

Broken Links in Native Families

The Basis and Need for ICWA

WrapAround
Certification Training

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Learning Objectives

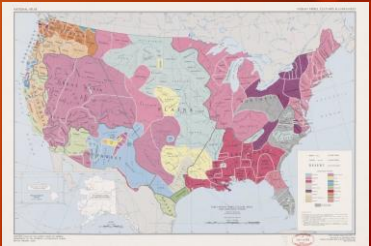
- Connection of Government Acts and Policies to the broken links within the Native American Family
- Ultimately - *The Spirit of ICWA*
- The Indian Child Welfare Act
 - Who and When does it apply
 - Enrollment and Blood Quantum
 - Child Welfare in Practice



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The Roots: Pre-Colonial Indigenous Life

The original lands and territories of tribes Indigenous to the United States



Sturdevant, W. C. & Geological Survey of S. 1964 / National atlas. Indian tribes, cultures & languages. United States. Reston, Virginia: U.S. Geological Survey, 1964.



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The Roots: Pre-Colonial Indigenous Life

1. What did this place where we all call home look like before it was America?
2. How many First Nations people were here when Europeans arrived?
3. What did the family look like?



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Early European Views of Indigenous People

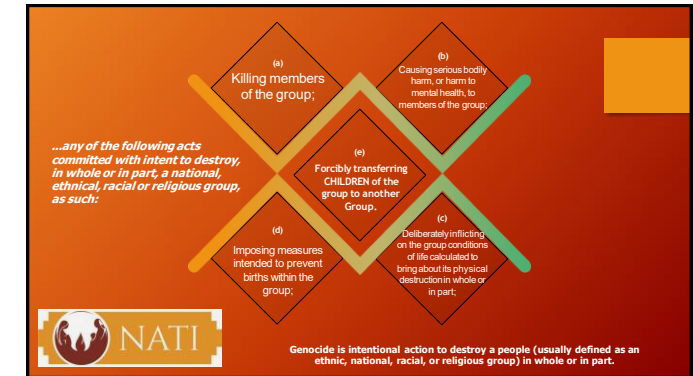
“European men viewed the lavishly affectionate and seemingly permissive treatment of Indian children as invitations to anarchy”

“children were shown much affection by their relatives, and punishing children by beating them was not part of their culture before Europeans taught them otherwise.”



Becoming Americans: Our Struggle to Be Both Free and Equal

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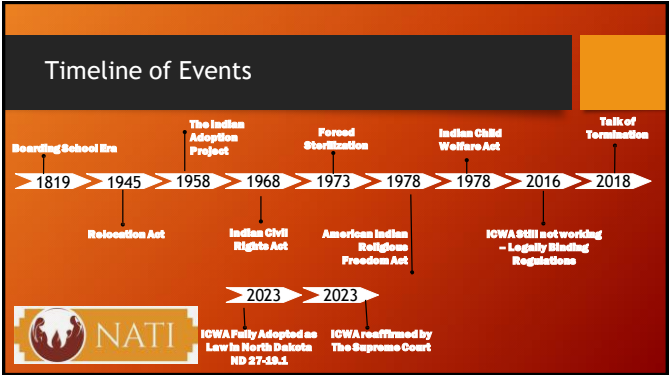
Meriam Report 1928

Commissioned by Secretary of the Interior Department

- Condemned schools' deficient diet
- Condemned overcrowded dorms
- Substandard medical service
- Overworking of students
- Reported systematic kidnapping of Indian children by school officials



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- 1924 - Indian Citizenship Act: US Congress allowed Native Americans to become citizens of the United States.
- 1934 - Indian Reorganization Act
- 1965 - Voting Rights Act: Native Americans can vote.
- 1968 - Indian Civil Rights Act: Free speech, right to a jury, protection from search and seizure.
- 1978 - American Indian Religious Freedom Act
- 1978 - Indian Child Welfare Act



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Boarding/Residential Schools





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The Spirit of ICWA





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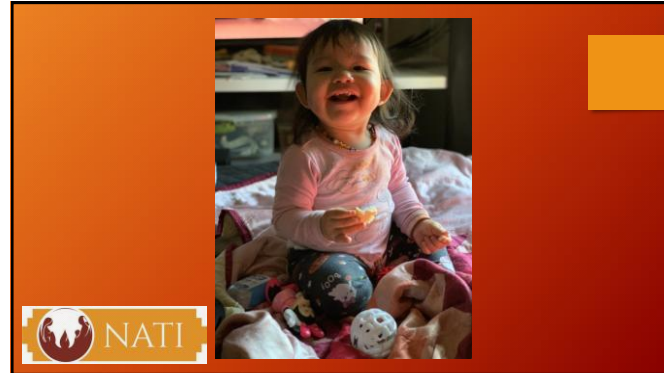
Who does this apply to?

An **Indian child** means any **unmarried** person who is **under age 18** and either:

- 1) Is a member or citizen of an Indian Tribe; or
- 2) Is **eligible** for membership or citizenship in an Indian Tribe **AND** is the **biological child** of a member/citizen of an Indian Tribe.



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The "Reason to Know"

- Any participant
 - court officer, Indian tribe, organization, or agency **DISCOVERS** and **INFORMS** the court the child is an Indian Child.
- The child, parent, relative, guardian, etc. reports the child is an Indian Child.
- The Domicile or Residence of the child is on a reservation.
- The child is a ward of a Tribal court.
- The parent or the child possess a Tribal Identification card or document.



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When does ICWA Apply?

- ICWA applies whenever an Indian child is the subject of
- Child-custody proceeding
 - When there is a need for out-of-home placement of the child, including
 - Foster-care placements (including guardianships)
 - Pre-adoptive placements
 - Adoptive placements
 - Termination of parental rights and
 - Emergency proceedings



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When ICWA **DOES NOT** Apply

- Divorce Proceedings in which custody is being disputed.
- Juvenile Delinquency Proceedings (if the primary reason for out of home placement does not include a deprivation issue and the crime would be a crime if committed as an adult.)
- Cases under Tribal Jurisdiction



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Verification of Citizenship

- Tribes, as sovereign governments, have the exclusive authority to determine their political citizenship and their eligibility requirements.
- A Tribe is, therefore, the authoritative and best source of information regarding who is a citizen (or member) of that Tribe and who is eligible for citizenship of that Tribe.
- Thus, the rule defers to Tribes in making determinations that a court may not substitute its own determination for that of a Tribe regarding a child's citizenship or eligibility for citizenship in a Tribe.



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Emergency Proceeding - Emergency Removal

Emergency proceeding means and includes any court action that involves an emergency removal or emergency placement of an Indian child.

Threshold for Removal

...necessary to prevent imminent/impending physical damage or harm to the child



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Imminent/Impending Danger Threshold for removal

- Typical considerations to find imminent danger include:
 - Circumstances in which the child is immediately threatened with harm," including when there is an immediate threat to the safety of the child,
 - When a young child is left without care or adequate supervision, or
 - Where there is evidence of serious ongoing abuse, and reason to fear imminent recurrence.



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Termination of Emergency Proceedings

An emergency proceeding can be terminated by one or more of the following actions:

1. Initiation of a child-custody proceeding subject to the provisions of ICWA;
2. Transfer of the child to the jurisdiction of the appropriate Indian Tribe; or
3. Restoring the child to the parent or Indian custodian.



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Jurisdiction

Exclusive Tribal Jurisdiction:

1. The Indian Child resides or is domiciled on Tribal Lands.

Case Management: Determine residence and domicile of the family (length of time away and intent to return).

2. The Child is a ward of a tribal court.

Case Management: Contact tribal court to determine whether they are a ward of the court.

If either of these applies the case must be officially transferred to the appropriate tribal court. All information relevant to the proceeding must be sent



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Jurisdiction

Transferring Jurisdiction

- The Tribe, the Parent, or the Indian Custodian can request a proceeding to be transferred to Tribal court.
- A transfer can be requested at all proceedings: emergency, foster care, termination, or any proceeding in between.

Transfer will NOT occur if:

- Either parent objects to the transfer.
- Tribal Court decides to not assume jurisdiction.
- "Good Cause" is determined to exist. State Court can deny transfer.



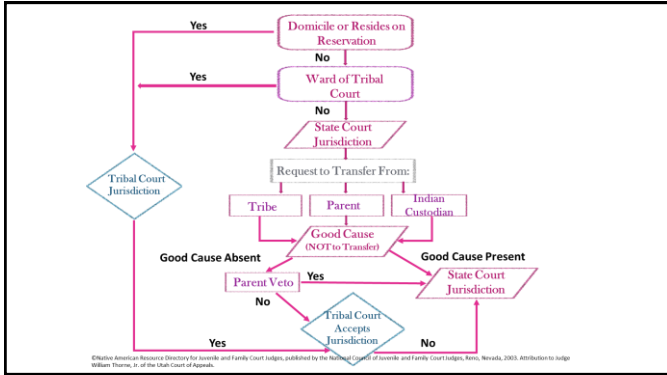
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Jurisdiction - What is NOT Good Cause

Stage	• A case is at an advanced stage. Provided Notice was received late.
History	• A lack of a request for transfer in prior proceedings.
Placement	• The transfer will affect the placement of the child.
Connections	• The child's existing cultural connections with the tribe or the reservation.
Bias	• Socioeconomic conditions or any negative perception of Tribal or BIA social services or judicial systems.



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ICWA Preferred Placements

Foster Care & Pre-Adoptive

Family
A member of the Indian child's extended family;

Tribe Directed
A foster home that is licensed, approved, or specified by the Indian child's Tribe;

Indian
An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

Special Needs
An institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

*When appropriate the Court must consider the placement preferences of the Indian Child and/or the Child's parents.

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ICWA Preferred Placement

Least Restrictive Setting

Family
Most approximates a family, taking into consideration sibling attachment;

Special Needs
Allows the Indian child's special needs (if any) to be met; and

Proximity
Is in reasonable proximity to the Indian child's home, extended family, or siblings.

Adoption
A member of the Child's extended family;
Other members of the Indian Child's Tribe; or
Other Indian families.

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Departing from Placement Preferences:
Limits

Money

- A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.

Bonding

- A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.



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Meaning of Active Efforts

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

Guidelines

1. A protection against unwarranted removal and/or quick reunification
2. The focus is on the quality of the actions
3. These efforts will vary according to family needs
4. Courts have the discretion to consider all the info



Note

Active efforts must begin at the moment of threat to removal. This includes the assessment and provision of family services. AND are to be done if there is a reason to believe the child may be an Indian child; until it is so determined on the court record that the child is NOT an Indian child.

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CPS Active Efforts

What active Efforts should be applied when an emergency removal happens?

- Is there anyone the parent(s) can identify to take their children.
- Involve the tribe, as soon as there is reason to know.
- Complete genogram with family at offset to identify kin and supports.
- Connect with culturally relevant services to prevent removal - active efforts start before custody.
- Remember parents cannot opt out of ICWA.
- Continual assessment of the family to provide reunification as soon as imminent/impending danger or risk has been eliminated.



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Active Effort Focus Areas

1) A comprehensive assessment with a clear focus on maintaining or reunifying the family.

2) Identifying appropriate services and barriers.

3) Working with tribal representatives to provide services and support.

4) Diligently searching for extended family and identifying in what ways support can be offered to the family.

5) Culturally appropriate family preservation strategies.

6) Keeping siblings together or in contact.

7) Considering safety, visitation must be frequent and occur in the most natural setting possible.

8) Frequent monitoring of progress and participation in services.

9) Ensure the family has access to and is utilizing all local services.

10) Think outside of the box!!

11) Post reunification services and monitoring.



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Providing active efforts

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

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

Guidelines

- Earliest Point Possible - CPS, In-Home and Foster Care
- Both parents must be considered.
- Court must monitor compliance.
- How long to provide active efforts?
- A child only needs to be ICWA eligible.



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Questions?

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