



The First 90 Days: ICWA and Achieving True Permanence. *Inquiry and Notice*

Wrap-up

*Standards
&
Practice*

*Overview
of the
basics*

*Getting
Started*

*California
Tribal
Families
Coalition*

CTFC

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

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

Presenters

***The
Report***



CALIFORNIA
ICWA
COMPLIANCE
TASK FORCE

REPORT TO THE
CALIFORNIA ATTORNEY GENERAL'S
BUREAU OF CHILDREN'S JUSTICE
2017

Presenters

Geneva Shaw, MSW, is a Social Work Dept. faculty member at Humboldt State University. She has 12+ years experience as an administrator, direct practitioner, and technical assistance provider of social work in Tribal communities including 6 years with the Yurok Tribe developing, implementing, and reporting on many state and federally funded programs including Indian Child Welfare and Title IV-E. She is a Hoopa tribal member and Karuk/Yurok/Apache decent.

Kimberly Cluff, JD, has worked exclusively in the field of Indian law including advocacy and litigation connected to tribal economic development, Indian Child Welfare, domestic violence, strengthening tribal governance and tribal ordinance development. Ms. Cluff also extends her advocacy to legislative efforts, for example spearheading the California Tribal Customary Adoption Act.

Permanence in the context of this Training

Permanency, as used in the context of the The Pursuit of Permanency: The First 90 Days training, means permanent connections for children and youth.

This can be in the form of reunification or finding another permanent home and includes connections to the child's biological family, neighborhood, or culture.


This training presents information, strategies, and concepts that, if pursued during the first 90 days of a child welfare case, may positively impact permanency efforts and outcomes.

Goals for this Webinar

Additional Concepts to Get Started

Let's see what we know...

How did we get here?



***ICWA, Child Welfare
Practice in the 1st
90 days and
Permanence***

1. Minimum Federal & State Standards
in the first 90 Days

2. Practice

3. Permanence

Permanency

*A Few Concepts to
Get Us Started*

Cornerstone


*ICWA as
Gold
Standard*



The Cornerstone Concept in a Tribal Worldview

Cornerstone:
Placement-Conference-Services-Visits

Cornerstone in a Tribal Construct might
add Culture and other elements to reflect
a uniquely Tribal worldview.



ICWA has been labeled the “gold standard” in child welfare policy and practice by a coalition of 18 national child advocacy organizations.

Permanency

“Permanency is not a philosophical process, a plan, or a foster care placement, nor is it...a relationship that lasts only until the child turns age 18. Permanence should bring physical, legal and emotional safety and security within the context of a family relationship and allow multiple relationships with a variety of caring adults.” --Gerald P. Mallon, D.S.W., at The Hunter College of Social Work, New York.

*To understand where
we are we going, we
have to look at where
we have been...*

- 1840's-1870's - State Sanctioned California Genocide
- 1880's-1960 -Indian Boarding Schools & Forced Assimilation
- 1950's - Federal Termination policy & Indian Adoption Project.
- 1978 - Passage of the Indian Child Welfare Act (ICWA)



**ICWA
Statute**



In the late 70's Congress heard:
Removal rate of approximately 25-35% for
Indian children and the bad outcomes for
removed children

The Congressional history states *"[t]he
wholesale separation of Indian children from
their families is perhaps the most tragic and
destructive aspect of American Indian life
today."*

Solution: Different laws for Indian
Children=ICWA, Passed October 1978

True and False

- 1.) ICWA can only ever apply if a child is currently an enrolled member of a Federally Recognized Tribe.
- 2.) If the tribe chooses to not intervene, ICWA does not apply to that case.
- 3.) If a Tribe is contacted by phone and the respondent states on the phone the child is not a member of the Tribe, adequate legal Notice has been given.
- 4.) Notice to the Tribe must be given at detention if possible, but is not required earlier.
- 5.) Reason to Know vs. Reason to Believe= they are legally the same and do not require any differences in process.



The Minimum Federal Standards and California State Standards

The Congress trying to solve
the problems they heard in
1978

INQUIRY

NOTICE

*The Tricky
Part*

Inquiry

Is the child an Indian Child under the law? You cannot know if you do not inquire. But steps of inquiry are very specific and detailed.

WIC 224.2,
Task Force Report Page 26

***A bit
deeper...***

***Indian
Child***

***Initial
Inquiry***

***Further
Inquiry***

Definition of an Indian Child

An unmarried person who is under the age of 18 and is either:

- A member of a federally-recognized tribe,
- Eligible for membership in a federally-recognized tribe and is the biological child of a member of a federally-recognized tribe.

Formal enrollment in a tribe is not required

Intial Inquiry

Affirmative duty to inquire at the soonest possible moment- Think Hotline!

This is an on-going responsibility of the County and the Court.

Who gets asked, how: and when? Tribal Social Worker, Child, Guardian, Indian Custodians ("IC"), extended family, reporting party.

NOTE: Inquiry requirements are different in California & continue to evolve.

Reason to Know vs. Reason to Believe

An area that Court's wrestling with...

What needs to be provided by the parents, extended family, the inquiry, to bump Reason to Believe up to Reason to Know?

The criteria in 224.2

Further Inquiry

- 1.) If reason to believe the child is an Indian child everyone "shall make **further inquiry**" ...as soon as practicable"
- 2.) **Multiple steps** for "further inquiry" including: Interviewing parents, Indian Custodians, extended family, tribe.
- 3.) Once there is Reason to Know child is an Indian Child, County must prove **Due Diligence** to verify child's status.
- 4.) The Court can find after due diligence that child is NOT an Indian Child, not at discretion of County.
- 4.) Child is treated as an Indian Child until confirmation that not an Indian Child.

Amended Section 224.2 of the Welfare and Institutions Code reads:

224.2. (a) The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300, 601, or 602 may be or has been filed, is or may be an Indian child. The duty to inquire begins with the initial contact, including, but not limited to, asking the party reporting child abuse or neglect whether the party has any information that the child may be an Indian child.

PLUS A WHOLE LOT MORE.....

NOTICE

If inquiry results in reason to know the child is an Indian Child, tribes must be given formal notice.

The contents of Formal Notice and the form of that notice are very specific.

W&I 224.3. Task Force Report p.30

*What if Tribe gets notice, replies affirmatively regarding Tribal Child and does nothing more? Does ICWA apply?

*Does reason
to believe
"informal"
inquiry affect
Notice?*

"Hi, I am a social worker from X County, we have reason to believe this baby a Tribal Member, so???"

Do I as a tribal rep waive tribal rights if I answer?

Abbreviated Step by Step - WIC 224.2

TEMPORAL:

- 1.) Inquiry must happen as soon as possible: e.g. Before petition or on hotline.
- 2.) For every case at petition or even considering a petition, placed or at first hearing there is an affirmative duty to inquire if "is or may be an Indian Child"
- 3.) In court: Court shall ask if each participant know or have reason to know

FACTUAL:

- 1.) How do we "know or have reason to know"? There is a list to guide.
- 2.) Even if don't "know or have reason to know" but have lesser "reason to believe" this triggers further inquiry.
- 3.) If in further inquiry b/c of reason to believe, must do three types of Due Diligence: Interview, govt contacts and informal reach out to Tribe.

IF= REASON TO KNOW BUT NO CONFIRMATION, PRESUMPTION IS ICWA
APPLIES

***How do we apply
the legal standards
to Best Practice
Social Work?***



Inquiry

Notice

Inquiry

When does inquiry begin? Does the county know who they should be contacting for Inquiry purposes with tribes and the most efficient/preferred form of communication?

Advocacy Tip: Tribal Contact Info Sheet. Desk guides for Hotline and ER workers

Notice

Notice to tribes must contain enough identifying info to be meaningful.

Advocacy Tip: Is the info presented in Notice meaningful identifying info?
Engage in feedback loops - The tribe can provide input on what is adequate noticing info and what the county should be asking/including.

Thank you!

***What did
we learn?***

***Lots to
remember
!***



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Let's revisit the True False Questions

- 1.) ICWA can only ever apply if a child is currently an enrolled member of a Federally Recognized Tribe. **FALSE**
- 2.) If the tribe chooses to not intervene, ICWA does not apply to that case. **FALSE**
- 3.) If a Tribe is contacted by phone and the respondent states on the phone the child is not a member of the Tribe, adequate legal Notice has been given. **FALSE**
- 4.) Notice to the Tribe must be given at detention if possible, but is not required earlier. **FALSE**
- 5.) Reason to Know vs. Reason to Believe are legally the same & do not require any differences in process. **FALSE**



That's a whole lot of information....

There are so many excellent resources for you out there that help navigate the Minimum Federal Standards. You do not have to memorize them! For example, the Judicial Council of California has a 4 page summary. Always be sure the resources are up to date!



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