

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



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

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

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

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



## Probation Departments Requirements Indian Child Welfare Act, Federal ICWA Regulations & Guidelines, California Statutes & Rules of Court \*

### I. Investigation/Intake Requirements

A. *Initial inquiry:* A juvenile probation department has a continuing duty to inquire about the child's Indian status, that is, whether the child is a member or eligible for membership in an Indian tribe and the child of a member of an Indian tribe. Inquiry must occur whenever the department makes contact with a child that could result in a petition under Section 601 or 602 (Welf. & Inst. Code § 224.2(a).) and whenever a child is placed in the temporary custody of the probation department pursuant to Welfare and Institutions Code § 307 (Welf. & Inst. Code § 224.2(b).) The duty to inquire begins at initial contact and the probation officer must ask the child, parents, guardians, Indian custodians (if the child is living with an Indian person), and available extended family and relatives whether the child may be an Indian child. (WIC, § 224.2(a); California Rules of Court, rule (hereafter "CRC") 5.481(a).)

**Practice Tip:** If you are making a "reasonable efforts" finding to support the possibility the child may enter foster care for the purposes of drawing down title IV-E funding, then it is essential the ICWA inquiry be made.

### II. Further Inquiry

A. *Further inquiry:* If, as a result of this inquiry or from any other source, you have reason to believe the child is an Indian child, then ask more questions to learn about the child's Indian status. You must (1) interview the child, parents, and available extended family members to gather family background information; (2) contact the Bureau of Indian Affairs (BIA) and the California Department of Social Services (CDSS) for assistance with contact information and in determining the tribes to contact if the information available identifies only possible ancestral tribal groups rather than federally recognized tribes; and (3) contact the tribe(s) the child is potentially affiliated with by fax, phone and email to determine the child's status. (WIC, § 224.2(e); CRC 5.481(a)(4).)

B. *How do I know? Tips to help figure out if you have reason to know the child is an Indian child:*

1. If the child, an Indian tribe, an Indian organization, an attorney, a public or private agency, or a member of the child's extended family says or provides information to anyone involved in the case that the child is an Indian child;
2. If the child, the child's parents, or an Indian custodian reside or are domiciled on an Indian reservation; or
3. The child or parent possess an identification card indicating membership in a tribe or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service. (WIC, § 224.2(d); CRC 5.481(a)(5).)

C. *Document inquiry on Juvenile Wardship Petition (Form JV-600) and ICWA-010(A):*

1. Item 2 on form JV-600 requires you to have conducted an initial inquiry and further inquiry if it is warranted.
2. You are also responsible for documenting your investigation on ICWA-010(A) and having the parents complete the ICWA-020 forms. If the child is or there is reason to believe the child is an Indian child, you and the court will need to take specific steps to prevent the breakup of the child's Indian family.

D. *Document active efforts if child taken into custody:* If you know or have reason to believe the child is an Indian child AND the child is already in foster care, or you think the child is at risk of entering foster care, then you must find resources and services that are culturally specific to the Indian child's family. These resources and services are the active efforts that you must document to show that you are actively trying to prevent the breakup of the child's Indian family. Just as you would document reasonable efforts in non-ICWA cases, you must also document these active efforts in the detention report. You can find resources to help fulfill the active efforts requirement at <http://www.courts.ca.gov/5807.htm> (25 U.S.C. § 1912(d); WIC, §§ 361.7; 727.4(d)(5)(D); CRC 5.484(c).)

\*All citations in this chart are to the Indian Child Welfare Act (ICWA) (25 U.S.C. 1901 et seq.), Federal ICWA Regulations found at 25 C.F.R. Part 23, Federal Guidelines for Implementing the Indian Child Welfare Act available at <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf>, California Welfare and Institutions Code (WIC), and California Rules of Court (CRC) effective as of January 1, 2020.

## II. Rights of all Indian Children in foster care

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

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

An Indian child's tribe is a required member of the child's Child and Family Team required to be consulted on development of the child's case plan and must be contacted concerning placement options when foster care placement is or may be required. (WIC §§ 16501a)(4); 727.1(a).)

You can find culturally relevant services at <http://www.courts.ca.gov/5807.htm>.

## III. ICWA's requirements other than inquiry apply only to 602 cases where the child is in foster care or at risk of entering foster care AND one of the following:

1. The proceeding arises out of conduct which would not be criminal if committed by an adult;
2. The court is setting or considering setting a hearing to terminate parental rights; or
3. The court makes a specific finding that the foster care placement is based entirely on conditions within the child's home.

In these cases, and only in these cases, you must comply with all the substantive ICWA requirements<sup>1</sup> in addition to the duties of inquiry, further inquiry and protection of legal rights of all Indian children in foster care discussed above.

## IV. ICWA Notice Requirements

- A. You must send notice in form ICWA-030 to the child's parents or guardians, the Indian custodian (if any), and the tribe(s) that the child may be a member or eligible for membership in (identified following inquiry and further inquiry), for any hearing that could result in a foster-care placement, termination of parental rights, pre-adoptive placement or adoptive placement. For all other hearings, once the child's tribe has been identified the tribe is entitled to the same notices as other parties. Because the detention hearing is considered an emergency proceeding, you are not required to delay the detention hearing to provide such notice (WIC § 224.1 (1).) However early notice to and contact with the child's tribe(s) is required for the report that must be submitted to the court and will allow a speedy determination of the child's tribal status and early identification of tribal resources that may be available to meet the child's needs, meet the requirements set out in section II above, and the *active efforts* requirements of ICWA. (25 USC § 1912(a); WIC, §§ 224.3, 319 (b); 727.4(a)(2); CRC 5.481(b).)
- B. *What to send:* Send mandatory form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*, including attachments and a copy of the petition and the report prepared for the hearing. (25 U.S.C. § 1912(c); WIC § 224.3(a)(5).)
- C. *Where/who to notice:* Notice must be sent to the child's parents, including the adoptive parents, the guardian(s), the Indian custodian (if any), the child's potential tribe(s), and in some cases the Sacramento area director of the BIA or the Secretary of the Interior. (See F. below).
- D. *How to send notice:* Notice must be sent by registered or certified mail, return receipt requested, but if a tribe intervenes in the case you may thereafter send notice to it in the same manner as to other parties.

<sup>1</sup> See *In re W.B.* (2012) 55 Cal.4th 30.

- E. *Where to send tribal notice:* When sending notices to the child's tribe(s), the notices must be addressed to the tribal chair or other tribal representative designated for receipt of ICWA notice. You can find a link to the most current list of agents for service of ICWA notice on the BIA website here: <https://www.bia.gov/bia/ois/dhs/icwa>. Send notice to all tribes of which the child may be a member or eligible for membership until the court confirms the child's tribe or if there is more than one tribe, the court determines which tribe is the child's tribe, after which notice need only be sent to that tribe. (WIC, §§ 224.2, 224.3; CRC 5.481(b).)
- G. *Purpose of notice:* The purpose of notice is to let the tribe(s) know of the involuntary child custody proceeding potentially involving an Indian child and allow the tribes to investigate to determine whether the child is a tribal member or eligible for membership and whether or not to participate in the proceedings. Therefore, it is important that the information you provide be complete and accurate. If it is not, your notice may be held to be inadequate. (25 USC § 1912(a); WIC, § 224.3; CRC 5.481(b).)
- H. *How to prove notice:* File with the court copies of all notices, with the certified mail receipts, any return receipts, and all responses from a tribe or the BIA.
- NOTE: It is not sufficient for you to state on the report that notice was sent.

**V. Detention Report Requirements for Indian Child in case when ICWA requirements apply** (25 U.S.C. § 1912(d); WIC, §§ 361.7, 636(c)(2); CRC 5.485(c).)

- A. Documentation to support your inquiry as to possible Indian ancestry and results of inquiry; and
- B. Documentation to support the required court findings regarding *reasonable efforts* and *active efforts* to prevent removal.

**VI. Disposition Report Requirements If an Indian Child Is Involved and It Is Probable the Child Will Be Entering Foster Care or Is Already in Foster Care**

- A. Document any further inquiry efforts you have made to determine if an Indian child is involved by completing and attaching ICWA-010(A) to the disposition report;
- B. Prepare a case plan in collaboration with the CFT within 60 days of removal or by the date of the dispositional hearing, whichever occurs first, that includes resources and services that are remedial, rehabilitative, and culturally specific to the Indian child's family and designed to prevent the breakup of the Indian family. (25 USC § 1912(d); WIC, § 361.7; CRC 5.485(c).) In preparing the case plan, you must solicit and integrate the input of the child's identified Indian tribe. (CRC 5.785(c)(2));
- C. Comply with ICWA notice requirements discussed in section IV above;
- D. Obtain a qualified expert witness (QEW) meeting the requirements of section VII(B) below to testify at the hearing;
- E. Make efforts to obtain a placement that complies with the ICWA placement preferences set out in section VII(D) and (E) below and document those efforts in your dispositional report; and
- F. Document in the report your active efforts and reasonable efforts and make recommended legal findings for the court to adopt. (25 U.S.C. § 1912(d); WIC, §§ 361.7, 706.5(a) and (b), 706.6.)

**VII. Placement Requirements**

- A. *ICWA preferences:* Where ICWA applies, the foster care placement of an Indian child requires placement in accordance with the ICWA preferences as further discussed in D below.
- B. *Evidentiary standard:* Where ICWA applies, the standard to support foster care placement is proof by clear and convincing evidence, including the testimony of at least one qualified expert witness, that, taking into account the prevailing social and cultural standards of the child's tribe, continued custody of the child with his or her parent or Indian custodian is likely to result in serious emotional or physical damage to the child. (25 U.S.C. § 1912(e); WIC, §§ 361, 361.31, 361.7(c); CRC 5.485(a).)
- C. *Qualified Expert Witness Testimony:* A QEW must be knowledgeable in the prevailing social and cultural standards of the Indian child's tribe, including that tribe's family organization and child-rearing practices. Persons most likely to meet the requirements are: 1) a person designated by the tribe as having the necessary expertise; 2) a member or citizen of the tribe recognized by the tribal community as having the necessary expertise; 3) another expert having substantial experience in the delivery of child and family services to Indians, AND with extensive knowledge of the prevailing social and cultural standards and child-rearing practices of the Indian child's tribe. NOTE that an employee of your probation department cannot serve as a QEW. (25 USC §1912 (e); WIC, § 224.6; CRC 5.485(a).)
- D. *Placement Preferences:* As with any child, the placement should be the least restrictive setting that best approximates a family and where the child's special

needs, if any, may be met. Unless the child's tribe has by resolution specified a different preference, preference must be given in order of priority to placement with (1) a member of the Indian child's extended family; (2) a foster home licensed, approved, or specified by the Indian child's tribe; (3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (4) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs. If no placement is available that meets these preferences, efforts must be made to place the child with a family committed to preserving the child's family ties and tribal relations. (25 USC § 1915(b); WIC, § 361.31; CRC 5.485(b).)

- E. *Documentation of efforts regarding placement:* Because the court must make a finding that the placement accords with ICWA, you must document in your report the efforts made to find a placement that meets the preferences of ICWA and the good cause for deviating from priority placements. These efforts would include contacts with members of the child's extended family, contacts with the child's tribe(s) seeking input and resources for placement, and contacts with other relevant Indian organizations. (See IID for resources.) These efforts should be made and documented each time there is a change in the Indian child's placement. (WIC, § 361.31; CRC 5.482(f).)

#### **VIII. Status Review, Permanency Planning, and Postpermanency Planning Hearing Requirements**

- A. Document further inquiry efforts you have made to determine if an Indian child is involved by completing and attaching ICWA-010(A) to the disposition report;
- B. Provide notice in accordance with section IV above; and
- C. Prepare and file a report with recommended legal findings and orders supported by evidence of continued compliance with:
1. Reasonable and active efforts requirement discussed in IID above; and
  2. Efforts to find a placement that complies with ICWA preferences as discussed in VIID above.

#### **IX. Termination of Parental Rights Requirements (WIC, §§ 366.26; 727.31)**

- A. Provide evidence supported by the testimony of at least one QEW **beyond a reasonable doubt** that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
- B. Prepare and file a report with recommended legal findings and orders supported by evidence of continued compliance with:
1. *Reasonable efforts* and *active efforts* requirements discussed in IID above (25 USC § 1912(d); WIC, §§ 361.7, 366.26(c)(2)(B); CRC 5.485(a)); and
  2. *Adoptive preferences:* Absent good cause to the contrary, for any adoptive placement of an Indian child preference of placement shall be given in priority order to (1) a member of the child's extended family, (2) other members of the Indian child's tribe or (3) other Indian families. (25 USC § 1915(a); WIC, § 727.3.)
- C. *Good cause not to terminate parental rights:* State law now recognizes that many tribal cultures do not believe in the termination of parental rights. Accordingly, it is good cause not to terminate parental rights if the termination would interfere with a connection to tribal community or membership or the child's tribe has identified guardianship, long-term foster care, or another permanent plan as the preferred plan for the child. (WIC, § 366.26(c)(1)(B)(vi); CRC 5.725.(2)(vi).)

## State of California

### WELFARE AND INSTITUTIONS CODE

#### Section 306.6

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306.6. (a) In a dependency proceeding involving a child who would otherwise be an Indian child, based on the definition contained in paragraph (4) of Section 1903 of the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), but is not an Indian child based on status of the child's tribe, as defined in paragraph (8) of Section 1903 of the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), the court may permit the tribe from which the child is descended to participate in the proceeding upon request of the tribe.

(b) If the court permits a tribe to participate in a proceeding, the tribe may do all of the following, upon consent of the court:

- (1) Be present at the hearing.
- (2) Address the court.
- (3) Request and receive notice of hearings.
- (4) Request to examine court documents relating to the proceeding.
- (5) Present information to the court that is relevant to the proceeding.
- (6) Submit written reports and recommendations to the court.
- (7) Perform other duties and responsibilities as requested or approved by the court.

(c) If more than one tribe requests to participate in a proceeding under subdivision (a), the court may limit participation to the tribe with which the child has the most significant contacts, as determined in accordance with paragraph (2) of subdivision (d) of Section 170 of the Family Code.

(d) This section is intended to assist the court in making decisions that are in the best interest of the child by permitting a tribe in the circumstances set out in subdivision (a) to inform the court and parties to the proceeding about placement options for the child within the child's extended family or the tribal community, services and programs available to the child and the child's parents as Indians, and other unique interests the child or the child's parents may have as Indians. This section shall not be construed to make the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), or any state law implementing the Indian Child Welfare Act, applicable to the proceedings, or to limit the court's discretion to permit other interested persons to participate in these or any other proceedings.

(e) The court shall, on a case-by-case basis, make a determination if this section is applicable and may request information from the tribe, or the entity claiming to be a tribe, from which the child is descended for the purposes of making this determination, if the child would otherwise be an Indian child pursuant to subdivision (a).

(Added by Stats. 2006, Ch. 838, Sec. 45. Effective January 1, 2007.)

**State of California**

**WELFARE AND INSTITUTIONS CODE**

**Section 346**

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346. Unless requested by a parent or guardian and consented to or requested by the minor concerning whom the petition has been filed, the public shall not be admitted to a juvenile court hearing. The judge or referee may nevertheless admit such persons as he deems to have a direct and legitimate interest in the particular case or the work of the court.

(Amended by Stats. 1982, Ch. 978, Sec. 15. Effective September 13, 1982.)

## State of California

### WELFARE AND INSTITUTIONS CODE

#### Section 676

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676. (a) Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. Nothing in this section shall preclude the attendance of up to two family members of a prosecuting witness for the support of that witness, as authorized by Section 868.5 of the Penal Code. The judge or referee may nevertheless admit those persons he or she deems to have a direct and legitimate interest in the particular case or the work of the court. However, except as provided in subdivision (b), members of the public shall be admitted, on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging that a minor is a person described in Section 602 by reason of the violation of any one of the following offenses:

- (1) Murder.
- (2) Arson of an inhabited building.
- (3) Robbery while armed with a dangerous or deadly weapon.
- (4) Rape with force or violence, threat of great bodily harm, or when the person is prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of a disability, of giving consent, and this is known or reasonably should be known to the person committing the offense.
- (5) Sodomy by force, violence, duress, menace, threat of great bodily harm, or when the person is prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of a disability, of giving consent, and this is known or reasonably should be known to the person committing the offense.
- (6) Oral copulation by force, violence, duress, menace, threat of great bodily harm, or when the person is prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of a disability, of giving consent, and this is known or reasonably should be known to the person committing the offense.
- (7) Any offense specified in subdivision (a) or (e) of Section 289 of the Penal Code.
- (8) Kidnapping for ransom.
- (9) Kidnapping for purpose of robbery.
- (10) Kidnapping with bodily harm.
- (11) Assault with intent to murder or attempted murder.
- (12) Assault with a firearm or destructive device.



- (13) Assault by any means of force likely to produce great bodily injury.
- (14) Discharge of a firearm into an inhabited dwelling or occupied building.
- (15) Any offense described in Section 1203.09 of the Penal Code.
- (16) Any offense described in Section 12022.5 or 12022.53 of the Penal Code.
- (17) Any felony offense in which a minor personally used a weapon described in any provision listed in Section 16590 of the Penal Code.

(18) Burglary of an inhabited dwelling house or trailer coach, as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, if the minor previously has been adjudged a ward of the court by reason of the commission of any offense listed in this section, including an offense listed in this paragraph.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Any offense as specified in Sections 11351, 11351.5, 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and Safety Code.

(21) Criminal street gang activity which constitutes a felony pursuant to Section 186.22 of the Penal Code.

(22) Manslaughter as specified in Section 192 of the Penal Code.

(23) Driveby shooting or discharge of a weapon from or at a motor vehicle as specified in Sections 246, 247, and 26100 of the Penal Code.

(24) Any crime committed with an assault weapon, as defined in Section 30510 of the Penal Code, including possession of an assault weapon as specified in Section 30605 of the Penal Code.

(25) Carjacking, while armed with a dangerous or deadly weapon.

(26) Kidnapping, in violation of Section 209.5 of the Penal Code.

(27) Torture, as described in Sections 206 and 206.1 of the Penal Code.

(28) Aggravated mayhem, in violation of Section 205 of the Penal Code.

(b) Where the petition filed alleges that the minor is a person described in Section 602 by reason of the commission of rape with force or violence or great bodily harm; sodomy by force, violence, duress, menace, threat of great bodily harm, or when the person is prevented from resisting by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of mental disorder or developmental or physical disability, of giving consent, and this is known or reasonably should be known to the person committing the offense; oral copulation by force, violence, duress, menace, threat of great bodily harm, or when the person is prevented from resisting by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of mental disorder or developmental or physical disability, of giving consent, and this is known or reasonably should be known to the person committing the offense; any offense specified in Section 289 of the Penal Code, members of the public shall not be admitted to the hearing in either of the following instances:

(1) Upon a motion for a closed hearing by the district attorney, who shall make the motion if so requested by the victim.

(2) During the victim's testimony, if, at the time of the offense the victim was under 16 years of age.

(c) The name of a minor found to have committed one of the offenses listed in subdivision (a) shall not be confidential, unless the court, for good cause, so orders. As used in this subdivision, “good cause” shall be limited to protecting the personal safety of the minor, a victim, or a member of the public. The court shall make a written finding, on the record, explaining why good cause exists to make the name of the minor confidential.

(d) Notwithstanding Sections 827 and 828 and subject to subdivisions (e) and (f), when a petition is sustained for any offense listed in subdivision (a), the charging petition, the minutes of the proceeding, and the orders of adjudication and disposition of the court that are contained in the court file shall be available for public inspection. Nothing in this subdivision shall be construed to authorize public access to any other documents in the court file.

(e) The probation officer or any party may petition the juvenile court to prohibit disclosure to the public of any file or record. The juvenile court shall prohibit the disclosure if it appears that the harm to the minor, victims, witnesses, or public from the public disclosure outweighs the benefit of public knowledge. However, the court shall not prohibit disclosure for the benefit of the minor unless the court makes a written finding that the reason for the prohibition is to protect the safety of the minor.

(f) Nothing in this section shall be applied to limit the disclosure of information as otherwise provided for by law.

(g) The juvenile court shall for each day that the court is in session, post in a conspicuous place which is accessible to the general public, a written list of hearings that are open to the general public pursuant to this section, the location of those hearings, and the time when the hearings will be held.

(Amended by Stats. 2014, Ch. 919, Sec. 2. (SB 838) Effective January 1, 2015. Note: This section was amended on March 7, 2000, by initiative Prop. 21.)



## 2021 California Rules of Court

### **Rule 5.530. Persons present**

#### **(a) Separate session; restriction on persons present (§§ 345, 675)**

All juvenile court proceedings must be heard at a special or separate session of the court, and no other matter may be heard at that session. No person on trial, awaiting trial, or accused of a crime, other than a parent, de facto parent, guardian, or relative of the child, may be present at the hearing, except while testifying as a witness.

*(Subd (a) amended effective January 1, 2005.)*

#### **(b) Persons present**

The following persons are entitled to be present:

- (1) The child or nonminor dependent;
- (2) All parents, de facto parents, Indian custodians, and guardians of the child or, if no parent or guardian resides within the state or their places of residence are not known, any adult relative residing within the county or, if none, the adult relative residing nearest the court;
- (3) Counsel representing the child or the parent, de facto parent, guardian, adult relative, or Indian custodian or the tribe of an Indian child;
- (4) The probation officer or social worker;
- (5) The prosecuting attorney, as provided in (c) and (d);
- (6) Any CASA volunteer;
- (7) In a proceeding described by rule 5.480, a representative of the Indian child's tribe;
- (8) The court clerk;
- (9) The official court reporter, as provided in rule 5.532;
- (10) At the court's discretion, a bailiff; and
- (11) Any other persons entitled to notice of the hearing under sections 290.1 and 290.2.

*(Subd (b) amended effective July 1, 2013; previously amended effective January 1, 1995, January 1, 1997, January 1, 2005, January 1, 2007, and January 1, 2012.)*

#### **(c) Presence of prosecuting attorney-section 601-602 proceedings (§ 681)**

In proceedings brought under section 602, the prosecuting attorney must appear on behalf of the people of the State of California. In proceedings brought under section 601, the prosecuting attorney may appear to assist in ascertaining and presenting the evidence if:

- (1) The child is represented by counsel; and
- (2) The court consents to or requests the prosecuting attorney's presence, or the probation officer requests and the court consents to the prosecuting attorney's presence.

*(Subd (c) amended effective January 1, 2007.)*

**(d) Presence of petitioner's attorney-section 300 proceedings (§ 317)**

In proceedings brought under section 300, the county counsel or district attorney must appear and represent the petitioner if the parent or guardian is represented by counsel and the juvenile court requests the attorney's presence.

*(Subd (d) amended effective January 1, 2007.)*

**(e) Others who may be admitted (§§ 346, 676, 676.5)**

Except as provided below, the public must not be admitted to a juvenile court hearing. The court may admit those whom the court deems to have a direct and legitimate interest in the case or in the work of the court.

- (1) If requested by a parent or guardian in a hearing under section 300, and consented to or requested by the child, the court may permit others to be present.
- (2) In a hearing under section 602:
  - (A) If requested by the child and a parent or guardian who is present, the court may admit others.
  - (B) Up to two family members of a prosecuting witness may attend to support the witness, as authorized by Penal Code section 868.5.
  - (C) Except as provided in section 676(b), members of the public must be admitted to hearings concerning allegations of the offenses stated in section 676(a).
  - (D) A victim of an offense alleged to have been committed by the child who is the subject of the petition, and up to two support persons chosen by the victim, are entitled to attend any hearing regarding the offense.
  - (E) Any persons, including the child, may move to exclude a victim or a support person and must demonstrate a substantial probability that overriding interests will be prejudiced by the presence of the individual sought to be excluded. On such motion, the court must consider reasonable alternatives to the exclusion and must make findings as required under section 676.5.

*(Subd (e) amended effective January 1, 2007; previously amended effective January 1, 2001.)*

**(f) Participation of incarcerated parent in dependency proceedings (§§ 290.1-294, 316.2, 349, 361.5(e); Pen. Code § 2625)**

The incarcerated parent of a child on behalf of whom a petition under section 300 has been filed may appear and participate in dependency proceedings as provided in this subdivision.

- (1) Notice must be sent to an incarcerated parent of a detention hearing under section 319 as required by sections 290.1 and 290.2; a jurisdictional hearing under section 355 or a dispositional hearing under section 358 or 361 as required by section 291; a review hearing under section 366.21, 366.22, or 366.25 as required by section 293; or a permanency planning hearing under section 366.26 as required by section 294.
  - (A) Notice to an incarcerated parent of a jurisdictional hearing, a dispositional hearing, or a section 366.26 permanency planning hearing at which termination of parental rights is at issue must inform the incarcerated parent of his or her right to be physically present at the hearing and explain how the parent may secure his or her presence or, if he or she waives the right to be physically present, appearance and participation.

- (B) Notice to an incarcerated parent of a detention hearing, a review hearing, or any other hearing in a dependency proceeding must inform the incarcerated parent of his or her options for requesting physical or telephonic appearance at and participation in the hearing.
- (C) The county welfare department must use the prisoner location system developed by the Department of Corrections and Rehabilitation to facilitate timely and effective notice of hearings to incarcerated parents.
- (2) The court must order an incarcerated parent's temporary removal from the institution where he or she is confined and production before the court at the time appointed for any jurisdictional hearing held under section 355 or dispositional hearing held under section 358 or 361, and any permanency planning hearing held under section 366.26 in which termination of parental rights is at issue.
- (3) For any other hearing in a dependency proceeding, including but not limited to a detention hearing or a review hearing, the court may order the temporary removal of the incarcerated parent from the institution where he or she is confined and the parent's production before the court at the time appointed for that hearing.
- (4) No hearing described in (2) may be held without the physical presence of the incarcerated parent and the parent's attorney unless the court has received:
  - (A) A knowing waiver of the right to be physically present signed by the parent; or
  - (B) A declaration, signed by the person in charge of the institution in which the parent is incarcerated, or his or her designated representative, stating that the parent has, by express statement or action, indicated an intent not to be physically present at the hearing.
- (5) When issuing an order under (2) or (3), the court must require that *Order for Prisoner's Appearance at Hearing Affecting Parental Rights* (form JV-450) and a copy of *Prisoner's Statement Regarding Appearance at Hearing Affecting Parental Rights* (form JV-451) be attached to the notice of hearing and served on the parent, the parent's attorney, the person in charge of the institution, and the sheriff's department of the county in which the order is issued by the person responsible for giving notice of the hearing at issue not less than 15 days before the date of the hearing.
- (6) The court may, at the request of any party or on its own motion, permit an incarcerated parent, who has waived his or her right to be physically present at a hearing described in (2) or who has not been ordered to appear before the court, to appear and participate in a hearing by videoconference consistent with the requirements of rule 5.531. If video technology is not available, the court may permit the parent to appear by telephone consistent with the requirements of rule 5.531. The court must inform the parent that, if no technology complying with rule 5.531 is available, the court may proceed without his or her appearance and participation.
- (7) The presiding judge of the juvenile court in each county should convene representatives of the county welfare department, the sheriff's department, parents' attorneys, and other appropriate entities to develop:
  - (A) Local procedures or protocols to ensure an incarcerated parent's notification of, transportation to, and physical presence at court hearings involving proceedings affecting his or her child as required or authorized by Penal Code section 2625 and this rule unless he or she has knowingly waived the right to be physically present; and
  - (B) Local procedures or protocols, consistent with (f)(6) and rule 5.531, to facilitate the appearance and participation by videoconference or telephone of an incarcerated parent who has knowingly waived the right to be physically present.

(Subd (f) adopted effective January 1, 2012.)

Rule 5.530 amended effective July 1, 2013; adopted as rule 1410 effective January 1, 1990; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1995, January 1, 1997, January 1, 2001, January 1, 2005, and January 1, 2012.

[ [Back to Top](#) ]

1 Inyo County Superior Court  
168 North Edwards Street  
2 Post Office Drawer U  
Independence, California 93526  
3 Tel: (760) 878-0217  
4  
5  
6  
7

8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF INYO  
10 JUVENILE COURT

11 In Re the Matter of ) STANDING ORDER NO.  
12 The Tribe's Presumed Direct and ) SISOAD-09-031  
13 Legitimate Interest in Juvenile ) Order Presuming Tribe's  
14 Delinquency Proceedings Involving ) Direct and Legitimate  
15 Designated Native American Youth ) Interest in Juvenile  
16 ) Delinquency Proceedings  
17 ) Involving Designated Native  
18 ) American Youth (WIC §  
19 ) 676(a))

20 This Standing Order is intended to enhance the Court's  
21 decision making in juvenile delinquency proceedings, including,  
22 but not limited to, detention hearings, dispositional hearings,  
23 and post-dispositional review hearings, which involve a Native  
24 American unmarried minor child who is a member of one of the  
25 following federally recognized local tribes, or who is the  
26 biological child of a member of one of the following federally  
27 recognized local tribes, and the child is eligible for  
28 membership:

- Big Pine Paiute Tribe Of The Owens Valley
- Bishop Paiute Reservation

- 1 • Fort Independence Indian Reservation
- 2 • Lone Pine Paiute-Shoshone Reservation
- 3 • Timbisha Shoshone Tribe

4 The Court recognizes that even though the provisions of the  
5 Indian Child Welfare Act (ICWA) may not be applicable in any  
6 particular case or hearing, the Court, Juvenile Probation, and  
7 the Minor can nevertheless benefit from the participation of the  
8 Tribe in the Minor's delinquency proceedings. Such benefits may  
9 include, but are not necessarily limited to, assessing the  
10 Minor's need for and providing substance abuse, mental health,  
11 and/or other treatment services to the Minor and/or his/her  
12 family; informing the court about placement options for the  
13 Minor within the Minor's extended family or the tribal  
14 community; assist the Probation Department and Court in  
15 identifying strengths and needs of the Minor and his/her family;  
16 assist in identifying and accessing tribal and cultural  
17 activities and programs for the benefit of the Minor and his/her  
18 family; as well as assisting in the development and  
19 implementation of a case plan and/or Independent Living  
20 Program/Plan for the Minor.

21 GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED AS  
22 FOLLOWS:

23 In the case of any unmarried Native American minor  
24 appearing before the above-entitled Court in connection with any  
25 juvenile delinquency (WIC § 602) proceeding, and said minor is a  
26 member of one of the following federally recognized local  
27 tribes, or who is the biological child of a member of one of the  
28 following federally recognized local tribes, and the child is

1 eligible for membership: Big Pine Paiute Tribe Of The Owens  
2 Valley; Bishop Paiute Reservation; Fort Independence Indian  
3 Reservation; Lone Pine Paiute-Shoshone Reservation; or, the  
4 Timbisha Shoshone Tribe, the duly authorized Indian Child  
5 Welfare Act (ICWA) Representative for said Tribe shall, within  
6 the meaning of Welfare & Institutions Code Section 676(a), be  
7 presumed to have a direct and legitimate interest in the case of  
8 said Minor.

9 Said ICWA Representative shall be allowed to attend  
10 Juvenile Court proceedings pertaining to such a Minor, subject  
11 to the judicial officer presiding over the case or particular  
12 hearing determining that said Tribe and ICWA Representative does  
13 not have a direct and legitimate interest in the particular  
14 case, or that good cause otherwise exists to exclude said ICWA  
15 Representative from a particular hearing(s), or portion thereof.

16 In addition to being present at the hearing, said  
17 Representative may do all of the following upon consent of the  
18 court:

- 19 1. Address the court.
- 20 2. Request and receive notice of hearings.
- 21 3. Request to examine court documents relating to the  
22 proceeding.
- 23 4. Present information to the court that is relevant to the  
24 proceeding.
- 25 5. Submit written reports and recommendations to the court.
- 26 6. Perform other duties and responsibilities as requested or  
27 approved by the court.

28



1 This Standing Order shall also apply to proceedings  
2 involving Native American minors, as described above, who have  
3 been designated by the Court as a "dual status" minor. (WIC §  
4 241.1)

5 This Standing Order applies even though the above-described  
6 minor has not been determined to be "at risk of removal," and/or  
7 the provisions of the Indian Child Welfare Act (ICWA)<sup>1</sup>, including  
8 the provisions of California Welfare & Institutions Code § 224  
9 *et seq.*, and *California Rules of Court*, Rule 5.480 *et seq.*)  
10 do not otherwise apply to the Minor's delinquency hearing or  
11 case. Any notice given to the Tribe under this Order shall not  
12 constitute any express or implied finding that the minor is "at  
13 risk of removal" under the aforementioned ICWA provisions, or  
14 otherwise implicating said provisions. Further, should the  
15 aforementioned provisions of ICWA apply to a particular minor,  
16 any notice provided to the Tribe hereunder, may not necessarily  
17 constitute legal notice to the Tribe as required by the  
18 aforementioned provisions of the ICWA.

19 Informal notice provided to the Tribe hereunder may be  
20 given by the Inyo County Probation Department to the Tribe's  
21 designated ICWA Representative by any reasonable means to insure  
22 timely notice of proceedings, which may include telephone, fax,  
23 and/or mailing of informal notice by use of Judicial Council  
24 form JV-625.

25 Dated:

26 \_\_\_\_\_  
27 Dean T. Stout, Presiding Judge/  
28 Presiding Judge of the Juvenile Court

<sup>1</sup> 25 U.S.C. § 1901 *et seq.*

To the ends of serving the best interests of Native American and Alaskan Native children by establishing, developing, and maintaining the child's political, cultural, and social relationship with their tribe and tribal community; obtaining relevant information that will enhance the Court's decision making; and where appropriate, promoting the child's rehabilitation and ensuring community safety, this Order shall apply to all juvenile justice (formerly juvenile delinquency), status offense, and dependency cases<sup>1</sup>; including, but not limited to, detention hearings, dispositional hearings, and post-dispositional review hearings, which involve an Indian, Native American or Alaskan Native<sup>2</sup> child. Upon initial contact with a child, the Probation Officer and Child Protective Services (Child Welfare Director) shall promptly carry out their affirmative and continuing duty to inquire whether the child is an Indian child or has Native American/Alaskan Native heritage. (See WIC section 224.2(a); In re W.B. (2012) 55 Cal.4th 30,40)

This Order is intended to ensure prompt identification of Indian, Native American and Alaskan Native children, notification to the child's tribe, and active participation by a representative from the child's tribe in said proceedings.

The Court finds that public policy favors early tribal access and participation in all dependency, status offense, and juvenile justice cases involving an Indian child and all children with Native American or Alaskan Native heritage. The Court is committed to protecting the essential tribal relations and best interest of Indian children and all Native children by promoting practices that protect the child's right to establish, develop, and maintain a political, cultural and social relationship with the child's tribe and tribal community. (See WIC section 224(a))

The *Foster Care Bill of Rights* (WIC section 160001.9) protects the rights of all children in foster care to cultural connections and rights - specifically protecting the rights of Indian children to access their Tribes and Tribal Representatives regardless whether in foster care through dependency or delinquency. The Court finds that it is in the best interest of all Native children to have those rights protected, even though they may not be in foster care or at risk of entering foster care, and whether or not they meet the definition of an Indian child or whether the Indian Child Welfare Act applies to the proceeding

---

<sup>1</sup> California Welfare & Institutions Code sections 300, 601, and 602.

<sup>2</sup> In this order the term Indian child means a child meeting the definition of Indian child under 25 U.S.C. § 1903 (iv) (4) and corresponding state law. Native American, Native, and Alaska Native children refers to children who identify as Alaska Native or Native American but who do not meet the definition of Indian child under the Indian Child Welfare Act and corresponding state law.

Early identification of Native youth and their Tribe(s), along with providing for early access and participation in the child's case, will insure that if and when the child becomes at risk of entering foster care, Probation and Child Welfare agencies can fulfill their mandate to integrate into the case plan input from the "...child's identified Tribe" in a timely manner. (See WIC sections 727.1 and 16501.1(c))

California Welfare & Institutions Code section 306.6 specifically contemplates the participation of tribes that have not been recognized by the federal government as having a government to government relationship in dependency proceedings. California Welfare & Institutions Code section 346 and 676 authorize the juvenile court to permit the participation of persons with a direct and legitimate interest to participate in dependency and juvenile justice cases respectively.

In order to consistently protect the legal rights of all Native children to maintain their tribal and cultural connections, this Order is intended to promote early discretionary access and participation by the child's tribe, so to assist the court in making decisions that are in the best interest of the child, and where appropriate, promoting rehabilitation and public safety, through the Tribal Representative informing the court and parties to the proceeding about placement options for the child within the child's extended family or tribal community, services and programs available to the child and the child's parents as Indians, and other unique interests the child or the child's parents may have as Indians.

GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED as follows:

1. The \_\_\_\_\_ County Probation Officer and the \_\_\_\_\_ County Child Protective Services (Child Welfare Director) shall upon initial contact with a child for whom a petition has been or may be filed under WIC sections 300, 601, or 602, promptly carry out their affirmative and continuing duty to inquire whether the child is an Indian child, or for purposes of this rule, has Native American or Alaskan Native heritage. (See WIC section 224.2(a); *In re W.B.* (2012) 55 Cal.4th 30,40)
2. Upon receiving any information creating a reason to believe that the child is or may be an Indian Child or has Native American heritage, the Probation Officer or Social Worker shall forthwith give notice to the child's tribe(s). Said notice to the child's Tribe may be informal notice to the Tribe's designated ICWA Representative or Tribal Chairperson, by any reasonable means to insure timely

notice of proceedings, which may include telephone, fax, email, hand delivery, and/or mailing of informal notice.<sup>3</sup>

3. This Order applies to all such cases and children even though any or all of the following exist:
  - The notice and other substantive provisions of the Indian Child Welfare Act (ICWA)<sup>4</sup> do not apply;
  - The child's tribe is not a "federally recognized" tribe;
  - The child is not technically an "Indian child" within the meaning of the ICWA;
  - The child is of lineal descent and involved in a tribal community, but is not enrolled or eligible for tribal enrollment; and,
  - The child is not in foster care or "at risk" of removal or entering foster care.
4. The Court finds that for any child described herein, their identified Tribe has a presumptively "direct and legitimate interest" in the particular child's case, and is entitled to access (See WIC sections 346 and 676(a)) The Tribal Representative (e.g, ICWA Representative) shall be allowed to attend otherwise confidential juvenile justice, status offense, and dependency proceedings pertaining to such Native child, subject to the judicial officer presiding over the case or particular hearing determining that said Tribe and/or Tribal Representative does not have a direct and legitimate interest in the particular case, or that good cause otherwise exists to exclude the Tribal Representative from a particular hearing(s), or portions thereof.
5. For the reasons set forth above, in addition to being present at such hearings, the Tribal Representative may do all of the following upon consent of the court:
  - Address the court.
  - Request and receive notice of hearings.
  - Request to examine court documents relating to the proceeding.
  - Present information to the court that is relevant to the proceeding.
  - Submit written reports and recommendations to the court.
  - Perform other duties and responsibilities as requested or approved by the court.

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<sup>3</sup> Should the notice and other substantive provisions of the ICWA apply or become applicable to the child's case, it should be noted that any notice provided under this Order may not necessarily constitute proper legal notice to the Tribe as required by the ICWA.

<sup>4</sup> 25 U.S.C. section 1901 *et seq.*; California Welfare & Institutions Code section 224 *et seq.*; California Rules of Court, rule 5.480 *et seq.*

6. If more than one tribe is identified or requests to participate, the Court may limit participation to the tribe with which the child has the most significant contacts, as determined in accordance Family Code section 170(d)(2))

SAMPLE



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## **Following The Spirit of the Indian Child Welfare Act (ICWA)**

*A guide to understanding the benefits of providing culturally appropriate services to Native American families from non–federally recognized tribes within the juvenile dependency and delinquency systems<sup>1</sup>*

In an effort to ensure proper inquiry and noticing and to reduce the number of ICWA-related appeals in child welfare cases, this handout is intended to help social workers and others respond when they encounter children and families that report American Indian or Alaska Native ancestry yet find they are not from a federally recognized tribe. What is good social work practice in these cases, and how can courts support culturally centered practice that results in positive outcomes?

### **How to Provide “Spirit of the Law” ICWA Services**

- Find out which tribes and Native American resources are in your area.
- Visit and establish connections with local tribes and Native American resources regardless of federal recognition status.
- Request ICWA training from tribal resources, California Department of Social Services training academies, or with staff from the Judicial Council of California.
- Conduct a proper inquiry of possible Native American ancestry in every case at the front end and throughout the duration of the case if family members provide additional lineage information.
- Connect a child and family with their tribe and local Native American resources regardless of tribal affiliation.
- Assist the child or family with the tribal enrollment process but understand it is up to the tribe to determine who is or is not eligible for enrollment.
- Conduct placements consistent with ICWA placement preferences even though not technically required. In the case of non–federally recognized tribes, tribal members would likely meet requirements as nonrelated extended family members because tribal communities tend to be related or close-knit communities.
- Consider the child’s tribal members as viable options for holiday visits, tutors, mentors, Court Appointed Special Advocates, etc.

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<sup>1</sup> This document was developed with the Fresno County Department of Social Services, Child Welfare Services, and Placer County System of Care as part of the American Indian Enhancement of the Casey Family Programs/Child and Family Policy Institute of the California Breakthrough Series on addressing disproportionality 2009–2010 in collaboration with the American Indian Caucus of the California ICWA Workgroup, Child and Family Policy Institute of California, Stuart Foundation, and Tribal STAR.



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### **The Benefits of Providing “Spirit of the Law” ICWA Services**

- If the child’s tribe is seeking federal recognition and is granted such recognition, formal ICWA case services, such as active efforts to prevent the breakup of the Indian family, will be required. If ICWA active efforts are attempted before the federal recognition, it is less disruptive for the child than having to change services and placement to make them in accordance with ICWA.
- Welfare and Institutions Code section 306.6 leaves the determination of services to individuals of non-recognized tribes to the discretion of the court that has jurisdiction.
- Even if individuals are not associated with a federally recognized tribe, they can still be part of an Indian community, which can serve as a strength and provide resources that enhance resilience factors for youth.
- Native American agencies that serve youth regardless of their tribe’s status can have youth groups that provide mental health and substance abuse services as well as fun trips, at no cost to the county.
- Many resources available to Native Americans do not require status in a federally recognized tribe (such as tribal Temporary Assistance for Needy Families (TANF), Native American health centers, and title VII Indian education programs).
- Some Native American health centers can access funding for residential treatment in and out of the state for children who are from non–federally recognized tribes.
- When culturally centered practice is provided as early as possible, it can result in positive outcomes for tribal youth.
- Linking a child to cultural resources that support his or her development into a healthy self-reliant adult can reduce the number of times the person may enter public systems.
- Culturally centered practice provided at the front end and throughout the lifespan of the case, regardless of the recognition status of the tribe, can reduce the public burden of cost over time.

### **Historical Background**

- In 1848, gold was discovered in Coloma, California.
- In 1851 and 1852, representatives of the United States entered into 18 treaties with tribes throughout California that would have provided for more than 7.5 million acres of reserve land for the tribes’ use. These treaties were rejected by the U.S. Senate in secret session. The affected tribes were given no notice of the rejection for more than 50 years, and the promised reserve lands were never provided.
- In 1928, a census was conducted to determine the number of American Indians in California, resulting in the establishment of the 1933 California Indian Rolls (also referred to as the California Judgment Rolls). The purpose of the census and the rolls was



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to determine the number of Indians in California who had families alive in 1851–1852, when treaties were signed by the original Californians.

- From 1953 to 1964, called the “Termination Era,” the U.S. Congress terminated the federal recognition status of more than 40 California tribes. These tribes were deemed as not federally or state recognized, though previously descendants of these tribes were federally recognized.
- Many tribes that were terminated are currently seeking federal recognition by the U.S. government.
- Tribal communities throughout California are active and thriving, whether or not they have federal recognition.
- Descendants of family members listed on the California Judgment Rolls can use this documentation of Native American ancestry to provide information as to tribal affiliation. *Note:* Finding an ancestor on the roll does not mean an individual is an enrolled member in that particular tribe. Only one tribe can be listed on this document, and it is possible to descend from more than one tribe.
- Senate Bill 678, passed in 2006 by the California Legislature, allows participation of non–federally recognized tribes, on request and at the discretion of the judge in the dependency matter. This expands the option and availability of culturally appropriate services to children from non-recognized tribes.

### **Additional Tips for Practice**

- Some tribes include descendants as members, not only those who are enrolled.
- Best practices will vary depending on the location, available resources, and tribe.
- If you are having challenges in working with the family, local Native American agencies or tribes can assist.
- If the family requests additional resource information to trace its lineage, you can provide the following resource information:
  - The tribe;
  - Mission church records;
  - Mormon genealogical records;
  - Historical societies and museums;
  - Genealogical Web sites; and
  - Historical statistical information and documents in the county of the family’s origin.





## Improving the Well-being of American Indian and Alaska Native Children and Families through State-Level Efforts to Improve Indian Child Welfare Act Compliance

David E. Simmons  
National Indian Child Welfare Association  
October 2014

### Introduction

The well-being of American Indian and Alaska Native (AI/AN) children and their families is directly connected to the relationship they have with their culture, extended families, and tribal communities. Federal and state child welfare policies and practices have sometimes not well understood or supported these relationships by not recognizing the unique qualities of AI/AN culture and the benefits of nurturing these relationships. The Indian Child Welfare Act (ICWA) was a response to the destructive practices in public and private child welfare systems that broke apart these bonds in many tribal families' lives. Such practices distanced families from the protective factors inherent in tribal communities and culture that can prevent and treat child abuse and neglect concerns.

Since the passage of ICWA in 1978, there has been increasing movement to enhance state policy to support ICWA and address several of the challenges to AI/AN children's well-being. The efforts that have proven most successful have been initiated by tribal governments and AI/AN Indian organizations in collaboration with state governments. This paper will provide background on, and describe, the basic requirements of ICWA, provide an overview of tribal child welfare and court systems, discuss disproportionality and its relationship to trends in ICWA compliance, highlight promising practices in state policy and practice that support ICWA, and underscore the necessity of working with tribal advocates on state child welfare policy change.

## The Indian Child Welfare Act

Federal Indian policy, beginning in the late 19<sup>th</sup> century and continuing into the 1960s, was designed to assimilate AI/AN people through various mechanisms, including removal from their homelands and isolation from their tribal culture. These policies gave rise to the involuntary placement of AI/AN children in military-style boarding schools that emphasized mainstream values and beliefs and punished children for practicing their tribal culture and speaking their language (Crofoot, 2005; Cross, Earle, & Simmons, 2000). AI/AN children placed in these government-funded boarding schools were rarely allowed to return home to visit their families and were taught to reject their tribal identity. The use of these boarding schools affected several generations of tribal families, essentially denying them the opportunity to parent.

Another devastating initiative followed the boarding school era: the Indian Adoption Project, which established a partnership between federal and private agencies that adopted out almost 400 AI/AN children between 1958 and 1967. The adoptions took AI/AN children from 16 western states to White families in the Midwest and Eastern United States (Kreisher, 2002). These efforts were hailed as a victory for civil rights and equality by leaders of the Indian Adoption Project, but tribal leaders and other tribal advocates challenged this view and condemned the policy which led to untold suffering of these children and their tribal families. In 2001, Child Welfare League of America Executive Director Shay Bilchik made a public apology for their role in the Indian Adoption Project in which he said, “No matter how well-intentioned and how squarely in the mainstream this was at the time, it was wrong; it was hurtful; and it reflected a kind of bias that surfaces feelings of shame, as we look back with the 20/20 vision of hindsight.” (Indian Child Welfare Act Law Center, n.d.).

In the late 1960s and into the 1970s, tribal advocates began to see a pattern of biased and abusive public and private child welfare practice that was impacting tribal communities across the nation. This spawned investigations into these practices that later led to the passage of the ICWA. The Association on American Indian Affairs (AAIA) was at the forefront of these investigations that resulted in reports documenting the large numbers of AI/AN children being removed from their homes by state and private adoption agencies. AAIA submitted its findings, which estimated that approximately 25-25 percent of all AI/AN children had been removed from their homes and placed in foster care or adoptive home (H.R. Rep. No. 95-1386, 1978). In some states the removal numbers were even higher.

The overwhelming majority of these removals (approximately 85 percent of foster care and 90 percent of adoptions) resulted in AI/AN children being placed in non-Indian homes, often far from their extended family and tribal communities (H.R. Rep. No. 95-1386, 1978). The reasons for these removals were often not related to the threat of abuse or neglect, but rather to a lack of understanding of tribal child-rearing and cultural practices, as well as bias of those involved in making key decisions in the child welfare process. The AI/AN children’s tribes were typically not notified or allowed to participate in most of these cases, leaving these children and families at the mercy of public and private child welfare systems that were most often not informed or supportive of tribal culture. The crisis was so severe that the future existence of many tribal communities was threatened.

Congress responded to the crisis by enacting ICWA in 1978, which established federal requirements for states and private agencies regarding the handling of child welfare matters involving AI/AN children and families. In addition, ICWA clarified the role of tribal governments in state and private child welfare matters, including the authority of tribes to intervene in state court proceedings and operate their own community-based child

welfare programs. ICWA's protections for AI/AN children and families are based upon their political status as citizens of a tribal government and not a racial classification (Native American Rights Fund, 2011).

## Key Indian Child Welfare Act Requirements

**Sections 1903(1) and (4):** ICWA applies to "Indian children" (a term as used and defined by ICWA that refers to AI/AN children) who are members of a federally recognized tribe or are eligible for membership and have a birth parent who is a member of a federally recognized tribe when the child is involved in a child custody proceeding.

**Section 1911(a):** Clarifies that tribes have jurisdiction over child welfare matters on their tribal lands and that a tribe or parent of an Indian child may petition a state court to transfer jurisdiction of the proceedings to a tribal court.

**Section 1911(c):** Clarifies that an Indian child's tribe or Indian custodian has the right to intervene in state court proceedings regarding the foster care or adoptive placement of an Indian child or termination of parental rights of an Indian child's birth parents (dependency-based guardianships are also included).

**Section 1912(a):** Requires notice to the Indian child's tribe and birth parents or Indian custodian of foster care placement or termination of parental rights proceedings.

**Section 1911(d):** Requires states and federal entities give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe related to child custody proceedings as defined by ICWA.

**Section 1912(c):** Allows a tribe to access all reports or other documents filed with a state court regarding an Indian child that is involved in a state child custody proceeding.

**Section 1912(d):** Requires active efforts to prevent removal and rehabilitate parents so they can be reunified with their children after a removal. The state court must determine that active efforts have been provided and have proven unsuccessful before a foster care placement or termination of parental rights is ordered. Active efforts are considered a higher standard than reasonable efforts.

**Sections 1912(e) and (f):** Contains evidentiary standards to place an Indian child in foster care or terminate parental rights (clear and convincing, and beyond a reasonable doubt, respectively).

**Sections 1912(e) and (f):** Requires a qualified expert witness to testify in proceedings to order a foster care placement for an Indian child or terminate parental rights of an Indian child's parents.

**Section 1913:** Sets out requirements regarding parental consents for voluntary placements and termination of parental rights that include consent be recorded before a court of competent jurisdiction (foster care or adoption).

**Section 1914:** Allows federal court review of state actions that violate certain requirements of ICWA and invalidate those actions if they are proven to be out of compliance with ICWA.

**Section 1915:** Provides placement preferences for foster care and adoptive placements of Indian children (applies to involuntary and voluntary placements).

**Section 1931(b):** Recognizes tribal foster care licensing standards as equivalent to state licensing standards for the purposes of approving placement and meeting other federal requirements.

**Section 1917:** Allows Indian adult adoptees to petition the court where their adoption was finalized to access information to establish their tribal affiliation and protect any rights flowing from their tribal relationship.

**Section 1919:** Authorizes tribes and states to enter into agreements for the care and custody of Indian children. These intergovernmental agreements often address child welfare procedures, access to state and federal funding, and principles of collaboration between these governments.

While implementation has been uneven in many areas, the results of ICWA’s requirements have been to:

- 1) Encourage more intensive examination of the efforts to prevent removals of AI/AN children and rehabilitate their parents,
- 2) Improve the identification of tribal and relative families who can serve as placement resources for AI/AN children,
- 3) Increase access to culturally appropriate services,
- 4) Clarify roles between states and tribes in child welfare matters,
- 5) Increase sharing of funding and other resources between states and tribes, and
- 6) Stimulate the development of state policy to improve the effectiveness of services and supports for AI/AN children and families.

Many of ICWA’s requirements are considered to be the “gold standard” in child welfare practice and they mirror similar requirements in other federal child welfare laws (*Adoptive Couple v. Baby Girl*). These other federal laws, which are authorized under Titles IV-B and IV-E of the Social Security Act, encourage relative placements, early intervention, collaborative approaches, cross-jurisdictional cooperation, and placing children within the least restrictive settings that are in close proximity to their communities and families.

## Tribal Child Welfare and Court Systems

Historically, tribes exercised sovereignty in full, including addressing threats to children’s safety and well-being. Natural helping systems utilizing extended family and clan members, and traditions for regulating civil matters such as child custody, acted to protect AI/AN children and help support families (Cross, Earle, & Simmons, 2000). Tribal elders acted as judges. Traditional chiefs governed as the protectors of family well-being. Tribal clan and kinship systems functioned as social service providers. Tribes had no words in their languages for “orphans” because children in need were the responsibility of everyone in the tribe (Cross, 1995). As Europeans migrated to North America and established new governmental structures, laws, and practices, the capacities and resources that allowed full exercise of tribal sovereignty and related governmental functions were diminished by forced dependence and destruction of traditional governmental structures. However, tribal sovereign authority and the responsibility for the protection of tribal children did not diminish as tribes began to adapt to the changing world around them.

Tribal nation sovereignty—the right to self-govern—is recognized in the U.S. Constitution, treaties between the United States and tribal nations, federal law, U.S. Supreme Court decisions, and presidential executive orders (National Congress of American Indians, n.d.). The United States also has a federal trust relationship with tribal governments. This trust relationship evolved from treaties signed between the United States and tribal nations that includes a responsibility for the U.S. government to protect tribal sovereignty and the rights to land, resources, assets, and treaty rights.

The trust responsibility obligates the federal government to provide resources for tribal governments to support the health and well-being of their tribal members, which includes development and operation of basic governmental services like child welfare. In return for these federal resources and other guarantees, tribal nations ceded millions of acres of land that now constitute what we know as the United States. While the amount of federal resources and funding currently available for tribal governments to exercise their sovereignty in child welfare are insufficient, tribal governments continue to use their sovereignty to help protect and support their children and families throughout the United States wherever they may live.

Today, there are 566 federally recognized tribes (also referred to as Indian nations, bands, pueblos, Native villages, and communities) in the United States that have tribal lands in 34 states (U.S. Department of Interior, 2014). Some states like California and Alaska have over 100 tribes within their borders, while others like Connecticut or South Carolina may only have one or two. Regardless of the number of tribes in each state, all 50 states have AI/AN people living within their boundaries.

All tribal governments offer some level of child welfare services and many also operate tribal court systems. The continuum of services varies greatly between tribes, with some offering a full array of child welfare services that are on par with, or exceed, what many state jurisdictions provide, while others may only perform case monitoring functions on cases that are in state court. As an example, many different entities can be involved in the investigation of child abuse or neglect involving AI/AN children either alone or in combination with other entities. Tribes are involved in 65 percent of investigations, states 42 percent, counties 21 percent, Bureau of Indian Affairs 19 percent, and a consortium of area tribes 9 percent (Earle, 2000). Tribes alone without the assistance of any other entities are involved in only 23 percent of child abuse investigations (Earle, 2000). The U.S. Federal Bureau of Investigation may also be involved in criminal child abuse and neglect investigations that involve AI/AN children on tribal lands.

Even when tribes are not able to provide services like child protection, in-home services, or parenting classes, many tribes participate with states in co-case managing state child welfare cases that involve AI/AN children and families. This can include helping state child welfare agencies identify culturally appropriate services, participating in case reviews and court hearings, locating qualified expert witnesses as required under ICWA, identifying potential placement families, accessing tribal resources and benefits for children and families, and guiding transition planning for children going back home or being moved to another permanent home. Such services and consultation are often critical to ensuring compliance with ICWA and creating opportunities to achieve better outcomes for AI/AN children and their families.

Funding is the primary determinant of how broad an array of child welfare services a tribe may provide. As an example, of the almost \$13.5 billion in federal child welfare funding distributed to states, territories of the United States, and tribes each year, tribal governments receive approximately 1 percent even though their needs and population numbers would indicate larger allocations (American Humane Association, n.d.; Cooper, DeVoght, Fletcher, and Vaughn, 2012; U.S. Department of Interior, 2012). Currently, AI/AN people comprise 1.7 percent of the U.S. population (U.S. Census Bureau, 2011) and have high rates of several key risk factors for child abuse and neglect that are well above the national average (poverty, number of single parent families, and substance abuse). In addition, economic conditions in most tribal communities do not allow for the development of a sustainable or sufficient tax base to support basic government services and infrastructure.

Unemployment and poverty rates in most tribal communities are well above the national average. Austin's analysis of Ruggles, et al.'s 2013 look at American Community Survey data (as cited in Austin, 2013) indicates unemployment rates nationally for AI/AN adults are 14.6 percent, compared to the White unemployment rate of 7.7 percent, and only 49–50 percent of AI/AN adults 16 and older living on or near tribal lands are in the workforce (U.S. Department of Interior, 2013). Poverty rates for the AI/AN populations are 27.8 percent, almost twice the national average of 14.9 percent, and are even higher on many Indian reservations (U.S. Census Bureau, 2012). These conditions contribute to an overall lack of resources to support basic child welfare services for many tribal communities.

Tribes have always had mechanisms for handling disputes and domestic issues that arise within their communities. Historically, these mechanisms have been informal, unwritten, and based upon holistic values and way of life (Melton, 1995). Today, with the exception of a few tribes that still exclusively operate their tribal justice systems traditionally, most tribal courts utilize written procedures and codes and operate their court system in a manner that resembles their state and federal counterparts (Jones, 2000). However, even courts that use less traditional methods of tribal court operation still incorporate their culture and traditional practices. Of the almost 300 tribes that operate a court system today, all of them have codes and/or procedures that are culturally based and unique to their way of life (Tribal Law and Policy Institute, n.d.).

Tribal courts may have many different forms. Some, like a few of the pueblo tribes in New Mexico, operate exclusively in the traditional manner as they always have. Others may use their tribal council or another body appointed by tribal leadership to adjudicate child welfare matters (Vincenti, 1995). The most common model is a hybrid model that uses elements of the American court system while incorporating tribal customs and traditions. Some examples include alternative dispute forums, like the Peacemaker courts operated by the Navajo Nation, or culturally defined customary adoption that helps children find a permanent home without terminating parental rights while maintaining connections with tribal and extended family relationships (Zion, 1998).

While there is some variance in how tribal courts may be structured, they generally perform many of the same functions that non-tribal courts do. They have hearings for emergency removals, substantiation of abuse or neglect allegations, permanency hearings, and finalize guardianships and adoptions. Several have guardian ad litem or court appointed special advocates programs as well as other judicial positions that you will find in state juvenile court systems.

Tribal court jurisdiction operates within a complex set of laws and court decisions. While many tribes in the lower 48 states have exclusive jurisdiction over child welfare proceedings on their lands, there are areas where states may play a role in investigating, managing cases, and adjudicating child welfare proceedings involving AI/AN children and families living on tribal lands. One such law that changed previous jurisdictional schemes in some parts of Indian Country was Public Law 280 (PL 280). (18 U.S.C. § 1162(2012), 28 U.S.C. § 1360 (2012), 25 U.S.C. §§ 1321-1326 ).

The practical effect of the law was to limit tribal exclusive jurisdiction over civil causes of action, including those common to child welfare proceedings, by recognizing state concurrent jurisdiction, but stopping short of replacing tribal exclusive jurisdiction on tribal lands. The negative effect of PL 280 has been the slow down of tribal child welfare program and court system development, as policymakers assume that states and counties are adequately addressing child welfare concerns (Jones, Tilden, & Gaines-Stoner, 2008). It has also subjected large numbers of AI/AN families to state or county child welfare systems that have often not well understood tribal child-rearing or tribal culture, and use interventions that are not well suited to helping AI/AN families rehabilitate successfully.

## Disproportionality and Critical Issues in Indian Child Welfare Act Compliance

While the federal protections of ICWA have provided benefits for thousands of AI/AN children and families in public and private child welfare systems, there continue to be significant challenges in fully implementing

the law. Even with ICWA requirements such as active efforts designed to reduce the flow of AI/AN children into foster care, AI/AN children continue to be over-represented in state foster care systems (Summers, Woods, & Donovan, 2013).

To understand why disproportionate placement of AI/AN children occurs, it is important to understand how decision making in child welfare impacts placement rates. Reports of abuse or neglect involving AI/AN children are consistent or proportionate with their population numbers. As one moves further into the child welfare system decision-making process, disproportionality increases for AI/AN children and families (Annie E. Casey Foundation, 2007).

Rates at which reports of abuse or neglect involving AI/AN children are investigated, substantiated, and removed from their families and placed in foster care are well beyond their population numbers. One study that looked at systemic bias in the child welfare system found AI/AN families were two times more likely to be investigated, two times more likely have reported abuse and neglect substantiated, and four times more likely to have their children removed and placed in foster care than their White counterparts (Annie E. Casey Foundation, 2007). This systemic bias is a primary factor in understanding why AI/AN children are disproportionately represented in many state foster care systems.

Congress enacted ICWA because of the disproportionate placement of AI/AN children in public and private child welfare systems. The law was designed to provide protections against systemic bias and reduce the flow of AI/AN children into these systems. This is accomplished through a number of federal requirements that seek to prevent removal whenever possible, ensure that AI/AN families receive culturally appropriate services and parents have opportunities to be rehabilitated, and ensure that tribes are available as resources throughout the child welfare process and nurture and support child and family connections to their culture, extended family, and tribe. Unfortunately, the implementation of the law is uneven in many jurisdictions. Regular oversight that could prevent noncompliance and inform efforts to correct poor performance is not available at the federal level.

The most critical issues of noncompliance involve (1) lack of regular oversight of ICWA implementation, (2) AI/AN children not being identified early in child welfare proceedings, (3) tribes not receiving early and proper notification of child welfare proceedings involving their member children and families, (4) lack of placement homes that reflect the preferences defined within ICWA, (5) limited training and support for state and private agency staff to develop knowledge and skills in implementing ICWA, and (6) inadequate resources for tribal child welfare agencies to participate and support their state and private agency counterparts.

ICWA is the only major federal child welfare law that does not have oversight assigned to a specific federal agency and a regular evaluation of implementation, either process or outcome related. Reports of noncompliance go uninvestigated by any federal agency, no implementation data is regularly collected and analyzed, and performance improvement plans are not required for agencies that are out of compliance even when the noncompliance is documented. ICWA compliance is most often a case-by-case procedure dependent upon the actions and goodwill of legal parties involved, with the greatest penalty available being invalidation of specific ICWA proceedings. This case-by-case approach does not effectively support system reform and relies on anecdotal information that is not generalizable or helpful in understanding larger trends in compliance. A few states have developed their own ICWA compliance systems, which have helped

promote improved compliance and services to AI/AN children, but they are limited in their ability to inform federal policymakers of national trends and help them develop federal responses.

While federal child welfare data requirements mandate the collection of racial classification for children and families that state agencies serve, the data is self-identified and does not track by political classification or tribal membership. For ICWA protections to apply, a child must either be a member of a federally recognized tribe or be eligible for membership and have a parent that is a tribal member. This is a political classification and only the child's tribe can make this determination regarding membership status or citizenship. In many cases, state and private agency workers do not ask about tribal membership status or are not proficient in knowing how to secure tribal information so that a child's tribe can be properly noticed and have an opportunity to assess the child's membership status.

Notice of child welfare proceedings and placement to the child's tribe is a critical element of ensuring ICWA compliance. Under ICWA, tribes have the authority to participate in child welfare proceedings involving their member children and families. Their role in these proceedings is important in helping state and private agencies identify resources and culturally appropriate services for the family, as well as educating agency and court personnel of the requirements of ICWA. Early notice that contains complete and accurate information to help tribes establish membership and participate in a meaningful fashion in the child welfare process is critical. As evidence of the importance of tribal involvement in state child welfare proceedings involving AI/AN children and families, a 2005 Government Accountability Office (GAO) study regarding the implementation of ICWA found that states depended upon tribes to help them successfully implement ICWA (GAO, 2005). When tribes are not notified or are notified late in proceedings, or when the information provided is incomplete, the result is often a higher risk for delays and changes to placements that could have been avoided with early and proper notice.

While it is acknowledged that there is a general lack of sufficient numbers of placement homes for all children in the child welfare system, the number of placement homes for AI/AN children that are compliant with the placement preferences of ICWA is equally low, if not lower, than those for other populations. ICWA requires that AI/AN children placed in foster care, guardianship, or adoption are placed according to the placement preferences. The foster care and guardianship preferences are (1) an extended family member of the child, (2) a tribally licensed or approved foster home of the child's tribe, (3) an AI/AN foster home licensed or approved by a non-Indian licensing authority (e.g., a state agency), and (4) an institution for children approved by a tribe or operated by an Indian organization. The adoption placement preferences are (1) an extended family member of the child, (2) a member of the child's tribe, and (3) another AI/AN family. States depend heavily upon tribes to identify and recruit AI/AN families in individual cases, but more proactive and culturally based recruitment needs to occur if the numbers of AI/AN placement families are going to increase overall. Furthermore, the process for licensing AI/AN foster homes can often be intimidating and offers limited support for families that are willing to consider becoming a licensed placement provider.

In today's child welfare system, the complexity of the work and competing demands can be difficult to manage. Skills-based training and user-friendly tools are the resources that public and private agency staff need to feel competent in their work with the diverse pool of children and families they will come into contact with. Working successfully with AI/AN children and families requires these same type of resources in addition to skills such as how to successfully engage tribes and knowledge of the unique legal and services frameworks that apply to AI/AN children.



However, many public and private agency professionals and judicial personnel do not have access to comprehensive trainings on the legal requirements of ICWA or the practice skills used to implement the requirements. Often the trainings that are available to public and private agency staff are provided by tribal or urban Indian organization child welfare staff who are carrying active caseloads. Many times these trainings are optional so staff may not participate. Judicial staff also need access to ICWA training and resource materials. Juvenile court judges may be very familiar with state laws, but not as comfortable with federal law like ICWA. Opportunities for state court judges to learn more about tribal-state court improvement projects can assist them in their efforts to make the courtroom more responsive to ICWA requirements and the unique needs of AI/AN children and families.

Like other child welfare work, it takes strong partnerships to ensure that AI/AN children and families receive the protections provided by the law and support to ensure good outcomes. The functioning of tribal and state relationships is a primary determinant of how well ICWA is implemented in any given jurisdiction. Where tribal-state relations are positive and functioning well, tribes are viewed as possessing important resources needed to achieve ICWA compliance and positive outcomes for AI/AN children and families. The 2005 GAO ICWA study found that decisions that influence the placement of AI/AN children can be influenced by the level of cooperation between tribes and states (GAO, 2005). States depend upon tribes to help them effectively implement ICWA. Yet, the level of resources that tribes have to participate in these partnerships affects their ability to be resources to states as well as tribal member children and families. The GAO study found that lack of resources was the primary reason that tribes were not able to assist states with ICWA cases (GAO, 2005).

## Promising Practices in ICWA Implementation

ICWA has been a catalyst for many very positive and successful new policies and practices in child welfare with AI/AN children and families. These promising practices can be found in a number of states and local county jurisdictions, and are the product of partnerships between tribes, states, and counties, typically at the initiation of tribal governments. The examples described below include state law, intergovernmental agreements, tribal-state forums, consultation policies, court procedures, and state agency policies or guidance. In some cases, the examples are unique to their jurisdiction, while others have been replicated in several states. This is not an exhaustive list and readers should inquire as to whether there are similar resource materials in the states they practice in.

### State Law and Policy

- State law defining government-to-government relationship with tribes and consultation process: Oregon Revised Statutes § 182.164 and 182.166
- Government-to-government agreement between a state and tribes establishing the principles and roles for implementing ICWA at the state level: [Washington tribal-state exclusive and concurrent jurisdiction agreements, along with local area agreements](#)
- State law requiring state courts that are holding a child welfare hearing inquire as whether the child that is the subject of the hearing is an Indian child under the definition of ICWA. If the court knows or has reason to believe that the child is an Indian child, they will proceed according to ICWA's requirements

until such time the court knows that the child is *not* an Indian child under ICWA: Oregon Revised Statutes 419B.419B.878)

- State law definition of what information should be in a tribal notice of child welfare proceedings: Iowa Code §§ 232B.5(7)
- State law requiring the district attorney or individuals facilitating voluntary placements of AI/AN children to notify the child's tribe and birth parents or Indian custodians of voluntary proceedings: Oklahoma Statute § 40.4
- State law recognizing culturally based permanent placement options of tribes, such as tribal customary adoption: [California courts website description of the legislation and related materials](#)
- Bench handbook for state courts providing a substantive and procedural overview of ICWA: [California Bench Handbook: The Indian Child Welfare Act \(revised 2013\)](#)
- Guidelines for state agencies, courts, private service providers, and tribes on what constitutes active efforts under ICWA: [Oregon Active Efforts, Principles and Expectations](#)
- State guidance on what constitutes a qualified expert witness under ICWA: [Qualified Expert Witness: Wisconsin Indian Child Welfare Act Implementing Guidelines 2013](#)

### **State Practices and Improvements**

- State-tribal reconciliation process to improve intergovernmental relationships and promote development of effective policy: [Maine Wabanaki-State Truth and Reconciliation Commission](#)
- State guide to ICWA by New York Office of Children and Family Services: [“A Guide to Compliance with the Indian Child Welfare Act”](#)
- [State local and regional community advisory bodies](#) that assist state child welfare agency staff who are working on ICWA cases; they help staff case plans, and identify services and other resources
- [ICWA checklist for state court judges](#) by National Council of Juvenile and Family Court Judges
- Mandatory training of state social workers on ICWA done jointly with tribal social workers: Washington State Social Work Academy Solution-Based ICWA Training and Curriculum
- State-tribal Indian child welfare forums where representatives of each group meet regularly to discuss child welfare policy and practice issues. These forums can provide a framework for tribal-state consultation required under federal law, such as the Title IV-B consultation requirement regarding ICWA implementation (several states have established these forums including Oregon, Montana, Utah, Oklahoma, Washington, and North Dakota)

- State-tribal court improvement forums where representatives of each court system meet regularly to discuss legal, inter-jurisdictional cooperation, and court procedural issues (several states have established these forums, including California, Michigan, Wisconsin, New York, and New Mexico)
- Pass through of federal or state social services funding to tribes, typically through contract or intergovernmental agreement. Examples include: state general revenue, Title IV-E Foster Care and Adoption Assistance, Social Services Block Grant, Community Mental Health Services Block Grant, and Medicaid (several states pass through funds from one or more of these funding sources, including Arizona, Oregon, Washington, Idaho, Alaska, and Minnesota)
- State evaluation of ICWA implementation performed in partnership with tribes. Data is continuously collected and analyzed to identify trends and areas for improvement: [2009 Washington State Indian Child Welfare Case Review example](#)
- State performance-based contracting requirements for use with private providers that require ICWA compliance, service provision in a culturally competent manner, and training of staff on these skill areas: Washington Department of Social and Health Services state performance-based contracting

#### **Additional Resources**

- [National Indian Child Welfare Association Online ICWA Training](#) for use with state, private, and tribal child welfare agency staff
- [ICWA checklist for state court judges](#) from the National Council of Juvenile and Family Court Judges
- ICWA guide from Native American Rights Fund, [“A Practical Guide to the Indian Child Welfare Act”](#)
- [State court ICWA monitoring tool \(QUICWA\)](#)
- [Listing of state Indian child welfare laws and policy](#) by the National Conference for State Legislatures
- [Reconciliation in child welfare resources and initiative](#) developed in partnership with First Nations Child and Family Caring Society, National Indian Child Welfare Association, Child Welfare League of America, and First Nations Repatriation Institute

## Working with Tribal Representatives as Partners in Change

The history of failed federal policy towards AI/AN people and tribes depended upon government support for the philosophy and implementation of colonization rather than self-determination and intergovernmental cooperation. The results were ruinous for tribal communities with the vestiges of those policies still with us today several generations later. Disproportionality and disparate treatment of AI/AN children and families in the child welfare system can only continue when we allow it to continue. Tribal-state partnerships are breaking down the barriers to a more equitable and effective child welfare system for AI/AN children and families. States are increasingly seeing the resources that tribes can provide in this effort and pursuing intergovernmental cooperation at new levels. State leaders who are willing to take the time to listen to their tribal counterparts, and increase their understanding of the needs of tribal communities and the appropriate methods for addressing these needs, will find new opportunities that can benefit both state and tribal governments, as well as the children and families involved in the child welfare system. At a recent state, county, and tribal coordination meeting in Portland, Oregon, two American Indian former foster youth summed up why we need to continue our efforts to partner. “Being in foster care is hard. We talk about foster care as a system, but it has real people in it like us. Don’t give up. It is important what you are doing for us.” (McConnell and McConnell, 2014).



*The First Focus State Policy Advocacy and Reform Center (SPARC), an initiative funded by the Annie E. Casey Foundation, Jim Casey Youth Opportunities Initiative, and Walter S. Johnson Foundations, aims to improve outcomes for children and families involved with the child welfare system by building the capacity of and connections between state child welfare advocates. You can visit us online at [www.childwelfaresparc.org](http://www.childwelfaresparc.org) or on Twitter at [@ChildWelfareHub](https://twitter.com/ChildWelfareHub).*

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## Language as a Facilitator of Cultural Connection

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### 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

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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.

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## 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.<sup>1</sup> 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).

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<sup>1</sup>NOTE “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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research interests include health professional student development, advancing health service access and quality, and improving health care services in underserved communities by understanding health behaviors and other social and structural determinants of health. Dr. Aronson's teaching interests include the principles of pharmaceutical care, health care systems, quality in health care, and professional and leadership development of student pharmacists.

**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.

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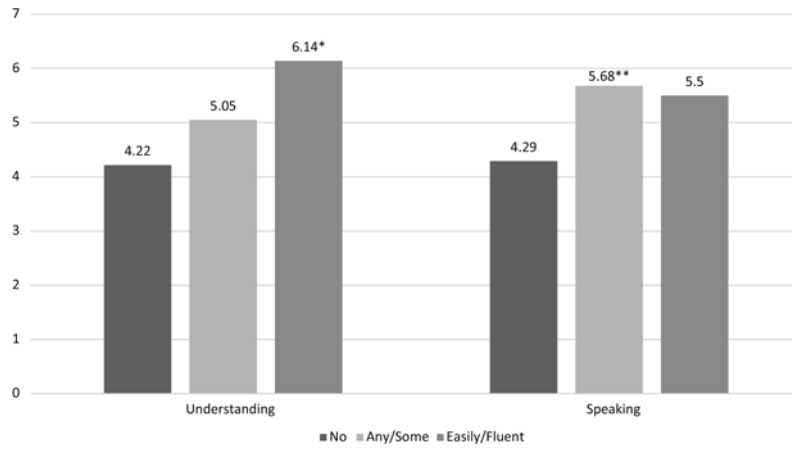
**BRENNAL GREENFIELD**, Ph.D., is a psychologist and assistant professor in the Department of Biobehavioral Health and Population Sciences at the University of Minnesota Medical School, Duluth campus. Her research is strengths-based and focuses on identifying and intervening on determinants of substance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

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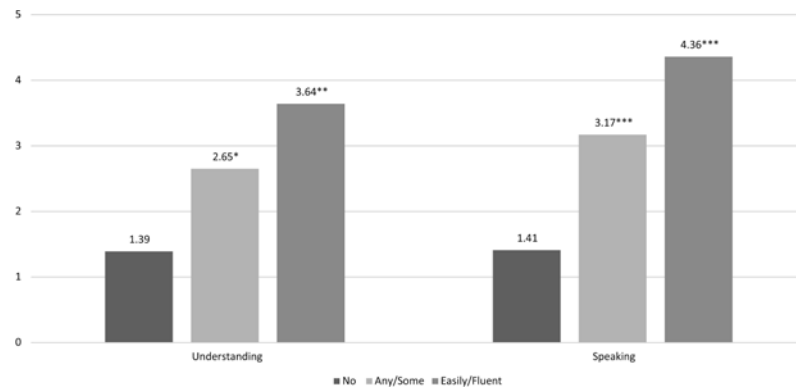
**Figure 1. Mean traditional activities by Ojibwe proficiency category**  
ANOVA test with Bonferroni correction; \* Significantly different than “No” and “Any” understanding groups; \*\* Significantly different than “No” speaking group

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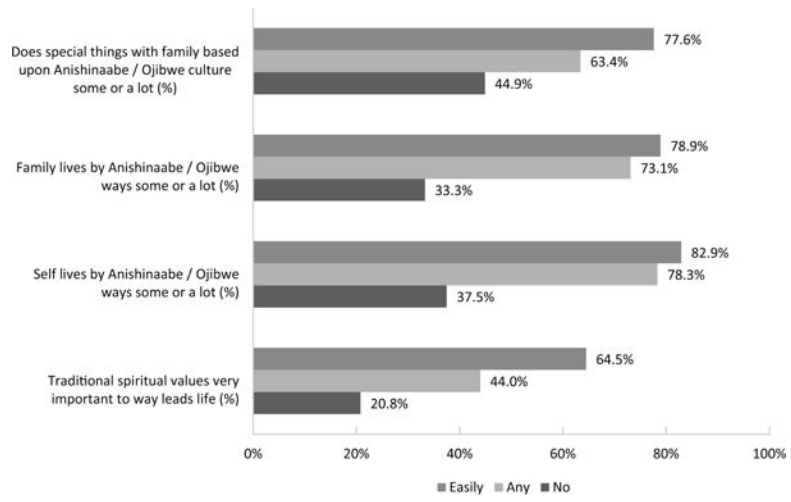
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**Figure 2. Mean spiritual activities by Ojibwe proficiency category**

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



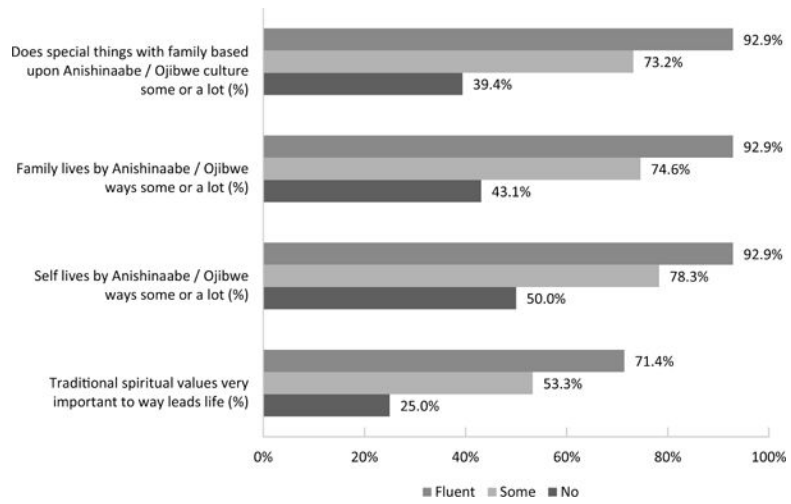
**Figure 3.**  
Percent within understanding proficiency category

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**Figure 4.**  
Percent within speaking proficiency category

**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). Corntassel (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 (Corntassel, 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				
<b>Family</b>	<b>Community</b>	<b>Land/Place</b>	<b>Intergenerational</b>	<b>Spirit</b>
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.

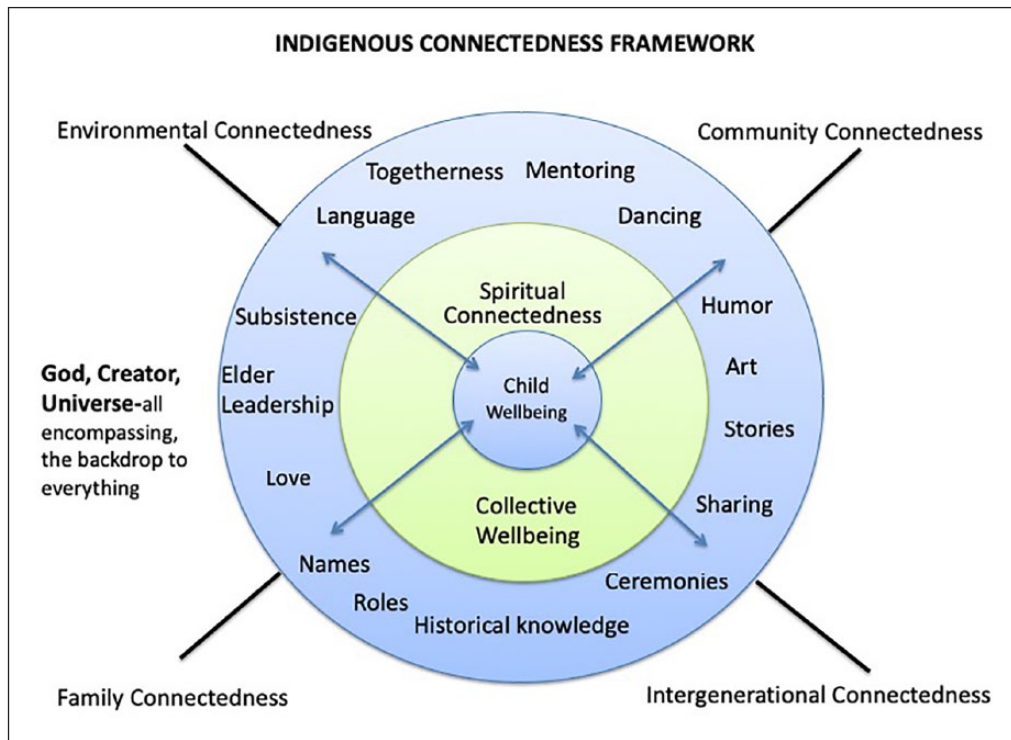


Figure 2. Indigenous Connectedness Framework.

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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