

Active Efforts Principles & Expectations

Oregon Tribes

**Oregon Judicial Department Citizen
Review Board**

Oregon Department of Human Services

Purpose of ICWA

- Prevent the unwarranted removal of Indian children due to cultural bias or ignorance
- Assure children who were removed maintain affiliation with their culture and tribe
- Maximize tribal decision-making

Civilization Act, early 1800s

- The act intended to “civilize” and “Christianize” Indians



- “It is admitted by most people that the adult savage is not susceptible to the influence of civilization, and we must therefore turn to his children, that they might be taught how to abandon the pathway of barbarism and walk with a sure step along the pleasant highway of christian civilization. . . . They must be withdrawn, in their tender years, entirely from the camp and taught to eat, to sleep, to dress, to play, to work and to think after the manner of the white man.





PHOTOGRAPH BY U.S. ARMY SIGNAL CORPS,
COURTESY OF THE ARIZONA HISTORICAL FOUNDATION



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Dawes Allotment Act, 1887

- Indian land divided up in effort to turn Indians into nuclear families and farmers
- Introduction of “blood quantum” concept of tribal enrollment



Indian Child Welfare Act Mandates

- 25 U.S.C Section 1902

“The congress hereby declares that it is the policy of this nation to protect the best interest of Indian children and to promote the stability and security of Indian Tribes and families.”



What does this mean?

- DHS must make **active efforts** to provide remedial services and rehabilitative programs designed to **prevent** the breakup of the Indian family and satisfy the court that these efforts have proved unsuccessful.
- Does not supersede emergency removal
- Requires factual evidence that the conduct or condition of the parent(s) will result in **serious physical or emotional harm** to the child

- Active efforts are also required **AFTER** a child has been placed in substitute care to reunify an Indian child with his or her parent or Indian custodian.
- The Active efforts Principles and Expectations document directly applies to the active efforts required to provide services to allow a child to safely return home. It should **not** be read as a definition of active efforts. It is a training tool and guideline.
- The Adoption and Safe Families Act (ASFA) does not supersede the Indian Child Welfare Act (ICWA). States are required to comply with both.

Efforts to Be Measured Against These Goals

- Commitment to the requirement and the *spirit* of ICWA
- Early tribal contact and active engagement
- More vigorous and higher level of effort – Casework which goes BEYOND reasonable

Always

Using methods and providing
Services that are culturally
appropriate.

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.
- Request training from tribal resources.
- Connect a child and family with their tribe and local Native American resources regardless of tribal affiliation.



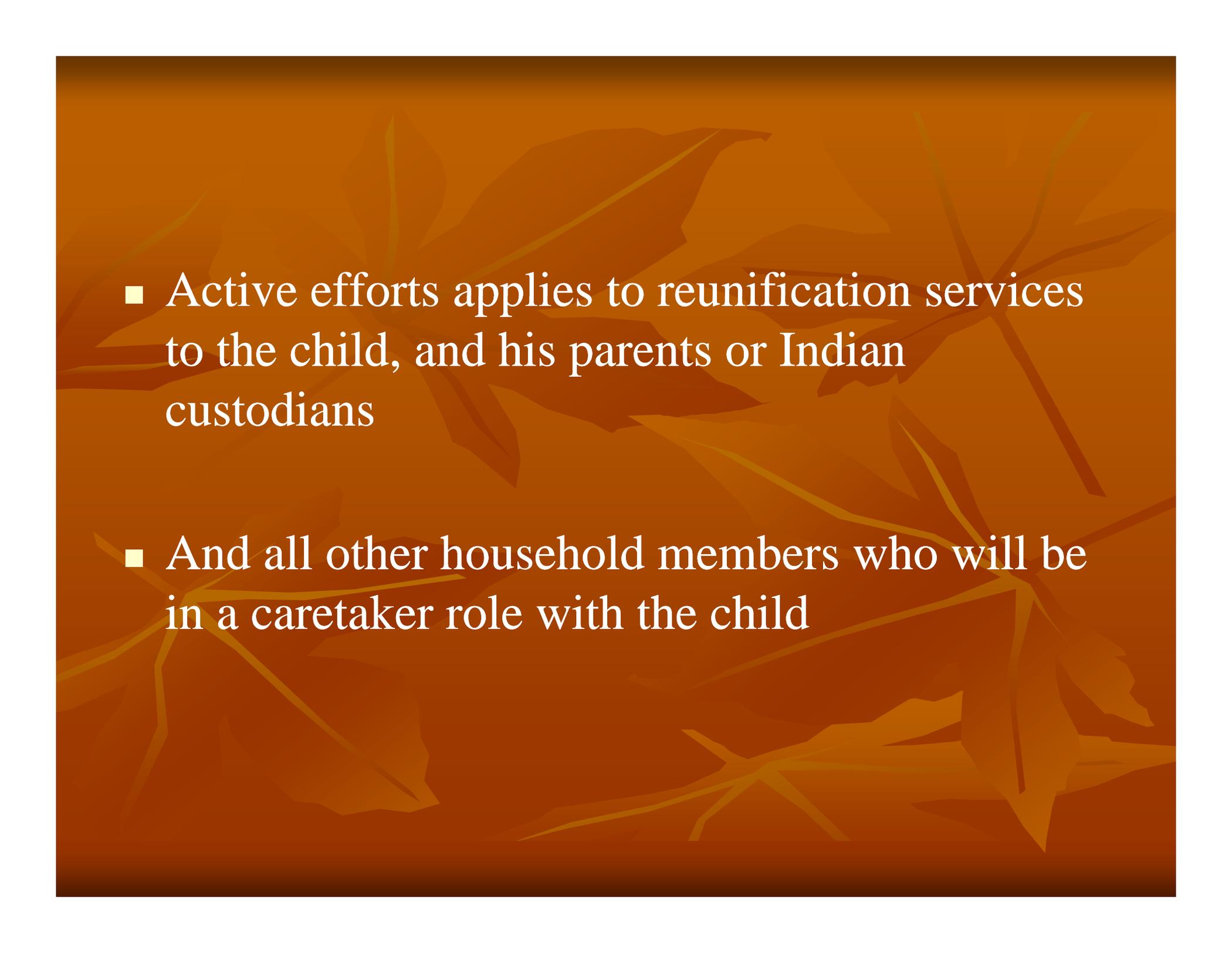
Application

ORS 419B.878

- Requires the court to inquire whether the child is an Indian child subject to the ICWA
- If court has reason to know that an Indian child is involved, the court shall enter an order requiring DHS to notify the tribe and inform them of their right to intervene, and
- Enter an order that the case be treated as an ICWA case until the court determines that it is not.

Determining Active Efforts

- Only the services and activities that affect the reunification plan are evaluated in determining active efforts. (the child, biological parents and Indian custodians/ guardians)
- The adequacy of services is judged by their appropriateness in addressing the needs that caused the child(ren) to be removed.

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- Active efforts applies to reunification services to the child, and his parents or Indian custodians
 - And all other household members who will be in a caretaker role with the child

Reasonable Efforts

- Referring to services – typical AA regime
- Providing a list of required services
- Managing a case
- Meeting requirements set by policy

Active Efforts

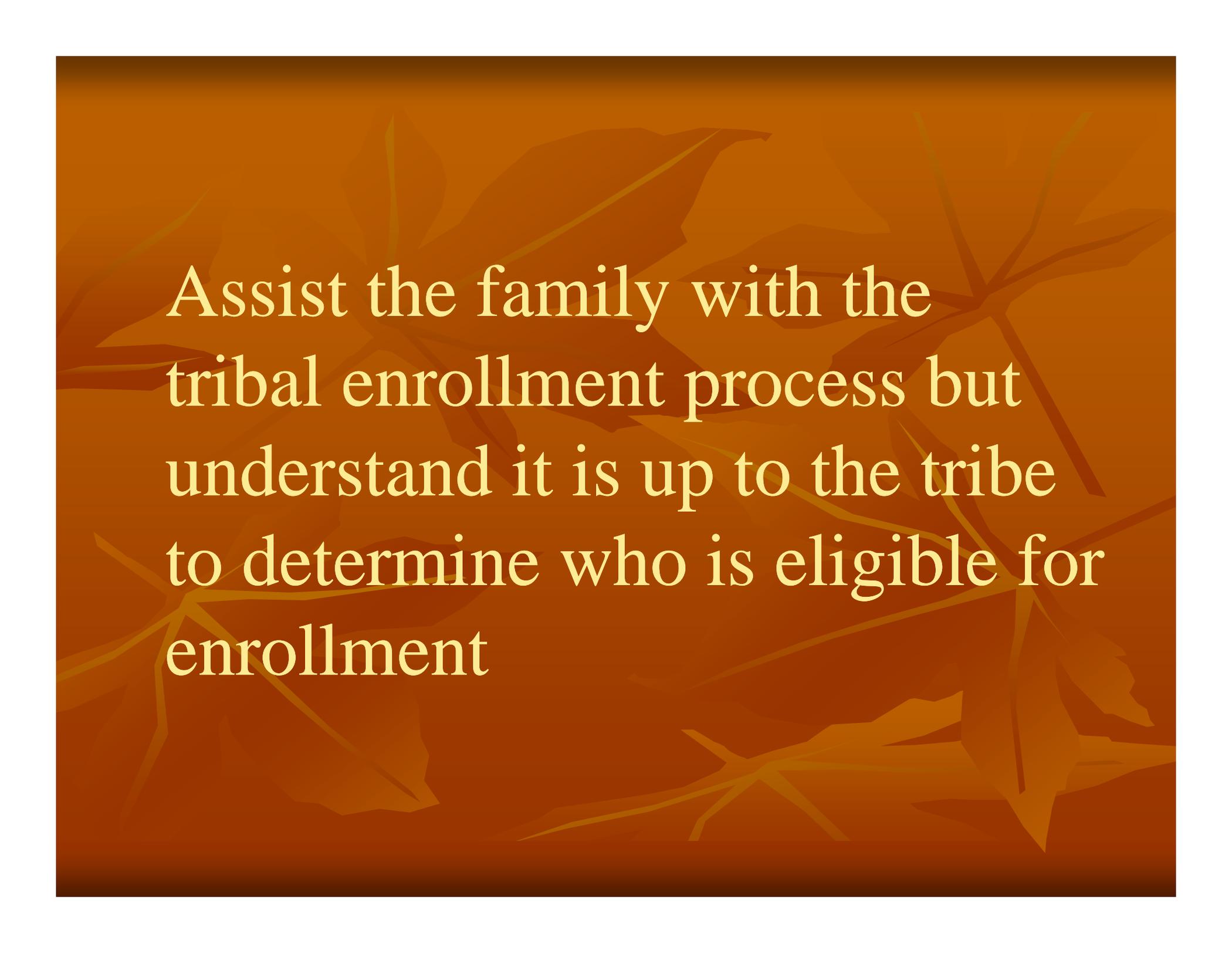
- Referral to tribal elders for services – Affirmatively assisting to
 - access food, medical treatment, safe housing, emergency phone service, day care
- Providing transportation to required services
 - Round trip bus tickets
- Proactively engaging the family and the child's tribe
- Meeting individual needs of the child and family

Who is an Indian child?

- The child must be
 - unmarried, under 18.
 - a member of a federally recognized Indian tribe or eligible for membership in a tribe and biological child of a member of an Indian tribe.
 - inquiry of Indian status must be made by the petitioning party if there is reason to believe a child is Indian.

Making the Inquiry

- Conduct a proper inquiry in every case at the front end and continue to ask throughout the case.
- It is sometimes helpful to make statements rather than ask questions
 - “if you are AI/AN or believe you may be affiliated with a tribe, there are additional services that are available to you.”
- The family historian may yield a wealth of information.
- Knowing about the geographic areas of ancestral homes and where contemporary relatives are living can be helpful.
- Have family members ever utilized Native services

The background of the slide features a pattern of overlapping autumn leaves in various shades of brown and orange, set against a darker brown gradient background.

Assist the family with the tribal enrollment process but understand it is up to the tribe to determine who is eligible for enrollment



Principles

- Active, Early participation and consultation with the child's Tribe in all planning decisions
 - Each Tribe has its own expectations for Active Efforts
 - Were immediate efforts made to contact the tribe or Indian relatives at the time the child was removed from the home? –CFSR ICWA Review
 - Shall also involve and use the available resources of the extended family, the tribe, Indian social services and individual Indian caregivers –BIA Guidelines
- Active efforts cannot be excused under state law definitions for aggravated circumstances or extreme conduct.
- Active Effort determinations apply to the entire time period covered by the CRB or court review.

- DHS must make active efforts to **provide/offer** services to make it possible for the child to safely return home **prior to adjudication** of the petition
- If DHS has made the effort to provide a service and another person or entity has not fulfilled their responsibility to provide the service, the active efforts finding should be made **based on DHS's effort** to provide the service in a more creative manner
- Utilizing Family Decision models (FDM), or other **culturally-relevant approaches**, to create unique family specific service plans.

- The Child's Tribe should be kept informed of the status of the case on an ongoing basis regardless of whether the child's Tribe chooses to intervene or not.
- If services are not readily accessible, DHS should make active efforts to develop, modify and coordinate services to address the basis of jurisdiction
- Documentation of all casework activity is important

Expectations

- All legal parties must be identified early in the case.
 - Case plans shall bear a rational relationship to the jurisdictional findings of the court.
- A 1270 shall be completed by all persons with custodial or parental rights to a child.
 - CFSR ICWA review form requires
 - If a specific Tribe has been named, the child's Tribe should be contacted within 24 hours. Document efforts made to contact the tribe!

- In order to retain an Indian child in foster care the court must make a determination supported by **clear and convincing evidence**, and testimony of an expert witness that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical injury to the child.
 - The child's Tribe should be consulted as to the selection of the expert witness.
- Absent parent searches shall be conducted and documented in a timely manner.



- All Tribal or ICWA placement preferences shall be followed unless documented good cause to the contrary exists.
 - Member of the child's extended family
 - A foster home licensed or approved by the child's tribe
 - An Indian foster home licensed or approved by DHS; or
 - An institution approved by a tribe or operated by an Indian organization that can meet the child's needs
- Consultation with the child's Tribe is critical.

- DHS shall consider the use of a family decision meeting in each case in which the child is placed in substitute care
 - The Tribe should receive notice and be consulted as to potential invitees.
 - DHS shall incorporate the plan developed at the FDM into the case plan to the extent it protects the child, builds on family strengths and is focused on permanency for the child within a reasonable time.



- **All plans** - initial service plans, visitation plans, service agreements/letters of expectation should be developed in conjunction with the Tribe. Simply mailing them to the Tribe will not be considered active efforts.
- A service agreement or letter of expectation should be done in consultation with the child's tribe
 - Mere referrals to , and monetary expenditures for services will not constitute an active efforts finding.

- A culturally appropriate assessment of the child's treatment needs should be completed within 60 days of placement.
- Workers shall make and document efforts to expedite receipt of assessment results.
- Active efforts includes more frequent contacts above and beyond policy requirements for face-to-face contact with the family, the child and the provider.

EVIDENCE BASED PRACTICES

- 267 funding only for evidence based
- Native Americans have no studies
- Different Values, Traditions and beliefs
- Tribal Best Practices
- Sweats, Positive Indian Parenting, Canoe Journey, Back to the Boards.....etc..



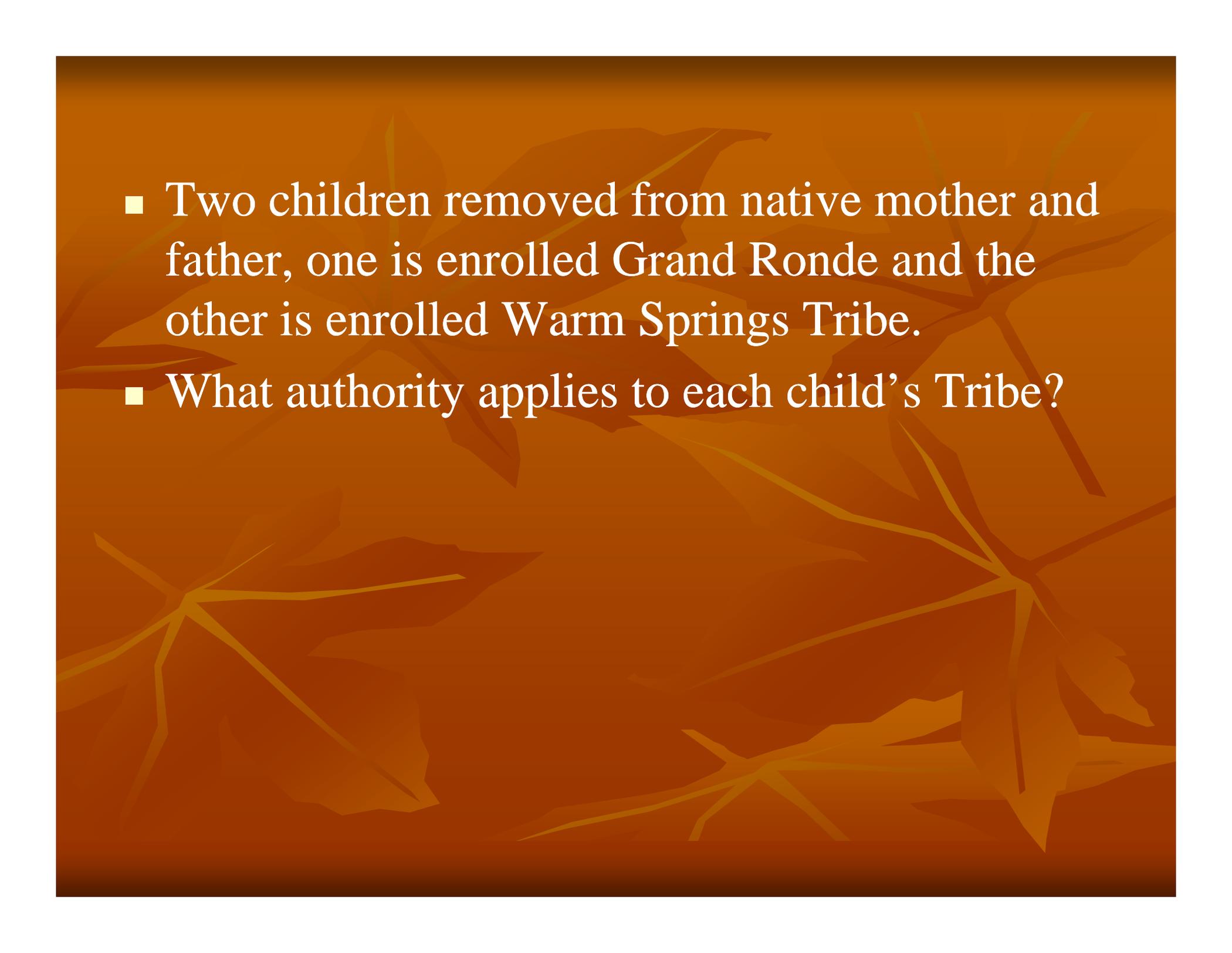
Case Scenarios

- Mother reports the child's father is enrolled with the Yakima tribe and that she also has Native American Heritage. She chose not to be enrolled and prefers that her children be placed with her relatives.

- Parents have not followed through with D/A and anger management. Father relays he's been sober for 6 months and regularly attends AA. Psychologist says children are mute, unable to relate and unable to complete simple tasks. One is hyperactive. Parents have come to therapy only once. Agency wants to change plan to adoption in the non-native home they are living in and appear to be bonding with.

- Mother and boyfriend go to Reno “for the weekend” and leave child with boyfriend’s mother. After 3 weeks she calls DHS and says she can’t keep child any longer. She tells worker that the child’s parents are members of the Umatilla tribe.
- Child is placed in an non Indian home. A week later mother comes back and discovers child is in care.

- Psychologist reports that the potential adoptive parents are fit parents and the child is bonded to them, but believes placing child with a non-Indian family (while it might meet the child's short term interest) will put the child at risk for difficulties later in life.

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- The background of the slide is a solid dark brown color with a pattern of lighter brown, stylized autumn leaves scattered across it. The leaves have prominent veins and are in various orientations, some overlapping. The overall aesthetic is warm and seasonal.
- Two children removed from native mother and father, one is enrolled Grand Ronde and the other is enrolled Warm Springs Tribe.
 - What authority applies to each child's Tribe?