

TRIBAL & STATE COURT JUDGES CONVENING

Chemeketa Eola Viticulture Center

AUGUST 12, 2015 ❖ 8:45 – 3:30

AGENDA

8:00 – 8:45 NETWORKING BREAKFAST & CHECK IN

8:45 - WELCOME

- **Judge Lisa Lomas** - Confederated Tribes of Warm Springs

OPENING CEREMONY

- **Radine Johnson**, Tribal Youth Coordinator, Confederated Tribes of Warm Springs

BACKGROUND & GOALS FOR THE DAY

- **Justice Martha Walters** – Oregon Supreme Court

INTRODUCTIONS - IMPROMPTU NETWORKING

- **Leola McKenzie**, Director, Juvenile & Family Court Programs Division, OJD

THE IMPORTANCE OF JUDICIAL LEADERSHIP & COLLABORATION (Moderator - Shary Mason)

- **Judge William A. Thorne**, Utah Court of Appeals, Retired

BREAK

ICWA PANEL (Moderator - Todd Albert)

- **Adrian Smith** JD, MSW, Government Affairs Associate, National Indian Child Welfare Association
- **Kathryn M. Hansen**, Deputy District Attorney, Umatilla, Oregon

VAWA PANEL (Moderator - Judge Michael Newman)

- **Stephanie L Striffler**, Senior AAG/ Native American Affairs Coordinator, Oregon Department of Justice
- **Howard Arnett**, Attorney at Law, Karnoff Petersen LLP

OTHER STATES COLLABORATIVE EFFORTS (Moderator - Shary Mason)

- ✓ Accomplishments/ Outcomes/Results/ System Improvements
 - **Judge Thorne**
 - **Heather Valdez Singleton**, Program Director, Tribal Law & Policy Institute

12:15 – 1:00 LUNCH

OTHER STATES COLLABORATIVE EFFORTS (continued)

- ✓ Strategies & process for developing and sustaining collaborative relationships
 - Judge Thorne
 - Heather Valdez Singleton

FUTURE PLANNING DISCUSSION

- ✓ How do we promote and continue –the discussions?
- ✓ What additional discussions should we be having?
- ✓ How do we communicate effectively?
 - Leola McKenzie
 - Judge Thorne

WRAP UP & NEXT STEPS

- Justice Martha Walters
- Judge Lisa Lomas

CLOSING CEREMONY

- Radine Johnson

TRIBAL & STATE COURT JUDGES CONVENING – PLANNING COMMITTEE	
Judge Lisa Lomas (Confederated Tribes of Warm Springs), Co-Chair	Todd Albert (Assistant Legal Counsel, Oregon Judicial Department)
Judge Michael Newman (Josephine County Circuit Court)	Craig Dorsay (Attorney)
Judge Ronald Pahl (Umatilla County Circuit Court)	Sheldon Spotted Elk (Casey Family Programs-Indian Child Welfare)
Judge David Shaw (Confederated Tribes of Grand Ronde),	Sheri Freemon (Senior Director, Casey Family Programs)
Justice William A. Thorne, Jr. , Retired	Shary Mason (JCIP Model Court & Training Analyst)
Justice Martha Walters, (Oregon Supreme Court) Co-Chair	Leola McKenzie (Director, Juvenile & Family Court Programs Division)
Judge JD Williams (Confederated Tribes of Coos, Lower Umpqua, Siuslaw Indians)	Heather Valdez Singleton (Program Director Tribal Law and Policy Institute)



Burns Paiute Tribe

The Burns Paiute Reservation is located north of Burns, Oregon in Harney County. The current tribal members are primarily the descendants of the "Wadatika" band of Paiute Indians that roamed in central and southern Oregon.

History:

The Burns Paiute Tribe descended from the Wadatika band, named after the wada seeds they collected near the shores of Malheur Lake to use as food. Bands were usually named after an important food source in their area. The Wadatika's territory included approximately 52,500 square miles between the Cascade Mountain Range in central Oregon and the Payette Valley north of Boise, Idaho. In the 1860s the Burns Paiute people were given the Malheur Reservation, but that land was later rescinded by the government and made into public domain. The Paiute people were forced off of the Malheur Reservation and were scattered throughout the area.

In 1935, 760 acres was purchased by the Burns Paiute people with a loan provided by the National Industrial Recovery Act; this land is held in trust by the U.S. government for the Burns Paiute Tribe. The Constitution and Bylaws of the tribe were written in 1968, and in 1972 the Burns Paiute were recognized as an independent Indian Tribe.

Tribal Government:

The standard business of the tribe is conducted by the seven-member Tribal Council, which includes a chairperson and a vice-chairperson. The tribal government includes nine departments and various committees. The departments provide essential services to the community and uphold tribal interests when working with state and federal agencies. Tribal committees, groups of community members appointed by the Tribal Council, advise, oversee, and are responsible for some of the important aspects of the tribe's organization.

Tribal Court:

The Burns Paiute Tribe provides Tribal Court Services on the Burns Paiute Reservation that protect the community from harm and guarantee the rights of individual Native Americans.

Program functions are: to maintain a Tribal Court System utilizing Tribal Laws and Ordinances adopted by the Burns Paiute Tribe; to provide efficient resolution of violations of tribal law disputes; to interpret tribal laws within a court system that focuses on rehabilitation in addition to

punishment of offenders; to adjudicate violations of tribal laws and disputes in an atmosphere free from influences through consistent decisions based upon the merits and facts of each case brought before Tribal Court; and to make available to plaintiffs and defendants a Court of Appeals as stated in the Tribal Code.

The Tribal Court has a Tribal Prosecutor to advise the Court and to represent the Tribe either as plaintiff or defendant.

Contact Information:

<p>Tribal Judge: Mark Kemp mmkemp2001@yahoo.com</p> <p>Court Administrator/Clerk: Linda Beaver linda.beaver@burnspaiute-nsn.gov</p> <p>100 Pasigo Street Burns, OR 97720 Tel: 541-573-2793 Fax: 541-573-3854</p>	<p>Burns Paiute Tribe 100 Pasigo St. Burns, OR 97720 Tel: 541-573-1910 Fax: 541-573-2012</p>
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Tribal Services:

The Education Department works to help students of all ages stay in school. The Health Department provides the community with health care and social services. Other departments handle environmental and energy issues, lease compliance for all the allotments and tribal lands, mitigation for fish and wildlife, cultural preservation and enhancement, law enforcement, and maintenance. There are also committees on culture, housing, social services, and annual events, such as the Language Gathering and Reservation Day Pow Wow, among others.

Information courtesy of Burns Paiute Tribe website (www.burnspaiute-nsn.gov).



Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians

The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians are made up of 3 tribes (4 Bands): 2 bands of Coos Tribes: Hanis Coos (Coos Proper) and Miluk Coos, Lower Umpqua Tribe, and Siuslaw Tribe.

History:

The Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians trace their ancestry back to the aboriginal inhabitants of the South-Central coast of Oregon. Their historic homelands extended from the Coastal Range in the East to the shoreline of the Pacific Ocean in the West, a vast region of some 1.6 million acres.

The Coos, Lower Umpqua and Siuslaw Indians maintained peaceful relations with settlers. In 1855, four years before Oregon attained Statehood, a treaty was drafted by the federal government to allow for the peaceful acquisition and settlement of the Confederated Tribes ancestral lands. The three Tribes agreed to the Treaty of 1855, but it was never ratified by the United States Senate. Within a year of the Tribes signing of the treaty, the Tribal members were forcefully removed from their ancestral lands and forced onto a reservation on the Yachats Reservation. Fifty percent of Tribal members died during the 17 years they spend on the Yachats Reservation.

In 1916, the Tribes established a formal, elected tribal government that they have maintained ever since. In 1941 the Bureau of Indian affairs took a 6 acre parcel of land into trust for the Confederated Tribes in the city of Coos Bay. The Tribes were included in the Western Oregon Termination Act of 1954 and lost their federally recognized status. It wasn't until 1984 that the Tribes' sovereignty was recognized and funding was restored for education, housing and health programs.

Tribal Government:

The Tribes are governed by a seven member Tribal Council, which has the authority to exercise all legislative and executive authority of the Tribes.

Tribal Court:

The Tribal Court exercises the Tribes' sovereignty providing for resolution of conflicts. The Tribal Court has jurisdiction over Civil Cases and Juvenile matters. The Tribes also have a Peacegiving Court, which provides voluntary dispute resolution grounded in the tribal traditions of peace and healing.

Contact Information:

Chief Judge: J.D. Williams jd@williamsmoses.com <i>Pro Tem</i> Judge: Robert Dickinson Appellate Judge: Eric Eberhard Appellate Judge: Mike Taylor Appellate Judge: Bob Anderson Court Clerk: Diane Whitson dwhitson@ctclusi.org Tina Dressor tdresser@ctclusi.org 1245 Fulton Ave. Coos Bay, OR 97420 Tel: 541-888-1306	Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians 1245 Fulton Avenue Coos Bay, OR 97420 Tel: 1-888-280-0726
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Tribal Services:

- Tribal Housing Programs
- Education Program
- Health and Human Services
- Department of Natural Resources
- Tribal Police Department

Information courtesy of Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians website (www.ctclusi.org).



Confederated Tribes of Grand Ronde

The Confederated Tribes of the Grand Ronde Community of Oregon are the proud peoples of the Umpqua, the Rogue River, the Molalla, the Kalapuya, the Chasta and many other tribes whose roots go back thousands of years and whose ancestors represent the blending of many different cultures.

History:

The Confederated Tribes of Grand Ronde were formed when the government forced member tribes to cede their ancestral lands and created the 60,000 acre Grand Ronde Reservation in Oregon's Coast Range. Beginning in February 1857, federal troops forced the native people to march from a temporary reservation at Table Rock in Southern Oregon 263 miles north across rough terrain to the newly created Grand Ronde Reservation. After World War II, the Bureau of Indian Affairs adopted a policy to terminate tribes that the Bureau considered capable of managing their own affairs. In 1954, with Public Law 588, Congress officially terminated the Grand Ronde Tribe, and with that, their individual Indian rights and sovereign status. Through the hard work and sacrifices of Tribal members, federal recognition was restored to the Confederated Tribes of Grand Ronde in 1983. In 1988, Congress re-established a 9,811-acre reservation in the mountains north of Grand Ronde.

Tribal Government:

The Grand Ronde Tribal Council was created by the Tribal Constitution to be the primary governing and legislative body of the Tribe. The Council consists of nine standing members, each of which is elected to serve three-year terms.

Tribal Court:

The Tribal Court's mission is several-fold. The Court must provide to the Tribe, Tribal members, lawyers, and others, a fair and prompt resolution of legal disputes. The Court must interpret the Tribe's laws and Constitution in resolving these disputes, and lay a foundation for the future interpretation of those laws. The Court must also provide for Tribal members and others access to information about the laws, the Court rules and procedures, and, in so doing, make it as easy and as comfortable as possible for the use of the Court.

The Tribal Court has a number of court programs: an Indigent Defense Program that provides attorneys for parents and children involved in abuse and neglect cases, a Tribal Member Review

Board to review cases of children in Tribal custody, a Peacemaker Program which provides a non-adversarial way to resolve disputes, Court Appointed Special Advocates (CASA) Program, and a Tribal Court Bar.

Contact Information:

<p>Chief Judge: David Shaw david.shaw@grandronde.org</p> <p>Appellate Judge: Doug Nash</p> <p>Appellate Judge: Bob Miller</p> <p>Appellate Judge: Patricia Paul patricia.paul@grandronde.org</p> <p>Court Administrator: Angela Fasana angela.fasana@grandronde.org</p> <p>Judicial Assistant: Julie Boekhoff Julie.boekhoff@Grandronde.org</p> <p>Program Specialist: Justine Colton</p> <p>Records Clerk: Devin Larsen</p> <p>9615 Grand Ronde Rd. Grand Ronde, OR 97347 Tel: 503-879-5211 Fax: 503-879-2117</p>	<p>Tribal Headquarters in Grand Ronde 9615 Grand Ronde Road Grand Ronde, OR 97347 Tel: (800) 422-0232 or (503) 879-5211 Fax: (503) 879-2117 info@grandronde.org</p>
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Tribal Services:

The Confederated Tribes of Grand Ronde have built a community center, a health center and a Tribal governance center and started education, health-care, housing and other programs for Tribal members. The Tribes also have embarked upon an ambitious economic development program, which includes Spirit Mountain Casino and the Spirit Mountain Community Fund. The Tribes have a Tribal Police and the Grand Ronde Health and Wellnes Center. Additionally, the Tribes have built the Chachalu Museum and Cultural Center.

Information courtesy of Confederated Tribes of Grand Ronde website (www.grandronde.org).



Confederated Tribes of Siletz Indians

The Confederated Tribes of Siletz Indians is a federally recognized confederation of 27 Native American tribal bands that once inhabited a range from northern California to southwest Washington. Today, the Tribe has close to 5,000 enrolled members and a 3,666 acre reservation located along the Siletz River in Lincoln County. The tribe owns and operates the Chinook Winds Casino and Convention Center and Golf Resort.

History:

The ancestors of the Confederated Tribes of Siletz spoke at least 10 different base languages. Because the region stretched from the coastline to the inland valley, the way of life and cultural practices differed among the various tribes. The influx of settlers combined with the 1850 passage of the Oregon Donation Land Act meant that most of the land occupied by the Tribes was taken. Through a series of seven different treaties with the U.S. government signed between 1851-1855, fifteen million acres were ceded by the Tribes. The Coast Reservation, an area of about 800,000 acres, was established in 1855 and was intended to be the permanent reservation for the Coast, Willamette and Umpqua Tribes.

The Western Oregon Indian Termination Act of 1954 came into effect in August 1954 and severed Bureau of Indian Affairs supervision of trust lands and regulation of services to Indian people. In 1977, the Confederated Tribes of Siletz became the second tribe in the U.S. to have its federal status restored and returned to being a sovereign government. The tribal members adopted a constitution in 1979.

Tribal Government:

A nine member Tribal Council is empowered to exercise all legislative authority and executive authority of the government.

Tribal Court:

The Tribal Council appoints Judges to the Tribal Court. This authority includes, but is not limited to, the power to review and overturn Tribal legislative and executive actions for violations of the Constitution or of the Federal Indian Civil Rights Act of 1968. Currently included are limited judicial

services for family, juvenile, employment, gaming, torts, and other matters that fall within the current tribal ordinances.

Contact:

Chief Judge: Cal Gantenbein gantenbeinc@aol.com Appellate Panel Associate Judge: Robert Dickinson District Court Associate Judge: Ed Goodman Gaming Court Associate Judge: Mark Williams Court Administrator: Dianne McLead DianneM@ctsi.nsn.us Deputy Court Administrator: Rebekah Goulet P.O. Box 549 Siletz, OR 97380 Tel: 541-444-8228 Fax: 541-444-8270	Confederated Tribes of Siletz Indians 201 S.E. Swan Avenue PO Boc 549 Siletz, OR 97380
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Tribal Services:

Cultural Resources Program- Culture Camp/Language program/Pow-Wows/Run to the Rogue/Cultural Center

Education- Head Start/Childcare Assistance/Youth Services Program/Higher Education Program

Healthcare- Health Clinic/Dental Clinic/Pharmacy/Alcohol and Drug Program/Community Health/Diabetes Program/Fitness Center/Optometry/CARE Program

Tribal Housing Services

Information courtesy of Confederated Tribes of Siletz website (www.ctsi.nsn.us).



The Confederated Tribes of the Umatilla Indian Reservation

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) is a union of three tribes: Cayuse, Umatilla, and Walla Walla. The CTUIR has 2,965 tribal members. Nearly half of those tribal members live on or near the Umatilla Reservation.

History:

Fishing was the primary means of livelihood and survival for tribal members. The Walla Walla and Umatilla tribes lived along the Columbia River, while the Cayuse lived along the tributary river valleys in the Blue Mountains. The arrival of the horse moved the Cayuse people to the Columbia Plateau where they could graze their horses. The Cayuse Tribe was known for their large horse herds. As more settlers arrived from the east, relations between the Tribes and the settlers became strained. In 1855 the three tribes signed a treaty with the US government, in which they ceded over 6.4 million acres to the United States. In the treaty, the tribes reserved rights to fish, hunt, and gather foods and medicines within the ceded lands, and reserved 510,000 acres on which to live. The government forced the Indians onto the Umatilla Reservation and the ceded Indian territories were declared public domain and auctioned at public sale. Various legislation throughout the late 1800s further reduced the size of the Umatilla Reservation; today it is 172,000 acres of which 52% is in Indian ownership and 48% is owned by non-Indians.

Tribal Government:

CTUIR is governed by a Constitution and by-laws adopted in 1949. The Governing body is the nine member Board of Trustees, elected every two years by the General Council (tribal members age 18 and older). The Board sets policy, makes the final decisions on tribal affairs, and takes a lead role in determining priority projects and issues. Day-to-day business of the tribal government is carried out by a staff of about 520 employees in departments and programs such as natural resources, health, police, fire, education, social services, public works, economic development, and dozens more.

Tribal Court:

The Umatilla Tribal Court was established by the Board of Trustees and consists of the Chief Judge and Court Administration staff. The Court is vested with jurisdiction to enforce all provisions of the

Umatilla Criminal Code within the boundaries of the Reservation and against any Tribal member exercising treaty hunting and fishing rights beyond the boundaries of the Reservation.

Contact:

Chief Judge: Bill Johnson williamjohnson@ctuir.org Pro Tem Judge: David Gallagher Judicial Assistant/Court Services Manager: David Quaempts davidquaempts@ctuir.org 46411 Timine Way Pendleton, OR 97801 Tel: 541-276-2046 Tribalcourt@ctuir.org	Confederated Tribes of the Umatilla Indian Reservation 46411 Timine Way Pendleton, OR 97801 Tel: 541-276-3165
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Tribal Services:

- Children and Family Services
- Veterans Services/ Senior Center
- Economic and Community Development
- Housing
- Public Safety/Police
- Yellowhawk Tribal Health Clinic

Information courtesy of Confederated Tribes of the Umatilla Indian Reservation website (www.ctuir.org).



The Confederated Tribes of Warm Springs

Since 1938, three tribes have been unified as the Confederated Tribes of Warm Springs: the Warm Springs, Wasco, and Paiute Tribes. The Warm Springs Reservation, located in north central Oregon, is inhabited by nearly 4,000 tribal members, most of whom live in or around the town of Warm Springs.

History:

The Wasco and Warm Springs bands lived along the Columbia River, while the Paiutes lived on the high-plains in southeastern Oregon. During the 1800s, settlers arrived in Oregon and in 1855, a series of treaties with the US government established the Warm Springs Reservation. Under the treaty, the Warm Springs and Wasco Tribes relinquished approximately ten million acres of land but reserved the Warm Springs Reservation for their exclusive use.

In 1879, 38 Paiutes moved to Warm Springs from the Yakima Reservation. Eventually, more Paiutes came and they became a permanent part of the Warm Springs Reservation. In 1934, Congress passed the Indian Reorganization Act (IRA), which recognized the need of tribal governments to manage their own affairs and offered federal assistance to tribes organizing under its provisions; the Warm Springs, Wasco and Paiutes tribes accepted the IRA's terms and in 1937 the three tribes organized as the Confederated Tribes of Warm Springs and adopted a constitution and by-laws for tribal government. The Confederated Tribes began to pursue self-sufficiency through hydropower dams, the establishment of Warm Springs Lumber Company, the opening of Kah-Nee-Ta Village and Lodge, the Museum at Warm Springs and the opening of Indian Head Casino.

Tribal Government:

Warm Springs Tribal Council is the governing authority of the Confederated Tribes. The Council is comprised of eleven members.

Tribal Court:

The Confederated Tribes of Warm Springs has a Tribal Court, whose mission is to provide fair, impartial, efficient and effective resolution of criminal and civil cases and estates through application of Tribal Laws and community standards.

Contact:

<p>Chief Judge: Walter Langnese III walter.langnese@wstribes.org Juvenile Court Judge: Lisa Lomas lisa.lomas@wstribes.org Associate Judge: Glendon Smith glendon.smith@wstribes.org Appellate Court: Doug Nash Appellate Court: Thor Hoyt Appellate Court: Marielle Florendo Court Administrator: Maria Godines maria.godines@wstribes.org</p> <p>P.O. Box 850 Warm Springs, OR 97761 Tel: 541-553-3278</p>	<p>Confederated Tribes of Warm Springs 1233 Veterans St. Warm Springs, OR 97761 Tel: (541) 553-1161 Fax: (541) 553-1924 www.warmsprings.com</p>
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Tribal Services:

Public Safety- patrol & community policing, fire & safety, tribal prosecutor office, parole & probation, victims' services

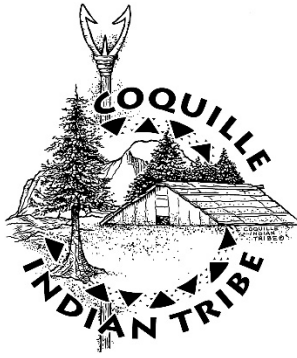
Social Services- senior services, vocational rehabilitation, community center, assisted living facility, Boys & Girls Club

Family Services- community counseling, children's protective services, and community health education team (CHET)

Education- Warm Springs Early Childhood Education Center (Early Head Start, Tribal Day Care and Preschool, Early Childhood Special Education, School Age Care Program)

Tribal Housing

Information courtesy of Confederated Tribes of Warm Springs website (www.warmsprings.com) and KWSA- Warm Springs Radio (www.wsnews.org)



Coquille Indian Tribe

The Coquille Indian Tribe is comprised of people whose ancestors lived in the lands of the Coquille River watershed and lower Coos Bay. The Coquille Indian Tribe today has over 1,000 members and a land base in excess of 10,000 acres.

History:

The Coquille ancestral territory encompassed more than 700,000 acres, which was ceded to the U.S. government by treaties signed in 1851 and 1855. Because neither treaty was ratified by Congress, the Coquille people and their descendants did not have a permanent homeland until the modern Coquille Tribe made several land purchases, which constitute today's tribal land base.

The Coquille Indian Tribe was terminated in 1954. The U.S. government restored federal recognition to the Tribe in 1989.

Tribal Government:

The seven-member Tribal Council is the governing body of the Coquille Indian Tribe. As elected representatives, the Council exercises all legislative authority except that which is vested in the Coquille General Council. The Coquille Indian Tribe uses Committees to assist the Tribal Council in providing services to its members. Some of the Committees are: Education and Culture, Elders, Election Board, Emergency Preparation & Disaster Mitigation, Enrollment, Natural Resources, and Health Advisory Board.

Tribal Court:

The Tribal Court's purpose is to provide for the administration of law, justice and judicial procedures and practices of the Coquille Indian Tribe as a sovereign nation by exercising the inherent power to make, execute, apply and enforce its own law and the laws of other sovereigns through a Tribal Court system.

Peacegiving Court: The Tribal Court has a peacegiving component that provides for adjudication of such matters as private, person-to-person disputes and cases involving youth who have admitted their responsibility for the commission of certain violations of Tribal law. The Peacegiving Court employs the resources of the Tribal

Court and Tribal Elders, and offers a variety of restorative justice services to resolve these disputes. The result is long-term satisfaction and healing for offenders, victims and the community.

Contact:

Chief Judge: Don Owen Costello doncostello@coquilletribe.org	Coquille Indian Tribe 3050 Tremont Street North Bend, OR 97459
Court Clerk: Lynda Payton lyndapayton@coquilletribe.org	Tel: 541-756-0904 Fax: 541-756-0847
3050 Tremont Blvd. North Bend, OR 97459 Tel: 541-756-0904 ext 1220 Fax: 541-751-1178	

Tribal Services:

- Community Health Center
- Elder Program
- Children Support Programs
- Tribal Youth Corps
- Home Health Care program
- Education Program- head start, higher education programs
- Library
- Medical Clinic

The Tribe is the second largest employer in Coos County, with successful business ventures in forestry, arts and exhibits, gaming and hospitality, high-speed telecommunications and renewable energy. The Tribe operates the Mill Resort & Casino.

Information courtesy of Coquille Indian Tribe website (www.coquilletribe.org)



Cow Creek Band of Umpqua Tribe of Indians

The Cow Creek Tribal Nation, located in Southwestern Oregon, has over 1,600 members.

History:

The Cow Creek Tribe lived between the Cascade and Coast Ranges in Southwestern Oregon. While this territory included the entire Umpqua watershed, the Tribe was very mobile.

On September 19, 1853 the Cow Creek Tribe was one of the first two tribes in Oregon to secure a treaty with the U.S. government. As a result of this treaty, the Cow Creek Tribe became a landless tribe, ceding more than 800 square miles of Southwestern Oregon to the United States. The Tribe was drastically underpaid for the value of their land. Though the treaty promised health, housing and education to the Cow Creek Tribe, these promises were ignored by the government for nearly a century. The Western Oregon Termination Act of 1954 caused federal relations with over 60 tribes and bands in Oregon to cease to exist; while the Cow Creek Tribe had never received services or recognition, they were recognized for the purpose of their involuntary termination in 1954. Because the Tribe did not receive prior notification of the Termination act, they were able to obtain presidential action in 1980 to take a land claims case to the U.S. Court of Claims. The case was eventually litigated to a negotiated settlement of \$1.5 million, which the Tribe vested into an endowment.

Tribal Government:

An elected eleven member council known as the Tribal Board of Directors governs the Tribe. The Tribal Government is responsible for establishing the policies and procedures for the administration of tribal programs, economic development ventures and other governmental business.

Tribal Court:

Contact:

<p>Tribal Judge: Ron Yockim ryockim@yockimlaw.com</p> <p>Administrator: Jhana McCullum jmccullum@cowcreek.com</p> <p>2371 N.E. Stephens Street Roseburg, OR 97480</p> <p>Tel: 541-672-9405</p>	<p>Cow Creek Band of Umpqua Tribe of Indians 2371 NE Stephens Street Roseburg, OR 97470</p> <p>Tel: 541-672-9405</p>
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Tribal Services:

The Tribal government office in Roseburg houses the Tribal government body and programs as well as the Cow Creek Tribal Gaming Commission and the Cow Creek Health and Wellness Center. The Tribe also offers a Tribal Career Development Program as well as other Elder, Education, and Social Services.

*Information courtesy of Cow Creek Band of Umpqua Tribe of Indians website
(www.cowcreek.com)*



Klamath Tribes

The Klamath Tribes are comprised of the Klamath, the Modocs, and the Yahooskin in the Klamath Basin of Oregon.

History:

The Klamaths lived along the Klamath Marsh, while the Modocs lived around Clear Lake and the Yahooskin Bands lived in the area east of the Yamsay Mountain. Newcomers arrived first as explorers, then missionaries, and finally as settlers and ranchers. In 1864, the Klamath Tribes ceded more than 23 million acres of land and entered the reservation era. The Tribes retained rights to hunt, fish, and gather on the lands reserved for them “in perpetuity.”

By the 1950s the Klamath Tribes were one of the wealthiest Tribes in the United States due to their success at cattle ranching and the valuable timber on the reservation. Because of this success, in 1954, the Klamath Tribes were terminated from federal recognition as a tribe and their 1.8 million acres were taken by condemnation. However, the Tribes were successful in a legal battle against the United States when a Federal court ruled the Tribes retained their rights to hunt, fish, gather, and be consulted in land management decisions in their former reservation area. In 1986, the Tribes were successful in regaining restoration of federal recognition for the Tribes, though the land base was not returned.

Tribal Government:

A ten member elected Tribal Council serves as the representative governing body of the Klamath Tribes, which conducts the day-to-day business of the Tribes. Additionally, the General Council, composed of all eligible voters of the Klamath Tribes, serves as the final authority on tribal matters.

Tribal Court:

The Constitution of the Klamath Tribes established an independent Klamath Tribes Judiciary, which consists of the Klamath Supreme Court, the Klamath Tribal Court, the Klamath Juvenile Court, and the Klamath Peacemaker Court. The Juvenile Court has a Memorandum of Understanding with Klamath County Circuit Court that refers

certain tribal juveniles to the Klamath Tribes Juvenile Court. This allows for a holistic and culturally appropriate probation term that provides more individualized attention to each juvenile and identifies the resources necessary to keep them out of the penal system, before they become “institutionalized” and become repeat offenders. This juvenile program is a success and an example of cooperation between the Klamath Tribes and Klamath County.

Contact Information:

Chief Judge: Jeremy Brave-Heart 116 East Chocktoot St. P.O. Box 1260 Chiloquin, OR 97624 Tel: 541-783-3020 Fax: 541-783-7522 Jeremy.braveheart@klamathtribalcourts.com	Klamath Tribes P.O. Box 436 501 Chiloquin Blvd. Chiloquin, OR 97624 Tel: 800-524-9787 Fax: 541-783-2029
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Tribal Services:

Community Services- transportation program, low income home energy assistance program, child care development fund, senior nutrition program, senior outreach, commodities

Education/Employment- adult basic education, adult vocational training, higher education scholarship, small business development program

Housing- low rent program, rental assistance, emergency shelter, home grant occupancy program, elderly emergency repair program, 184 Indian Housing Loan Guarantee program

Social Services- Indian Child Welfare Act issues, family violence issues, the Tribal Work Assistance program, TEAM, NAFA (Native American Family Assistance) and the Family Support Center

Tribal Health & Family Services- family medicine clinic, general dental clinic, pharmacy, alcohol & drug prevention, behavioral health, health education, transportation to health-related appointments, special programs.

Information courtesy of Klamath Tribes website (www.klamathtribes.org)

initiatives, training opportunities, and as valued partners.

As judicial educators, judicial leaders, and system stakeholders, you have an opportunity to bring knowledge, awareness, and to inspire a vision for judicial leaders to fulfill the ICWA promise. This will have a transforming effect on so many lives, not only for the children and families before the court, but for generations to come.

For more information or to receive resources, tools, and technical assistance, visit the following websites:

- National Council of Juvenile and Family Court Judges: www.ncjfcj.org
- National Resource Center on Legal and Judicial Issues: <http://www.apps.americanbar.org/child/rclji/home.html>
- National Resource Center for Tribes: <http://www.nrc4tribes.org/>
- National Indian Child Welfare Association: www.nicwa.org
- Tribal STAR, a program of the Academy for Professional Excellence, San Diego State University School of Social Work: <http://theacademy.sdsu.edu/TribalSTAR>
- American Indian Enhancement Project of California Toolkit: http://calswec.berkeley.edu/CalSWEC/AIE/AIE_home.html
- QUICWA Compliance Collaborative Project: <http://www.d.umn.edu/sw/cw/2010video/2011docs/QUICWA/brochure.pdf>



Top photo: NCJFCJ Tribal Judicial Leadership Gathering. Bottom Photo: Memorial March to honor native children lost to adoption in Sioux City Iowa.

Oregon Statewide ICWA Compliance

By Shary Mason, JCIP Model Court and Training Analyst, Juvenile Court Programs, Oregon Judicial Department

The Oregon Juvenile Court Improvement Program (JCIP) partnered with the NCJFCJ and Casey Family Programs to create an Oregon State Court Compliance with the Indian Child Welfare Act (ICWA) Workgroup. Much was accomplished in the workgroup's first 18 months as stakeholders worked toward building tribal capacity, educating stakeholders and improving Oregon state court compliance with ICWA.

In support of the workgroup's goals, and in partnership with tribal representatives, the JCIP conducted and/or provided support for multidisciplinary trainings on ICWA and Active Efforts in ICWA cases in six Oregon jurisdictions and three statewide conferences. The JCIP also presented a workshop on Active Efforts at the National Indian Child Welfare Association (NICWA) conference in Alaska. At these trainings, the JCIP disseminated resource materials, such as the Active Efforts Principles and Expectations and the NCJFCJ ICWA Checklist for Juvenile and Family Court Judges. In addition, Casey Family Programs provided support through the Safe and Equitable Foster Care Reduction initiative to purchase NICWA's on line training course for over 1,000 juvenile dependency stakeholders statewide. The JCIP, as a key partner in the initiative, helped distribute information and promote participation in the training.

To engender an increased understanding about ICWA and why it is important, educating stakeholders about tribal cultures and history is critical. To this end, the JCIP invited Esther Stutzman to be a featured guest speaker at the juvenile judge's conference, where she told traditional stories and explained how stories shaped and influenced everyday life of the Native people. Also, representatives from JCIP, Urban Indian organizations and Department of Human Services, ICWA units helped the Multnomah County Court plan a county-wide trauma training, where Dr. Tom Ball presented on historical trauma and generational oppression to over 200 people.

Another important aspect of ICWA compliance is meaningful engagement with tribes. JCIP Model Court Teams were encouraged to identify tribal members within their communities, conduct outreach,

and engage with tribes in the dependency process. To achieve a meaningful level of collaboration, judges began conducting tribal court cross site visits. Judge Suzanne Ojibway Townsend, of the Confederated Tribes of Grand Ronde, hosted Judge Tom Ryan, Multnomah County Circuit Court and Referee and Pro Tem Judge Paulette Sanders, Lincoln County Circuit Court. The Confederated Tribes of Siletz Indians, the Confederated Tribes of Umatilla Indian Reservation, the Coquille Indian Tribe, and the Cow Creek Band of Umpqua Tribe of Indians have agreed to host visits in the coming months. These cross-site visits provide state and tribal judges with unique opportunities to form relationships and gain a better understanding of how state and tribal courts can work together to ensure positive outcomes for children and youth involved in the child welfare system.

In addition to supporting multi-disciplinary training, resource dissemination, and tribal engagement, the JCIP is actively engaged in program review activities. JCIP staff sits on the ICWA Advisory Council, and participated in the most recent Department of Human Services ICWA Review. Results of the ICWA Review were presented to the Workgroup and at the NICWA Conference, and tribal feedback was incorporated into the recommendations for improving ICWA compliance. Also, the JCIP reviewed and revised Oregon's Juvenile Dependency Judge's Bench Book, the JCIP Model Court forms for judgments and orders, and the Citizen Review Board Supplemental Guide to ensure all documents contained clear and substantial language related to ICWA and ICWA principles.

Overall, important education and collaboration is occurring in Oregon and efforts are promising. However, improving statewide compliance with ICWA is one of the outcomes the JCIP has identified for the 2012-2016 Strategic Plan and much work remains to be done. Stakeholders in Oregon remained committed to improving ICWA compliance and are moving forward with developing strategies to meet this outcome.

END NOTES

¹ Materials are available on the JCIP website. <http://courts.oregon.gov/OJD/OSCA/cpsd/courtimprovement/jcip/index.page>

ENFORCEMENT ACTIONS TAKEN BY TSA IN CALENDAR YEAR 2014—Continued

TSA Case number/type of violation	Penalty proposed/assessed
TSA Case # 2014IAD0082—TWIC—Fraudulent Use or Manufacture (49 CFR 1570.7)	\$4,000/\$4,000.
TSA Case # 2014IAD0083—TWIC—Fraudulent Use or Manufacture (49 CFR 1570.7)	\$4,000/\$2,000.

[FR Doc. 2015–03798 Filed 2–24–15; 8:45 am]
 BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5851–N–01]

Rental Assistance Demonstration (RAD)—Alternative Requirements or Waivers: Waiving and Specifying Alternative Requirements for the 20 Percent Portfolio Cap on Project-Basing and Certain Tenant Protection and Participation Provisions for the San Francisco Housing Authority’s RAD Projects

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The RAD statute gives HUD authority to establish waivers and alternative requirements. Pursuant to this authority, HUD has waived, to date, the statutory 20 percent cap on project-basing of a PHA’s tenant-based voucher funding for RAD-converted units. This notice advises that HUD is waiving for the San Francisco Housing Authority (SFHA), to a limited extent and subject to certain conditions, the 20 percent cap on project-basing and certain other provisions governing project-based assistance with respect to an identified portfolio that includes RAD funding. These waivers are in response to plans submitted by SFHA to address capital needs of the portfolio and preserve available affordable housing for the SFHA’s jurisdiction. Without this waiver, SFHA states that its plan for improving its affordable housing portfolio with RAD would not be workable, and the conversion of units under RAD would not be effective for its purpose.

DATES: *Effective Date:* March 9, 2015.

FOR FURTHER INFORMATION CONTACT: Janet Golrick, Acting Director of the Office of Recapitalization, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–7000; telephone number 202–708–0001 (this is not a toll-free number). Hearing- and speech-

impaired persons may access these numbers through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Background and Action

The RAD statute (Pub. L. 112–55, approved November 18, 2011) gives HUD authority to waive or specify alternative requirements for, among other things, section 8(o)(13) of the United States Housing Act of 1937 (the 1937 Act). In order to utilize this authority, the RAD statute requires HUD to publish by notice in the **Federal Register** any waiver or alternative requirement no later than 10 days before the effective date of such notice. This notice meets this publication requirement.

On July 2, 2013, notice 2012–32 Rev-1 (as corrected by the technical correction issued February 6, 2014) (“the revised notice”) superseded PIH Notice 2012–32. The revised notice is found at the following URL: http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/publications/notices/2012.

The revised notice at section 1.9, paragraph F, entitled “Portfolio Awards,” also sets forth a new option of a “portfolio award,” which allows PHAs to apply for RAD conversions affecting a group of projects. This type of award is meant to enable PHAs to create a comprehensive revitalization plan for multiple buildings they oversee. SFHA has submitted an application for a portfolio award under RAD.

The revised notice contains a waiver of 8(o)(13)(B) and other sections of the 1937 Act. Section 1.6, “Special Provisions Affecting Conversions to PBVs,” at paragraph A.1, allows a project that converts from one form of rental assistance to another under RAD to exceed the 20 percent project-basing cap. Section 1.6.A.2 allows sets alternate requirements for the percent limitation on the number of units in a project that may receive PBV assistance. Section 1.6.C. sets forth alternative requirements for resident rights and participation. (Collectively, the waivers and alternative requirements set forth in Sections 1.6.A.1, 1.6.A.2 and 1.6.C are referred to herein as the “Applicable Alternative Tenanting Requirements.”)

As part of its application for a portfolio award, SFHA’s comprehensive

revitalization planning contemplates not only the conversion of assistance pursuant to RAD, but also to supplement such converted projects by project-basing additional voucher assistance. SFHA has submitted a waiver request that seeks permission to apply the Applicable Alternative Tenanting Requirements to all units in those projects with assistance converted under RAD. HUD has granted that request, subject to certain conditions which SFHA has agreed to carry out.

Dated: February 13, 2015.

Jemine A. Bryon,

Acting Assistant Secretary for Public and Indian Housing.

Biniam T. Gebre,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2015–03780 Filed 2–24–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[K00103 12/13 A3A10; 134D0102DR–DS5A300000–DR.5A311.1A000113]

Guidelines for State Courts and Agencies in Indian Child Custody Proceedings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: These updated guidelines provide guidance to State courts and child welfare agencies implementing the Indian Child Welfare Act’s (ICWA) provisions in light of written and oral comments received during a review of the Bureau of Indian Affairs (BIA) *Guidelines for State Courts in Indian Child Custody Proceedings* published in 1979. They also reflect recommendations made by the Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence and significant developments in jurisprudence since ICWA’s inception. The updated BIA *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings* promote compliance with ICWA’s stated goals and provisions by providing a framework for State courts and child

welfare agencies to follow, as well as best practices for ICWA compliance. Effective immediately, these guidelines supersede and replace the guidelines published in 1979.

DATES: These guidelines are effective on February 25, 2015.

FOR FURTHER INFORMATION CONTACT: Hankie Ortiz, Deputy Director—Indian Services, Bureau of Indian Affairs, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240, (202) 208–2874; *hankie.ortiz@bia.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

These updated BIA guidelines provide standard procedures and best practices to be used in Indian child welfare proceedings in State courts. The updated guidelines are issued in response to comments received during several listening sessions, written comments submitted throughout 2014, and recommendations of the Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence.

Congress enacted ICWA in 1978 to address the Federal, State, and private agency policies and practices that resulted in the “wholesale separation of Indian children from their families.” H. Rep. 95–1386 (July 24, 1978), at 9. Congress found “that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions” 25 U.S.C. 1901(4). Congress determined that cultural ignorance and biases within the child welfare system were significant causes of this problem and that state administrative and judicial bodies “have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.” 25 U.S.C. 1901(5); H. Rep. 95–1386, at 10. Congress enacted ICWA to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishing minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes or institutions which will reflect the unique values of Indian culture.” H. Rep. 95–1386, at 8. ICWA thus articulates a strong “federal policy that, where possible, an Indian child should remain in the Indian community.” *Mississippi Band of*

Choctaw Indians v. Holyfield, 490 U.S. 30 (1989) (citing H. Rep. 95–1386 at 24).

Following ICWA's enactment, in July 1979, the Department of the Interior (Department) issued regulations addressing notice procedures for involuntary child custody proceedings involving Indian children, as well as governing the provision of funding for and administration of Indian child and family service programs as authorized by ICWA. See 25 CFR part 23. Those regulations did not address the specific requirements and standards that ICWA imposes upon State court child custody proceedings, beyond the requirements for contents of the notice. Also, in 1979, the BIA published guidelines for State courts to use in interpreting many of ICWA's requirements in Indian child custody proceedings. 44 FR 67584 (Nov. 26, 1979). Although there have been significant developments in ICWA jurisprudence, the guidelines have not been updated since they were originally published in 1979. Much has changed in the 35 years since the original guidelines were published, but many of the problems that led to the enactment of ICWA persist.

In 2014, the Department invited comments to determine whether to update its guidelines and what changes should be made. The Department held several listening sessions, including sessions with representatives of federally recognized Indian tribes, State court representatives (e.g., the National Council of Juvenile and Family Court Judges and the National Center for State Courts' Conference of Chief Justices Tribal Relations Committee), the National Indian Child Welfare Association, and the National Congress of American Indians. The Department received comments from those at the listening sessions and also received written comments, including comments from individuals and additional organizations, such as the Christian Alliance for Indian Child Welfare and the American Academy of Adoption Attorneys. An overwhelming proportion of the commenters requested that the Department update its ICWA guidelines and many had suggestions for revisions that have been included. The Department reviewed and considered each comment in developing these revised Guidelines.

II. Statutory Authority

The Department is issuing these updated guidelines under ICWA, 25 U.S.C. 1901 *et seq.*, and its authority over the management of all Indian affairs under 25 U.S.C. 2.

III. Summary of Updates

The 1979 guidelines included “commentary” for each section, which was intended to explain the requirements of each section. The updated guidelines are clearer, making the commentary unnecessary. Recognizing the important role that child welfare agencies play in ICWA compliance, these updated guidelines broaden the audience of the guidelines to include both State courts and any agency or other party seeking placement of an Indian child. The guidelines identify procedures to address circumstances in which a parent desires anonymity in a voluntary proceeding. Those procedures clarify that a parent's desire for anonymity does not override the responsibility to comply with ICWA. The guidelines also establish that agencies and courts should document their efforts to comply with ICWA. The following paragraphs include section-by-section highlights of the substantive updates that these guidelines make to the 1979 version.

Section A. General Provisions (formerly, entitled “Policy”)

The updated guidelines add several provisions to section A, to provide better context for the guidelines and clear direction on implementing the guidelines. For example, this section includes definitions of key terms used throughout the guidelines, such as “active efforts” and “child custody proceeding.” The phrase “active efforts” has been inconsistently interpreted. The guidelines' definition is intended to provide clarity—particularly in establishing that “active efforts” require a level of effort beyond “reasonable efforts.”

Section A also includes an applicability section, which incorporates many of the provisions of the 1979 guidelines' section B.3. In addition, section A:

- Clarifies that agencies and State courts must ask, in every child custody proceeding, whether ICWA applies;
- Clarifies that courts should follow ICWA procedures even when the Indian child is not removed from the home, in order to allow tribes to intervene as early as possible to assist in preventing a breakup of the family; and
- Provides that, where agencies and State courts have reason to know that a child is an Indian child, they must treat that child as an Indian child unless and until it is determined that the child is not an Indian child.

These clarifications are necessary to ensure that the threshold question for determining whether ICWA applies (is

the child an Indian child?) is asked, and asked as soon as possible. If such inquiry is not timely made, a court proceeding may move forward without appropriate individuals aware that ICWA applies and that certain procedures must be followed. Tragic consequences may result.

The updated guidelines also add a section regarding how to contact a tribe, in case the agency or State court is unfamiliar with whom to contact.

Section A is intended to make clear that there is no existing Indian family (EIF) exception to application of ICWA. The EIF doctrine is a judicially-created exception to the application of ICWA. Since first recognition of the EIF in 1982, the majority of State appellate courts that have considered the EIF have rejected it as contrary to the plain language of ICWA. Some State legislatures have also explicitly rejected the EIF within their State ICWA statutes. The Department agrees with the States that have concluded that there is no existing Indian family exception to application of ICWA.

Section A also clarifies that ICWA and the guidelines apply in certain voluntary placements.

Section B. Pretrial Requirements

The updated guidelines, and section B in particular, promote the early identification of ICWA applicability. Such identifications will promote proper implementation of ICWA at an early stage, to prevent—as much as possible—delayed discoveries that ICWA applies. Often, those circumstances resulting from delayed discoveries have caused heartbreaking separations and have sometimes led to noncompliance with ICWA's requirements. By requiring agencies and courts to consider, as early as possible, whether ICWA applies, the updated guidelines will ensure that proper notice is given to parents/Indian custodians and tribes, that tribes have the opportunity to intervene or take jurisdiction over proceedings, as appropriate, and that ICWA's placement preferences are respected.

With regard to early discovery, section B requires agencies and courts to consider whether the child is an Indian child, and sets out the steps for verifying the tribe(s) and providing notice to the parents/Indian custodians and tribe(s). Section B also adds guidance regarding the evidence a court may require an agency to provide of the agency's investigations into whether the child is an Indian child.

With regard to application of ICWA, the updated section B clarifies when the Act's requirement to conduct "active

efforts" begins. ICWA requires "active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family." See 25 U.S.C. 1912(d). The updated section B clarifies that active efforts must begin from the moment the possibility arises that the Indian child may be removed. This updated section also clarifies that active efforts should be conducted while verifying whether the child is an Indian child; this clarification ensures compliance with ICWA in cases in which the status of whether the child is an Indian child is not verified until later in the proceedings.

Section B adds a new paragraph clarifying that the tribe alone retains the responsibility to determine tribal membership. This section makes clear that there is no requirement for the child to have a certain degree of contact with the tribe or for a certain blood degree, and notes that a tribe may lack written rolls. The updated guidelines delete the provision allowing BIA, in lieu of the tribe, to verify the child's status. This provision has been deleted because it has become increasingly rare for the BIA to be involved in tribal membership determinations, as tribes determine their own membership. See *e.g.*, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). ("Congress' authority over Indian matters is extraordinarily broad, and the role of courts in adjusting relations between and among tribes and their members correspondingly restrained.") BIA may assist in contacting the tribe to ensure a determination, however.

The updated section B also expands upon procedures for determining a child's tribe in the event that more than one tribe is identified as the child's tribe. Specifically, it changes the criteria for determining with which tribe the child has "significant contacts," adding that the parents' preference for membership will be considered, and deleting factors that are subjective or inapplicable to infants.

With regard to providing notice to Indian tribes and the child's parents/Indian custodians, the updated section B:

- Clarifies that notice is required for each proceeding (not just for the first or last proceeding);
- States that notice must be sent, at a minimum, by registered mail, return receipt requested, and that personal service or other types of service may be in addition to, but not in lieu of, such mail; and
- Clarifies that the tribe has the right to intervene at any time.

This section also clarifies how guidelines apply if the child is transferred interstate.

The updated guidelines expand upon the emergency procedure provisions in light of evidence that some States routinely rely upon emergency removals and placements in a manner that bypasses implementation of ICWA. See *Oglala Sioux Tribe v. Hunnik*, Case No. 5:13-cv-05020-JLV, *Amicus Brief of the United States*, at *5-6 (D.S.D. Aug. 14, 2014) (involving allegations that: (1) Defendants are conducting perfunctory 48-hour hearings that do not adequately gather or evaluate information necessary to determine whether emergency removals or placements should be terminated, and that the orders issued at the end of the 48-hour hearing do not adequately instruct State officials to return the child to the home as soon as the emergency has ended; (2) Defendants are violating the Due Process Clause by preventing parents from testifying, presenting evidence, or cross-examining the State's witnesses at the 48-hour hearing; and (3) parents are not being provided adequate notice or the opportunity to be represented by appointed counsel and that the State courts are issuing orders to remove Indian children from their homes without basing those orders on evidence adduced in the hearing). Because ICWA was intended to help prevent the breakup of Indian families; therefore, emergency removals and emergency placements of Indian children should be severely limited, applying only in circumstances involving imminent physical damage or harm. The updated section B clarifies that the guidelines for emergency removal or placement apply regardless of whether the Indian child is a resident of or domiciled on a reservation. This section also explicitly states the standard for determining whether emergency removal or emergency placement is appropriate—*i.e.*, whether it is necessary to prevent imminent physical damage or harm to the child—and provides examples. The guidelines clearly state that the emergency removal/placement must be as short as possible, and provides guidance on how to ensure it is as short as possible. It also shortens the time period for temporary custody without a hearing or extraordinary circumstances from 90 days to 30 days. This shortened timeframe promotes ICWA's important goal of preventing the breakup of Indian families.

Section C. Procedures for Transfer to Tribal Court

The updated section C deletes the requirement that requests to transfer to

tribal court be made “promptly after receiving notice of the proceeding” because there is no such requirement in ICWA. Instead, the updated guidelines clarify that the right to transfer is available at any stage of a proceeding, including during an emergency removal. The updated section C also clarifies that the right to request a transfer occurs with each distinct proceeding. ICWA contains no restriction on the right to request a transfer occurring at the first, last, or any specific child custody proceeding. A tribe may decide that transfer is not appropriate until it reaches the stage where parental termination is being determined.

The updated section C also updates the “good cause” factors for denying transfer to tribal court. The updated criteria are more general; in summary, good cause may be found if either parent objects, the tribal court declines, or the State court otherwise determines that good cause exists. The updated guidelines specifically omit some of the factors that were the basis for finding that “good cause” exists under the 1979 guidelines. One such factor that should no longer be considered is whether the proceeding was at an advanced stage. As mentioned above, there may be valid reasons for waiting to transfer a proceeding until it reaches an advanced stage. Another factor that should no longer be considered is the level of contacts the child has had with the tribe—this factor unnecessarily introduces an outsider’s evaluation of the child’s relationship with the tribe and cannot sensibly be applied to infants.

The updated guidelines also specify that it is inappropriate to conduct an independent analysis, inconsistent with ICWA’s placement preferences, of the “best interest” of an Indian child. The provisions of ICWA create a presumption that ICWA’s placement preferences are in the best interests of Indian children; therefore, an independent analysis of “best interest” would undermine Congress’s findings. Finally, the updated guidelines provide that the tribal court’s prospective placement of an Indian child should not be considered, because it invites speculation regarding the tribal court’s findings and conclusions and, therefore, undermines the independence of tribal court decision making.

Section D. Adjudication of Involuntary Placements, Adoptions, or Terminations or Terminations of Parental Rights

The updated section D establishes that parties have the right to examine records and reports in a timely manner; this ensures that parents/Indian

custodians and tribes have the opportunity to examine information necessary to protect their rights under ICWA. This updated section also expands significantly on how to comply with the Act’s “active efforts” requirement. Specifically, the updated guidelines:

- Require demonstration that “active efforts” were made, not only “prior to” the commencement of the proceeding, but also “until” the commencement of the proceeding;
- Require documentation of what “active efforts” were made; and

Require a showing that active efforts have been unsuccessful. The updated section D also provides guidance regarding how to identify an appropriate “qualified expert witness.” Commenters indicated that some States rely on witnesses’ qualifications as child care specialists, or on other areas of expertise, but do not require any expert knowledge related to the tribal community. The updated guidelines establish a preferential order for witnesses who are experts in the culture and customs of the Indian child’s tribe. This will ensure that the expert witness with the most knowledge of the Indian child’s tribe is given priority.

Section E. Voluntary Proceedings

ICWA applies to voluntary proceedings that operate to prohibit an Indian child’s parent or Indian custodian from regaining custody of the child upon demand; nevertheless, evidence suggests that ICWA is sometimes ignored or intentionally bypassed in voluntary proceedings. The updated section E clarifies that, even in voluntary proceedings, it is necessary to determine whether ICWA applies, and to comply with ICWA’s provisions. To ensure that parents and Indian custodians understand the significance of their consent, the updated section E requires the consent document to identify any conditions to the consent and requires the court to explain the consequences of the consent before its execution. It also addresses steps for withdrawal of consent. The updated section E further restates the statutory restriction that a consent given prior to or within 10 days after birth of an Indian child is not valid.

Section F. Dispositions

The updated guidelines provide more information regarding when and how to apply ICWA’s placement preferences for foster and adoptive placements. In some cases, agencies fail to conduct any investigation of whether placements that conform to ICWA’s placement

preferences are available. The updated section F requires that:

- The agency bears the burden of proof if it departs from any of the placement preferences and must demonstrate that it conducted a diligent search to identify placement options that satisfy the placement preferences, including notification to the child’s parents or Indian custodians, extended family, tribe, and others; and
- The court determines whether “good cause” to deviate from the placement preferences exists before departing from the placement preferences.

The updated section F also adds provisions to ensure that “good cause” determinations are explained to all parties and documented.

Evidence suggests that “good cause” has been liberally relied upon to deviate from the placement preferences in the past. Commenters noted that, in some cases, a State court departed from the placement preferences because an Indian child has spent significant time in a family’s care, despite the fact that the placement was made in violation of ICWA. The guidelines attempt to prevent such circumstances from arising by encouraging early compliance with ICWA (see sections A and B, in particular). The guidelines also specify in section F that “good cause” does not include normal bonding or attachment that may have resulted from a placement that failed to comply with the Act. As in other parts of the guidelines, this section clarifies that an independent consideration of the child’s “best interest” is inappropriate for this determination because Congress has already addressed the child’s best interest in ICWA. Because ICWA does not allow for consideration of socio-economic status in the placement preferences, this section also now clarifies that the court may not depart from the preferences based on the socio-economic status of one placement relative to another, except in extreme circumstances.

Section G. Post-Trial Rights

ICWA is intended to protect the rights, not only of Indian children, parents and Indian custodians, but also of Indian tribes. The updated guidelines establish that an Indian child, parent or Indian custodian, or tribe may petition to invalidate an action if the Act or guidelines have been violated, regardless of which party’s rights were violated. This approach promotes compliance with ICWA and reflects that ICWA is intended to protect the rights of each of these parties.

Adults who had been adopted by non-Indian families and seek to reconnect with their tribes often face significant hurdles in obtaining needed information. The updated guidelines attempt to protect those adults' rights to obtain information about their tribal relationship by specifying that, even in States where adoptions remain closed, the relevant agency should facilitate communication directly with the tribe's enrollment office.

The guidelines also recommend that courts work with tribes to identify tribal designees who can assist adult adoptees to connect with their tribes.

Finally, the updated guidelines clarify that the requirement to maintain records on foster care, preadoptive placement and adoptive placements applies not only in involuntary proceedings, but also in voluntary proceedings.

IV. Guidance

These guidelines supersede and replace the guidelines published at 44 FR 67584 (November 28, 1979).

Guidelines for State Courts and Agencies in Indian Child Custody Proceedings

A. General Provisions

1. What is the purpose of these guidelines?
2. What terms do I need to know?
3. When does ICWA apply?
4. How do I contact a tribe under these guidelines?
5. How do these guidelines interact with State laws?

B. Pretrial Requirements

1. When does the requirement for active efforts begin?
2. What actions must an agency and State court undertake to determine whether a child is an Indian child?
3. Who makes the determination as to whether a child is a member of a tribe?
4. What is the procedure for determining an Indian child's tribe when the child is a member or eligible for membership in more than one tribe?
5. When must a State court dismiss an action?
6. What are the notice requirements for a child custody proceeding involving an Indian child?
7. What time limits and extensions apply?
8. What is the process for emergency removal of an Indian child?
9. What are the procedures for determining improper removal?

C. Procedures for Making Requests for Transfer to Tribal Court

1. How are petitions for transfer of proceeding made?
2. What are the criteria and procedures for ruling on transfer petitions?
3. How is a determination of "good cause" made?
4. What happens when a petition for transfer is made?

D. Adjudication of Involuntary Placements, Adoptions, or Terminations of Parental Rights

1. Who has access to reports or records?
2. What steps must a party take to petition a State court for certain actions involving an Indian child?
3. What are the applicable standards of evidence?
4. Who may serve as a qualified expert witness?

E. Voluntary Proceedings

1. What actions must an agency and State court undertake in voluntary proceedings?
2. How is consent obtained?
3. What information should the consent document contain?
4. How is withdrawal of consent achieved in a voluntary foster care placement?
5. How is withdrawal of consent to a voluntary adoption achieved?

F. Dispositions

1. When do the placement preferences apply?
2. What placement preferences apply in adoptive placements?
3. What placement preferences apply in foster care or preadoptive placements?
4. How is a determination for "good cause" to depart from placement procedures made?

G. Post-Trial Rights

1. What is the procedure for petitioning to vacate an adoption?
2. Who can make a petition to invalidate an action?
3. What are the rights of adult adoptees?
4. When must notice of a change in child's status be given?
5. What information must States furnish to the Bureau of Indian Affairs?
6. How must the State maintain records?

Guidelines for State Courts and Agencies in Indian Child Custody Proceedings

A. General Provisions

A.1. What is the purpose of these guidelines?

These guidelines clarify the minimum Federal standards, and best practices, governing implementation of the Indian Child Welfare Act (ICWA) to ensure that ICWA is applied in all States consistent with the Act's express language, Congress' intent in enacting the statute, and the canon of construction that statutes enacted for the benefit of Indians are to be liberally construed to their benefit. In order to fully implement ICWA, these guidelines should be applied in all proceedings and stages of a proceeding in which the Act is or becomes applicable.

A.2. What terms do I need to know?

Active efforts are intended primarily to maintain and reunite an Indian child with his or her family or tribal community and constitute more than reasonable efforts as required by Title IV-E of the Social Security Act (42 U.S.C. 671(a)(15)). Active efforts include, for example:

(1) Engaging the Indian child, the Indian child's parents, the Indian child's extended family members, and the Indian child's custodian(s);

(2) Taking steps necessary to keep siblings together;

(3) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;

(4) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate;

(5) Conducting or causing to be conducted a diligent search for the Indian child's extended family members for assistance and possible placement;

(6) Taking into account the Indian child's tribe's prevailing social and cultural conditions and way of life, and requesting the assistance of representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards;

(7) Offering and employing all available and culturally appropriate family preservation strategies;

(8) Completing a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;

(9) Notifying and consulting with extended family members of the Indian child to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child;

(10) Making arrangements to provide family interaction in the most natural setting that can ensure the Indian child's safety during any necessary removal;

(11) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or extended family in utilizing and accessing those resources;

(12) Monitoring progress and participation in services;

(13) Providing consideration of alternative ways of addressing the needs of the Indian child's parents and extended family, if services do not exist or if existing services are not available;

(14) Supporting regular visits and trial home visits of the Indian child during any period of removal, consistent with the need to ensure the safety of the child; and

(15) Providing post-reunification services and monitoring.

"Active efforts" are separate and distinct from requirements of the Adoption and Safe Families Act

(ASFA), 42 U.S.C. 1305. ASFA's exceptions to reunification efforts do not apply to ICWA proceedings.

Agency means a private State-licensed agency or public agency and their employees, agents or officials involved in and/or seeking to place a child in a child custody proceeding.

Child custody proceeding means and includes any proceeding or action that involves:

(1) *Foster care placement*, which is any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, although parental rights have not been terminated;

(2) *Termination of parental rights*, which is any action resulting in the termination of the parent-child relationship;

(3) *Preadoptive placement*, which is the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; or

(4) *Adoptive placement*, which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Continued custody means physical and/or legal custody that a parent already has or had at any point in the past. The biological mother of a child has had custody of a child.

Custody means physical and/or legal custody under any applicable tribal law or tribal custom or State law. A party may demonstrate the existence of custody by looking to tribal law or tribal custom or State law.

Domicile means:

(1) For a parent or any person over the age of eighteen, physical presence in a place and intent to remain there;

(2) For an Indian child, the domicile of the Indian child's parents. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's mother. Under the principle for determining the domicile of an Indian child, it is entirely logical that "[o]n occasion, a child's domicile of origin will be in a place where the child has never been." *Holyfield*, 490 U.S. at 48. *Holyfield* notes that tribal jurisdiction under 25 U.S.C. 1911(a) was not meant to be defeated by the actions of individual members of the tribe, because Congress was concerned not solely about the interests of Indian children and families, but also about the impact of large numbers of Indian

children adopted by non-Indians on the tribes themselves. *Id.* at 49.

Extended family member is defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, is a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

Imminent physical damage or harm means present or impending risk of serious bodily injury or death that will result in severe harm if safety intervention does not occur.

Indian means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 43 CFR part 1606.

Indian child means any unmarried person who is under age eighteen and is either: (1) a member of an Indian tribe; or (2) eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

Indian child's tribe means: (1) the Indian tribe in which an Indian child is a member or eligible for membership; or (2) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts.

Indian Child Welfare Act (ICWA) or Act means 25 U.S.C. 1901 *et seq.*

Indian custodian means any person who has legal custody of an Indian child under tribal law or custom or under State law, whichever is more favorable to the rights of the parent, or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

Indian organization means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians or a tribe, or a majority of whose members are Indians.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c).

Parent means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include an unwed father where paternity has not been acknowledged or established. To qualify as a parent, an unwed father need only take reasonable steps to establish or acknowledge paternity. Such steps may include acknowledging

paternity in the action at issue or establishing paternity through DNA testing.

Reservation means Indian country as defined in 18 U.S.C 1151, including any lands, title to which is held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

Secretary means the Secretary of the Interior or the Secretary's authorized representative acting under delegated authority.

Status offenses mean offenses that would not be considered criminal if committed by an adult; they are acts prohibited only because of a person's status as a minor (*e.g.*, truancy, incorrigibility).

Tribal court means a court with jurisdiction over child custody proceedings, including a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe vested with authority over child custody proceedings.

Upon demand means that the parent or Indian custodians can regain custody simply upon request, without any contingencies such as repaying the child's expenses.

Voluntary placement means a placement that either parent has, of his or her free will, chosen for the Indian child, including private adoptions.

A.3. When does ICWA apply?

(a) ICWA applies whenever an Indian child is the subject of a State child custody proceeding as defined by the Act. ICWA also applies to proceedings involving status offenses or juvenile delinquency proceedings if any part of those proceedings results in the need for placement of the child in a foster care, preadoptive or adoptive placement, or termination of parental rights.

(b) There is no exception to application of ICWA based on the so-called "existing Indian family doctrine." Thus, the following non-exhaustive list of factors should not be considered in determining whether ICWA is applicable: the extent to which the parent or Indian child participates in or observes tribal customs, votes in tribal elections or otherwise participates in tribal community affairs, contributes to tribal or Indian charities, subscribes to tribal newsletters or other periodicals of special interest in Indians, participates in Indian religious, social, cultural, or political events, or maintains social contacts with other members of the tribe; the relationship between the Indian child and his/her Indian parents;

the extent of current ties either parent has to the tribe; whether the Indian parent ever had custody of the child; and the level of involvement of the tribe in the State court proceedings.

(c) Agencies and State courts, in every child custody proceeding, must ask whether the child is or could be an Indian child and conduct an investigation into whether the child is an Indian child. Even in those cases in which the child is not removed from the home, such as when an agency opens an investigation or the court orders the family to engage in services to keep the child in the home as part of a diversion, differential, alternative response or other program, agencies and courts should follow the verification and notice provisions of these guidelines. Providing notice allows tribes to intervene as early as possible in a child custody proceeding and provides an opportunity for the tribe to bring resources to bear to assist the family in preventing a breakup of the family.

(d) If there is any reason to believe the child is an Indian child, the agency and State court must treat the child as an Indian child, unless and until it is determined that the child is not a member or is not eligible for membership in an Indian tribe.

(e) ICWA and these guidelines or any associated Federal guidelines do not apply to:

(1) Tribal court proceedings;

(2) Placements based upon an act by the Indian child which, if committed by an adult, would be deemed a criminal offense; or

(3) An award, in a divorce proceeding, of custody of the Indian child to one of the parents.

(f) Voluntary placements that do not operate to prohibit the child's parent or Indian custodian from regaining custody of the child upon demand are not covered by the Act.

(1) Such placements should be made pursuant to a written agreement, and the agreement should state explicitly the right of the parent or Indian custodian to regain custody of the child upon demand.

(2) Nevertheless, it is a best practice to follow the procedures in these guidelines to determine whether a child is an Indian child and to notify the tribe.

(g) Voluntary placements in which a parent consents to a foster care placement or seeks to permanently terminate his or her rights or to place the child in a preadoptive or adoptive placement are covered by the Act.

A.4. How do I contact a tribe under these guidelines?

To contact a tribe to provide notice or obtain information or verification under these Guidelines, you should direct the notice or inquiry as follows:

(1) Many tribes designate an agent for receipt of ICWA notices. The Bureau of Indian Affairs publishes a list of tribes' designated tribal agents for service of ICWA notice in the **Federal Register** each year and makes the list available on its Web site at www.bia.gov.

(2) For tribes without a designated tribal agent for service of ICWA notice, contact the tribe(s) to be directed to the appropriate individual or office.

(3) If you do not have accurate contact information for the tribe(s) or the tribe(s) contacted fail(s) to respond to written inquiries, you may seek assistance in contacting the Indian tribe(s) from the Bureau of Indian Affairs' Regional Office and/or Central Office in Washington DC (see www.bia.gov).

A.5. How do these guidelines interact with State laws?

(a) These guidelines provide minimum Federal standards and best practices to ensure compliance with ICWA and should be applied in all child custody proceedings in which the Act applies.

(b) In any child custody proceeding where applicable State or other Federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Act, ICWA requires that the State court must apply the higher standard.

B. Pretrial Requirements

B.1. When does the requirement for active efforts begin?

(a) The requirement to engage in "active efforts" begins from the moment the possibility arises that an agency case or investigation may result in the need for the Indian child to be placed outside the custody of either parent or Indian custodian in order to prevent removal.

(b) Active efforts to prevent removal of the child must be conducted while investigating whether the child is a member of the tribe, is eligible for membership in the tribe, or whether a biological parent of the child is or is not a member of a tribe.

B.2. What actions must an agency and State court undertake in order to determine whether a child is an Indian child?

(a) Agencies must ask whether there is reason to believe a child that is subject to a child custody proceeding is

an Indian child. If there is reason to believe that the child is an Indian child, the agency must obtain verification, in writing, from all tribes in which it is believed that the child is a member or eligible for membership, as to whether the child is an Indian child.

(b) State courts must ask, as a threshold question at the start of any State court child custody proceeding, whether there is reason to believe the child who is the subject of the proceeding is an Indian child by asking each party to the case, including the guardian ad litem and the agency representative, to certify on the record whether they have discovered or know of any information that suggests or indicates the child is an Indian child.

(1) In requiring this certification, the court may require the agency to provide:

(i) Genograms or ancestry charts for both parents, including all names known (maiden, married and former names or aliases); current and former addresses of the child's parents, maternal and paternal grandparents and great grandparents or Indian custodians; birthdates; places of birth and death; tribal affiliation including all known Indian ancestry for individuals listed on the charts, and/or other identifying information; and/or

(ii) The addresses for the domicile and residence of the child, his or her parents, or the Indian custodian and whether either parent or Indian custodian is domiciled on or a resident of an Indian reservation or in a predominantly Indian community.

(2) If there is reason to believe the child is an Indian child, the court must confirm that the agency used active efforts to work with all tribes of which the child may be a member to verify whether the child is in fact a member or eligible for membership in any tribe, under paragraph (a).

(c) An agency or court has reason to believe that a child involved in a child custody proceeding is an Indian child if:

(1) Any party to the proceeding, Indian tribe, Indian organization or public or private agency informs the agency or court that the child is an Indian child;

(2) Any agency involved in child protection services or family support has discovered information suggesting that the child is an Indian child;

(3) The child who is the subject of the proceeding gives the agency or court reason to believe he or she is an Indian child;

(4) The domicile or residence of the child, parents, or the Indian custodian is known by the agency or court to be, or is shown to be, on an Indian

reservation or in a predominantly Indian community; or

(5) An employee of the agency or officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

(d) In seeking verification of the child's status, in a voluntary placement proceeding where a consenting parent evidences a desire for anonymity, the agency or court must keep relevant documents confidential and under seal. A request for anonymity does not relieve the obligation to obtain verification from the tribe(s) or to provide notice.

B.3. Who makes the determination as to whether a child is a member of a tribe?

(a) Only the Indian tribe(s) of which it is believed a biological parent or the child is a member or eligible for membership may make the determination whether the child is a member of the tribe(s), is eligible for membership in the tribe(s), or whether a biological parent of the child is a member of the tribe(s).

(b) The determination by a tribe of whether a child is a member, is eligible for membership, or whether a biological parent is or is not a member of that tribe, is solely within the jurisdiction and authority of the tribe.

(c) No other entity or person may authoritatively make the determination of whether a child is a member of the tribe or is eligible for membership in the tribe.

(1) There is no requirement that the child maintain a certain degree of contacts with the tribe or for a certain blood quantum or degree of Indian blood.

(2) A tribe need not formally enroll its members for a child to be a member or eligible for membership. In some tribes, formal enrollment is not required for tribal membership. Some tribes do not have written rolls and others have rolls that list only persons that were members as of a certain date. *See United States v. Broncheau*, 597 F.2d 1260, 1263 (9th Cir. 1979). The only relevant factor is whether the tribe verifies that the child is a member or eligible for membership.

(d) The State court may not substitute its own determination regarding a child's membership or eligibility for membership in a tribe or tribes.

B.4. What is the procedure for determining an Indian child's tribe when the child is a member or eligible for membership in more than one tribe?

(a) Agencies are required to notify all tribes, of which the child may be a member or eligible for membership, that the child is involved in a child custody

proceeding. The notice should specify the other tribe or tribes of which the child may be a member or eligible for membership.

(b) If the Indian child is a member or eligible for membership in only one tribe, that tribe should be designated as the Indian child's tribe.

(c) If an Indian child is a member or eligible for membership in more than one tribe, ICWA requires that the Indian tribe with which the Indian child has the more significant contacts be designated as the Indian child's tribe.

(1) In determining significant contacts, the following may be considered:

(i) Preference of the parents for membership of the child;

(ii) Length of past domicile or residence on or near the reservation of each tribe;

(iii) Tribal membership of custodial parent or Indian custodian; and

(iv) Interest asserted by each tribe in response to the notice that the child is involved in a child custody proceeding;

(d) When an Indian child is already a member of a tribe, but is also eligible for membership in another tribe, deference should be given to the tribe in which the Indian child is a member, unless otherwise agreed to by the tribes. However, if the Indian child is not a member of any tribe, an opportunity should be provided to allow the tribes to determine which of them should be designated as the Indian child's tribe.

(i) If the tribes are able to reach an agreement, the agreed upon tribe should be designated as the Indian child's tribe.

(ii) If the tribes do not agree, the following factors should be considered in designating the Indian child's tribe:

(A) The preference of the parents or extended family members who are likely to become foster care or adoptive placements; and/or

(B) Tribal membership of custodial parent or Indian custodian; and/or

(C) If applicable, length of past domicile or residence on or near the reservation of each tribe; and/or

(D) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes; and/or

(E) Self-identification by the child; and/or

(F) Availability of placements.

(iii) In the event the child is eligible for membership in a tribe but is not yet a member of any tribe, the agency should take the steps necessary to obtain membership for the child in the tribe that is designated as the Indian child's tribe.

(3) Once an Indian tribe is designated as the child's Indian tribe, all tribes which received notice of the child

custody proceeding must be notified in writing of the determination and a copy of that document must be filed with the court and sent to each party to the proceeding and to each person or governmental agency that received notice of the proceeding.

(4) A determination of the Indian child's tribe for purposes of ICWA and these guidelines does not constitute a determination for any other purpose or situation.

(d) The tribe designated as the Indian child's tribe may authorize another tribe to act as a representative for the tribe in a child custody case, including, for example, having the representative tribe perform home studies or expert witness services for the Indian child's tribe.

B.5. When must a State court dismiss an action?

Subject to B.8 (emergency procedures), the following limitations on a State court's jurisdiction apply:

(a) The court must dismiss any child custody proceeding as soon as the court determines that it lacks jurisdiction.

(b) The court must make a determination of the residence and domicile of the Indian child. If either the residence or domicile is on a reservation where the tribe exercises exclusive jurisdiction over child custody proceedings, the State court must dismiss the State court proceedings, the agency must notify the tribe of the dismissal based on the tribe's exclusive jurisdiction, and the agency must transmit all available information regarding the Indian child custody proceeding to the tribal court.

(c) If the Indian child has been domiciled or previously resided on an Indian reservation, the State court must contact the tribal court to determine whether the child is a ward of the tribal court. If the child is a ward of a tribal court, the State court must dismiss the State court proceedings, the agency must notify the tribe of the dismissal, and the agency must transmit all available information regarding the Indian child custody proceeding to the tribal court.

B.6. What are the notice requirements for a child custody proceeding involving an Indian child?

(a) When an agency or court knows or has reason to know that the subject of an involuntary child custody proceeding is an Indian child, the agency or court must send notice of each such proceeding (including but not limited to a temporary custody hearing, any removal or foster care placement, any adoptive placement, or any termination of parental or custodial

rights) by registered mail with return receipt requested to:

- (1) Each tribe where the child may be a member or eligible for membership;
 - (2) The child's parents; and
 - (3) If applicable, the Indian custodian.
- (b) Notice may be sent via personal service or electronically in addition to the methods required by the Act, but such alternative methods do not replace the requirement for notice to be sent by registered mail with return receipt requested.
- (c) Notice must be in clear and understandable language and include the following:
- (1) Name of the child, the child's birthdate and birthplace;
 - (2) Name of each Indian tribe(s) in which the child is a member or may be eligible for membership;
 - (3) A copy of the petition, complaint or other document by which the proceeding was initiated;
 - (4) Statements setting out:
 - (i) The name of the petitioner and name and address of petitioner's attorney;
 - (ii) The right of the parent or Indian custodian to intervene in the proceedings.
 - (iii) The Indian tribe's right to intervene at any time in a State court proceeding for the foster care placement of or termination of a parental right.
 - (iv) If the Indian parent(s) or, if applicable, Indian custodian(s) is unable to afford counsel based on a determination of indigency by the court, counsel will be appointed to represent the parent or Indian custodian where authorized by State law.
 - (v) The right to be granted, upon request, a specific amount of additional time (up to 20 additional days) to prepare for the proceedings due to circumstances of the particular case.
 - (vi) The right to petition the court for transfer of the proceeding to tribal court under 25 U.S.C. 1911, absent objection by either parent: *Provided, that* such transfer is subject to declination by the tribal court.
 - (vii) The mailing addresses and telephone numbers of the court and information related to all parties to the proceeding and individuals notified under this section.
 - (viii) The potential legal consequences of the proceedings on the future custodial and parental rights of the Indian parents or Indian custodians.
 - (d) In order to assist the Indian tribe(s) in making a determination regarding whether the child is a member or eligible for membership, the agency or court should include additional information in the notice, such as:
 - (1) Genograms or ancestry charts for both parents, including all names

known (maiden, married and former names or aliases); current and former addresses of the child's parents, maternal and paternal grandparents and great grandparents or Indian custodians; birthdates; places of birth and death; tribal affiliation including all known Indian ancestry for individuals listed on the charts, and/or other identifying information; and/or

(2) The addresses for the domicile and residence of the child, his or her parents, or the Indian custodian and whether either parent or Indian custodian is domiciled on or a resident of an Indian reservation or in a predominantly Indian community.

(3) In the event that a parent has requested anonymity, the agency and court must take steps to keep information related to the parent confidential and sealed from disclosure.

(e) If the identity or location of the Indian parents, Indian custodians or tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to believe the child is an Indian child, notice of the child custody proceeding must be sent to the appropriate Bureau of Indian Affairs Regional Director (see www.bia.gov). To establish tribal identity, as much information as is known regarding the child's direct lineal ancestors should be provided (see section B.6.(c) of these guidelines regarding notice requirements). The Bureau of Indian Affairs will not make a determination of tribal membership, but may, in some instances, be able to identify tribes to contact.

(f) Because child custody proceedings are usually conducted on a confidential basis, information contained in the notice should be kept confidential to the extent possible.

(g) The original or a copy of each notice sent under this section should be filed with the court together with any return receipts or other proof of service.

(h) If a parent or Indian custodian appears in court without an attorney, the court must inform him or her of the right to appointed counsel, the right to request that the proceeding be transferred to tribal court, the right to object to such transfer, the right to request additional time to prepare for the proceeding and the right (if the parent or Indian custodian is not already a party) to intervene in the proceedings.

(i) If the court or an agency has reason to believe that a parent or Indian custodian possesses limited English proficiency and is therefore not likely to understand the contents of the notice, the court or agency must, at no cost,

provide a translated version of the notice or have the notice read and explained in a language that the parent or Indian custodian understands. To secure such translation or interpretation support, a court or agency should contact the Indian child's tribe or the local BIA agency for assistance in locating and obtaining the name of a qualified translator or interpreter.

(j) In voluntary proceedings, notice should also be sent in accordance with this section because the Indian tribe might have exclusive jurisdiction and/or the right to intervene. Further, notice to and involvement of the Indian tribe in the early stages of the proceedings aids the agency and court in satisfying their obligations to determine whether the child is an Indian child and in complying with 25 U.S.C. 1915.

(k) If the child is transferred interstate, regardless of whether the Interstate Compact on the Placement of Children (ICPC) applies, both the originating State court and receiving State court must provide notice to the tribe(s) and seek to verify whether the child is an Indian child.

(l) The notice requirement includes providing responses to requests for additional information, where available, in the event that a tribe indicates that such information is necessary to determine whether a child is an Indian child.

B.7. What time limits and extensions apply?

(a) No hearings regarding decisions for the foster care or termination of parental rights may begin until the waiting periods to which the parents or Indian custodians and to which the Indian child's tribe are entitled have passed. Additional extensions of time may also be granted beyond the minimum required by the Act.

(b) A tribe, parent or Indian custodian entitled to notice of the pendency of a child custody proceeding has a right, upon request, to be granted an additional 20 days from the date upon which notice was received in accordance with 25 U.S.C. 1912(a) to prepare for participation in the proceeding.

(c) The proceeding may not begin until all of the following dates have passed:

- (1) 10 days after each parent or Indian custodian (or Secretary where the parent or Indian custodian is unknown to the petitioner) has received notice in accordance with 25 U.S.C. 1912(a);
- (2) 10 days after the Indian child's tribe (or the Secretary if the Indian child's tribe is unknown to the party

seeking placement) has received notice in accordance with 25 U.S.C. 1912(a);

(3) 30 days after the parent or Indian custodian has received notice in accordance with 25 U.S.C. 1912(a), if the parent or Indian custodian has requested an additional 20 days to prepare for the proceeding; and

(4) 30 days after the Indian child's tribe has received notice in accordance with 25 U.S.C. 1912(a), if the Indian child's tribe has requested an additional 20 days to prepare for the proceeding.

(d) The court should allow, if it possesses the capability, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

B.8. What is the process for the emergency removal of an Indian child?

(a) The emergency removal and emergency placement of an Indian child in a foster home or institution under applicable State law is allowed only as necessary to prevent imminent physical damage or harm to the child. This requirement applies to all Indian children regardless of whether they are domiciled or reside on a reservation. This does not, however, authorize a State to remove a child from a reservation where a tribe exercises exclusive jurisdiction.

(b) Any emergency removal or emergency placement of any Indian child under State law must be as short as possible. Each involved agency or court must:

(1) Diligently investigate and document whether the removal or placement is proper and continues to be necessary to prevent imminent physical damage or harm to the child;

(2) Promptly hold a hearing to hear evidence and evaluate whether the removal or placement continues to be necessary whenever new information is received or assertions are made that the emergency situation has ended; and

(3) Immediately terminate the emergency removal or placement once the court possesses sufficient evidence to determine that the emergency has ended.

(c) If the agency that conducts an emergency removal of a child whom the agency knows or has reason to know is an Indian child, the agency must:

(1) Treat the child as an Indian child until the court determines that the child is not an Indian child;

(2) Conduct active efforts to prevent the breakup of the Indian family as early as possible, including, if possible, before removal of the child;

(3) Immediately take and document all practical steps to confirm whether the child is an Indian child and to verify the Indian child's tribe;

(4) Immediately notify the child's parents or Indian custodians and Indian tribe of the removal of the child;

(5) Take all practical steps to notify the child's parents or Indian custodians and Indian tribe about any hearings regarding the emergency removal or emergency placement of the child; and

(6) Maintain records that detail the steps taken to provide any required notifications under section B.6 of these guidelines.

(d) A petition for a court order authorizing emergency removal or continued emergency physical custody must be accompanied by an affidavit containing the following information:

(1) The name, age and last known address of the Indian child;

(2) The name and address of the child's parents and Indian custodians, if any;

(3) If such persons are unknown, a detailed explanation of what efforts have been made to locate them, including notice to the appropriate Bureau of Indian Affairs Regional Director (see www.bia.gov);

(4) Facts necessary to determine the residence and the domicile of the Indian child;

(5) If either the residence or domicile is believed to be on an Indian reservation, the name of the reservation;

(6) The tribal affiliation of the child and of the parents and/or Indian custodians;

(7) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;

(8) If the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to transfer the child to the tribe's jurisdiction;

(9) A statement of the specific active efforts that have been taken to assist the parents or Indian custodians so the child may safely be returned to their custody; and

(10) A statement of the imminent physical damage or harm expected and any evidence that the removal or emergency custody continues to be necessary to prevent such imminent physical damage or harm to the child.

(e) At any court hearing regarding the emergency removal or emergency placement of an Indian child, the court must determine whether the removal or placement is no longer necessary to prevent imminent physical damage or

harm to the child. The court should accept and evaluate all information relevant to the agency's determination provided by the child, the child's parents, the child's Indian custodians, the child's tribe or any participants in the hearing.

(f) Temporary emergency custody should not be continued for more than 30 days. Temporary emergency custody may be continued for more than 30 days only if:

(1) A hearing, noticed in accordance with these guidelines, is held and results in a determination by the court, supported by clear and convincing evidence and the testimony of at least one qualified expert witness, that custody of the child by the parent or Indian custodian is likely to result in imminent physical damage or harm to the child; or

(2) Extraordinary circumstances exist.

(g) The emergency removal or placement must terminate as soon as the imminent physical damage or harm to the child which resulted in the emergency removal or placement no longer exists, or, if applicable, as soon as the tribe exercises jurisdiction over the case, whichever is earlier.

(h) Once an agency or court has terminated the emergency removal or placement, it must expeditiously:

(1) Return the child to the parent or Indian custodian within one business day; or

(2) Transfer the child to the jurisdiction of the appropriate Indian tribe if the child is a ward of a tribal court or a resident of or domiciled on a reservation; or

(3) Initiate a child custody proceeding subject to the provisions of the Act and these guidelines.

(i) The court should allow, if it possesses the capability, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

B.9. What are the procedures for determining improper removal?

(a) If, in the course of any Indian child custody proceeding, any party asserts or the court has reason to believe that the Indian child may have been improperly removed from the custody of his or her parent or Indian custodian, or that the Indian child has been improperly retained, such as after a visit or other temporary relinquishment of custody, the court must immediately stay the proceeding until a determination can be made on the question of improper removal or retention, and such

determination must be conducted expeditiously.

(b) If the court finds that the Indian child was improperly removed or retained, the court must terminate the proceeding and the child must be returned immediately to his or her parents or Indian custodian, unless returning the child to his parent or custodian would subject the child to imminent physical damage or harm.

C. Procedures for Making Requests for Transfer to Tribal Court

C.1. How are petitions for transfer of proceeding made?

(a) Either parent, the Indian custodian, or the Indian child's tribe may request, orally on the record or in writing, that the State court transfer each distinct Indian child custody proceeding to the tribal court of the child's tribe.

(b) The right to request a transfer occurs with each proceeding. For example, a parent may request a transfer to tribal court during the first proceeding for foster placement and/or at a proceeding to determine whether to continue foster placement, and/or at a later proceeding, for example at a hearing for termination of parental rights.

(c) The right to request a transfer is available at any stage of an Indian child custody proceeding, including during any period of emergency removal.

(d) The court should allow, if possible, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

C.2. What are the criteria and procedures for ruling on transfer petitions?

(a) Upon receipt of a petition to transfer by a parent, Indian custodian or the Indian child's tribe, the State court must transfer the case unless any of the following criteria are met:

(1) Either parent objects to such transfer;

(2) The tribal court declines the transfer; or

(3) The court determines that good cause exists for denying the transfer.

(b) To minimize delay, the court should expeditiously provide all records related to the proceeding to the tribal court.

C.3. How is a determination of "good cause" made?

(a) If the State court believes, or any party asserts, that good cause not to transfer exists, the reasons for such

belief or assertion must be stated on the record or in writing and made available to the parties who are petitioning for transfer.

(b) Any party to the proceeding must have the opportunity to provide the court with views regarding whether good cause to deny transfer exists.

(c) In determining whether good cause exists, the court may not consider whether the case is at an advanced stage or whether transfer would result in a change in the placement of the child because the Act created concurrent, but presumptively, tribal jurisdiction over proceedings involving children not residing or domiciled on the reservation, and seeks to protect, not only the rights of the Indian child as an Indian, but the rights of Indian communities and tribes in retaining Indian children. Thus, whenever a parent or tribe seeks to transfer the case it is presumptively in the best interest of the Indian child, consistent with the Act, to transfer the case to the jurisdiction of the Indian tribe.

(d) In addition, in determining whether there is good cause to deny the transfer, the court may not consider:

(1) The Indian child's contacts with the tribe or reservation;

(2) Socio-economic conditions or any perceived inadequacy of tribal or Bureau of Indian Affairs social services or judicial systems; or

(3) The tribal court's prospective placement for the Indian child.

(e) The burden of establishing good cause not to transfer is on the party opposing the transfer.

C.4. What happens when a petition for transfer is made?

(a) Upon receipt of a transfer petition the State court must promptly notify the tribal court in writing of the transfer petition and request a response regarding whether the tribal court wishes to decline the transfer. The notice should specify how much time the tribal court has to make its decision; provided that the tribal court has at least 20 days from the receipt of notice of a transfer petition to decide whether to accept or decline the transfer.

(b) The tribal court should inform the State court of its decision to accept or decline jurisdiction within the time required or may request additional time; provided that the reasons for additional time are explained.

(c) If the tribal court accepts the transfer, the State court should promptly provide the tribal court with all court records.

D. Adjudication of Involuntary Placements, Adoptions, or Terminations or Terminations of Parental Rights

D.1. Who has access to reports or records?

(a) The court must inform each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child of his or her right to timely examination of all reports or other documents filed with the court and all files upon which any decision with respect to such action may be based.

(b) Decisions of the court may be based only upon reports, documents or testimony presented on the record.

D.2. What steps must a party take to petition a State court for certain actions involving an Indian child?

(a) Any party petitioning a State court for foster care placement or termination of parental rights to an Indian child must demonstrate to the court that prior to, and until the commencement of, the proceeding, active efforts have been made to avoid the need to remove the Indian child from his or her parents or Indian custodians and show that those efforts have been unsuccessful.

(b) Active efforts must be documented in detail and, to the extent possible, should involve and use the available resources of the extended family, the child's Indian tribe, Indian social service agencies and individual Indian care givers.

D.3. What are the applicable standards of evidence?

(a) The court may not issue an order effecting a foster care placement of an Indian child unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody with the child's parents or Indian custodian is likely to result in serious harm to the child.

(b) The court may not order a termination of parental rights unless the court's order is supported by evidence beyond a reasonable doubt, supported by the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious harm to the child.

(c) Clear and convincing evidence must show a causal relationship between the existence of particular conditions in the home that are likely to result in serious emotional or physical damage to the particular child who is the subject of the proceeding. Evidence that shows only the existence of

community or family poverty or isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence that continued custody is likely to result in serious emotional or physical damage to the child.

D.4. Who may serve as a qualified expert witness?

(a) A qualified expert witness should have specific knowledge of the Indian tribe's culture and customs.

(b) Persons with the following characteristics, in descending order, are presumed to meet the requirements for a qualified expert witness:

(1) A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices.

(2) A member of another tribe who is recognized to be a qualified expert witness by the Indian child's tribe based on their knowledge of the delivery of child and family services to Indians and the Indian child's tribe.

(3) A layperson who is recognized by the Indian child's tribe as having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe.

(4) A professional person having substantial education and experience in the area of his or her specialty who can demonstrate knowledge of the prevailing social and cultural standards and childrearing practices within the Indian child's tribe.

(c) The court or any party may request the assistance of the Indian child's tribe or the Bureau of Indian Affairs agency serving the Indian child's tribe in locating persons qualified to serve as expert witnesses.

E. Voluntary Proceedings

E.1. What actions must an agency and State court undertake in voluntary proceedings?

(a) Agencies and State courts must ask whether a child is an Indian child in any voluntary proceeding under sections B.2. to B.4. of these guidelines.

(b) Agencies and State courts should provide the Indian tribe with notice of the voluntary child custody proceedings, including applicable pleadings or executed consents, and their right to intervene under section B.6. of these guidelines.

E.2. How is consent to termination of parental rights, foster care placement or adoption obtained?

(a) A voluntary termination of parental rights, foster care placement or adoption must be executed in writing and recorded before a court of competent jurisdiction.

(b) Prior to accepting the consent, the court must explain the consequences of the consent in detail, such as any conditions or timing limitations for withdrawal of consent and, if applicable, the point at which such consent is irrevocable.

(c) A certificate of the court must accompany a written consent and must certify that the terms and consequences of the consent were explained in detail in the language of the parent or Indian custodian, if English is not the primary language, and were fully understood by the parent or Indian custodian.

(d) Execution of consent need not be made in open court where confidentiality is requested or indicated.

(e) A consent given prior to or within 10 days after birth of the Indian child is not valid.

E.3. What information should a consent document contain?

(a) The consent document must contain the name and birthdate of the Indian child, the name of the Indian child's tribe, identifying tribal enrollment number, if any, or other indication of the child's membership in the tribe, and the name and address of the consenting parent or Indian custodian. If there are any conditions to the consent, the consent document must clearly set out the conditions.

(b) A consent to foster care placement should contain, in addition to the information specified in subsection (a), the name and address of the person or entity by or through whom the placement was arranged, if any, or the name and address of the prospective foster parents, if known at the time.

E.4. How is withdrawal of consent achieved in a voluntary foster care placement?

(a) Withdrawal of consent must be filed in the same court where the consent document was executed.

(b) When a parent or Indian custodian withdraws consent to foster care placement, the child must be returned to that parent or Indian custodian immediately.

E.5. How is withdrawal of consent to a voluntary adoption achieved?

(a) A consent to termination of parental rights or adoption may be withdrawn by the parent at any time

prior to entry of a final decree of voluntary termination or adoption, whichever occurs later. To withdraw consent, the parent must file, in the court where the consent is filed, an instrument executed under oath asserting his or her intention to withdraw such consent.

(b) The clerk of the court in which the withdrawal of consent is filed must promptly notify the party by or through whom any preadoptive or adoptive placement has been arranged of such filing and the child must be returned to the parent or Indian custodian as soon as practicable.

F. Dispositions

F.1. When do the placement preferences apply?

(a) In any preadoptive, adoptive or foster care placement of an Indian child, the Act's placement preferences apply; except that, if the Indian child's tribe has established by resolution a different order of preference than that specified in the Act, the agency or court effecting the placement must follow the tribe's placement preferences.

(b) The agency seeking a preadoptive, adoptive or foster care placement of an Indian child must always follow the placement preferences. If the agency determines that any of the preferences cannot be met, the agency must demonstrate through clear and convincing evidence that a diligent search has been conducted to seek out and identify placement options that would satisfy the placement preferences specified in sections F.2. or F.3. of these guidelines, and explain why the preferences could not be met. A search should include notification about the placement hearing and an explanation of the actions that must be taken to propose an alternative placement to:

(1) The Indian child's parents or Indian custodians;

(2) All of the known, or reasonably identifiable, members of the Indian child's extended family members;

(3) The Indian child's tribe;

(4) In the case of a foster care or preadoptive placement:

(i) All foster homes licensed, approved, or specified by the Indian child's tribe; and

(ii) All Indian foster homes located in the Indian child's State of domicile that are licensed or approved by any authorized non-Indian licensing authority.

(c) Where there is a request for anonymity, the court should consider whether additional confidentiality protections are warranted, but a request for anonymity does not relieve the

agency or the court of the obligation to comply with the placement preferences.

(d) Departure from the placement preferences may occur only after the court has made a determination that good cause exists to place the Indian child with someone who is not listed in the placement preferences.

(e) Documentation of each preadoptive, adoptive or foster care placement of an Indian child under State law must be provided to the State for maintenance at the agency. Such documentation must include, at a minimum: the petition or complaint; all substantive orders entered in the proceeding; the complete record of, and basis for, the placement determination; and, if the placement deviates from the placement preferences, a detailed explanation of all efforts to comply with the placement preferences and the court order authorizing departure from the placement preferences.

F.2. What placement preferences apply in adoptive placements?

(a) In any adoptive placement of an Indian child under State law, preference must be given in descending order, as listed below, to placement of the child with:

- (1) A member of the child's extended family;
- (2) Other members of the Indian child's tribe; or
- (3) Other Indian families, including families of unwed individuals.

(b) The court should, where appropriate, also consider the preference of the Indian child or parent.

F.3. What placement preferences apply in foster care or preadoptive placements?

In any foster care or preadoptive placement of an Indian child:

(a) The child must be placed in the least restrictive setting that:

- (1) Most approximates a family;
- (2) Allows his or her special needs to be met; and
- (3) Is in reasonable proximity to his or her home, extended family, and/or siblings.

(b) Preference must be given, in descending order as listed below, to placement of the child 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, whether on or off the reservation;
- (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 which has a

program suitable to meet the child's needs.

F.4. How is a determination for "good cause" to depart from the placement preferences made?

(a) If any party asserts that good cause not to follow the placement preferences exists, the reasons for such belief or assertion must be stated on the record or in writing and made available to the parties to the proceeding and the Indian child's tribe.

(b) The party seeking departure from the preferences bears the burden of proving by clear and convincing evidence the existence of "good cause" to deviate from the placement preferences.

(c) A determination of good cause to depart from the placement preferences must be based on one or more of the following considerations:

(1) The request of the parents, if both parents attest that they have reviewed the placement options that comply with the order of preference.

(2) The request of the child, if the child is able to understand and comprehend the decision that is being made.

(3) The extraordinary physical or emotional needs of the child, such as specialized treatment services that may be unavailable in the community where families who meet the criteria live, as established by testimony of a qualified expert witness; provided that extraordinary physical or emotional needs of the child does not include ordinary bonding or attachment that may have occurred as a result of a placement or the fact that the child has, for an extended amount of time, been in another placement that does not comply with the Act. The good cause determination does not include an independent consideration of the best interest of the Indian child because the preferences reflect the best interests of an Indian child in light of the purposes of the Act.

(4) The unavailability of a placement after a showing by the applicable agency in accordance with section F.1., and a determination by the court that active efforts have been made to find placements meeting the preference criteria, but none have been located. For purposes of this analysis, a placement may not be considered unavailable if the placement conforms to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(d) The court should consider only whether a placement in accordance with the preferences meets the physical, mental and emotional needs of the child; and may not depart from the preferences based on the socio-economic status of any placement relative to another placement.

G. Post-Trial Rights

G.1. What is the procedure for petitioning to vacate an adoption?

(a) Within two years after a final decree of adoption of any Indian child by a State court, or within any longer period of time permitted by the law of the State, a parent who executed a consent to termination of paternal rights or adoption of that child may petition the court in which the final adoption decree was entered to vacate the decree and revoke the consent on the grounds that consent was obtained by fraud or duress, or that the proceeding failed to comply with ICWA.

(b) Upon the filing of such petition, the court must give notice to all parties to the adoption proceedings and the Indian child's tribe.

(c) The court must hold a hearing on the petition.

(d) Where the court finds that the parent's consent was obtained through fraud or duress, the court must vacate the decree of adoption, order the consent revoked and order that the child be returned to the parent.

G.2. Who can make a petition to invalidate an action?

(a) Any of the following may petition any court of competent jurisdiction to invalidate an action for foster care placement or termination of parental rights where it is alleged that the Act has been violated:

(1) An Indian child who is the subject of any action for foster care placement or termination of parental rights;

(2) A parent or Indian custodian from whose custody such child was removed; and

(3) The Indian child's tribe.

(b) Upon a showing that an action for foster care placement or termination of parental rights violated any provision of 25 U.S.C. 1911, 1912, or 1913, the court must determine whether it is appropriate to invalidate the action.

(c) There is no requirement that the particular party's rights under the Act be violated to petition for invalidation; rather, any party may challenge the action based on violations in implementing the Act during the course of the child custody proceeding. For example, it is acceptable for the tribe to petition to invalidate an action because

it violated the rights of a parent, or for a parent to petition to invalidate an action because the action violated the statutory rights of the tribe. ICWA is designed to provide rights to ensure that tribes, parents, and children are protected. In light of Congressional findings in ICWA, it is presumed that the Indian child is disadvantaged if any of those rights are violated.

(d) The court should allow, if it possesses the capability, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

G.3. What are the rights of adult adoptees?

(a) Upon application by an Indian individual who has reached age 18 who was the subject of an adoptive placement, the court that entered the final decree must inform such individual of the tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights, which may include tribal membership, resulting from the individual's tribal relationship.

(b) This section should be applied regardless of whether the original adoption was subject to the provisions of the Act.

(c) Where State law prohibits revelation of the identity of the biological parent, assistance of the Bureau of Indian Affairs should be sought to help an adoptee who is eligible for membership in a tribe to become a tribal member without breaching the Privacy Act or confidentiality of the record.

(d) In States where adoptions remain closed, the relevant agency should, at a minimum, communicate directly with the tribe's enrollment office and provide the information necessary to facilitate the establishment of the adoptee's tribal membership.

(e) Agencies should work with the tribe to identify at least one tribal designee familiar with 25 U.S.C. 1917 to assist adult adoptees statewide with the process of reconnecting with their tribes and to provide information to State judges about this provision on an annual basis.

G.4. When must notice of a change in child's status be given?

(a) Notice by the court, or an agency authorized by the court, must be given to the child's biological parents or prior Indian custodians and the Indian child's tribe whenever:

(1) A final decree of adoption of an Indian child has been vacated or set aside; or

(2) The adoptive parent has voluntarily consented to the termination of his or her parental rights to the child; or

(3) Whenever an Indian child is removed from a foster care home or institution to another foster care placement, preadoptive placement, or adoptive placement.

(b) The notice must inform the recipient of the right to petition for return of custody of the child.

(c) A parent or Indian custodian may waive his or her right to such notice by executing a written waiver of notice filed with the court. The waiver may be revoked at any time by filing with the court a written notice of revocation. A revocation of the right to receive notice does not affect any proceeding which occurred before the filing of the notice of revocation.

G.5. What information must States furnish to the Bureau of Indian Affairs?

(a) Any state entering a final adoption decree or order must furnish a copy of the decree or order to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW., Mail Stop 4513 MIB, Washington, DC 20240, along with the following information:

(1) Birth name of the child, tribal affiliation and name of the child after adoption;

(2) Names and addresses of the biological parents;

(3) Names and addresses of the adoptive parents;

(4) Name and contact information for any agency having files or information relating to the adoption;

(5) Any affidavit signed by the biological parent or parents asking that their identity remain confidential; and

(6) Any information relating to the enrollment or eligibility for enrollment of the adopted child.

(b) Confidentiality of such information must be maintained and is not subject to the Freedom of Information Act, 5 U.S.C. 552, as amended.

G.6. How must the State maintain records?

(a) The State must establish a single location where all records of every voluntary or involuntary foster care, preadoptive placement and adoptive placement of Indian children by courts of that State will be available within seven days of a request by an Indian child's tribe or the Secretary.

(b) The records must contain, at a minimum, the petition or complaint, all

substantive orders entered in the proceeding, and the complete record of the placement determination.

Dated: February 19, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

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DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-PWR-PWRO-17253;
PX.PD0771601.00.4]

Draft Environmental Impact Statement for Alcatraz Ferry Embarkation Plan, San Francisco County, California.

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) has prepared a Draft Environmental Impact Statement (DEIS) for the Alcatraz Ferry Embarkation project. The project would establish a new, long-term ferry embarkation site for passenger service between the northern San Francisco waterfront and Alcatraz Island. It would also establish occasional special ferry service between the selected Alcatraz ferry embarkation site and the existing Fort Baker pier, as well as between Fort Mason and other destinations in San Francisco Bay.

DATES: All comments must be postmarked or transmitted not later than 90 days from the date of publication in the **Federal Register** of the Environmental Protection Agency's notice of filing and release of the DEIS. Upon confirmation of this date, we will notify all entities on the project mailing list, and public announcements about the DEIS review period will be posted on the project Web site (<http://parkplanning.nps.gov/ALCAembarkation>) and distributed via local and regional press media.

FOR FURTHER INFORMATION CONTACT: Please contact the Golden Gate National Recreation Area Planning Division at (415) 561-4930 or goga_planning@nps.gov.

SUPPLEMENTARY INFORMATION: The purpose and need for the project is driven by the following factors: (1) Alcatraz Island ferry service has been subject to location changes every 10 years, which has led to visitor confusion, community concerns, and inconsistency in visitor support services. The site and associated connections should be a consistent feature for visitors to Golden Gate National Recreation Area (GGNRA). (2)

Glossary of Acronyms for VAWA Panel Presentation

BOP:	Bureau of Prisons (Federal)
BOT:	Board of Trustees of CTUIR (Tribe's governing body)
CTUIR:	Confederated Tribes of the Umatilla Indian Reservation
DV:	Domestic Violence (Criminal Offense)
ICRA:	1968 Indian Civil Rights Act
PYT:	Pascua Yaqui Tribe (of Arizona)
SCIA:	Senate Committee on Indian Affairs
TLOA:	2010 Tribal Law and Order Act (Expanded tribal court criminal sentencing authority if certain conditions met.)

VAWA's 2013 Special Domestic Violence Criminal Jurisdiction

Authorizes participating tribes to exercise “special domestic violence criminal jurisdiction” (SDVCJ) over non-Indian defendants for

- the acts of domestic violence or dating violence; and
- violations of certain protection orders.

However,

- the victim must be Indian;
- the crime must take place in the Indian Country of the participating tribe; and
- the non-Indian defendant must have “sufficient ties to the Indian Tribe,” which could include either:
 - residing in the Indian country of the participating tribe;
 - being employed in the Indian country of the participating tribe; or
 - being a spouse, intimate partner, or dating partner of a tribal member, or an Indian who resides in the Indian country of the participating tribe.

Required Due Process Protections (many of which mirror the due process protections required to exercise the enhanced sentencing provisions of the Tribal Law and Order Act (TLOA) of 2010):

TLOA and VAWA Due Process Requirements	TLOA	VAWA
Defendants are provided with effective assistance of counsel equal to at least that guaranteed in the U.S. Constitution.	X	X
Tribal government provides to an indigent defendant a defense attorney licensed to practice by any jurisdiction in the United States.	X	X
Defense attorney is licensed by a jurisdiction that applies appropriate licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.	X	X
Judges presiding over criminal proceedings subject to enhanced sentencing/non-Indian defendants have sufficient legal training to preside over criminal trials.	X	X
Any judge presiding over criminal proceedings subject to enhanced sentencing/non-Indian defendants is licensed to practice law by any jurisdiction in the United States.	X	X
The tribe’s criminal law, rules of evidence, and rules of criminal procedure are made available to the public prior to charging the defendant.	X	X
Tribal court maintains a record of the criminal proceeding, including an audio or other recording.	X	X
Any defendant sentenced under either Act is sentenced to a facility that passes the BIA jail standards for enhanced sentencing authority.	X	X
Tribal court provides the defendant the right to a trial by an impartial jury.		X
Tribal court ensures that the jury reflects a fair cross section of the community.		X
Tribal court ensures that juries are drawn from sources that do not systematically exclude any distinctive group in the community, including non-Indians.		X
Tribal court ensures that anyone detained under SDVCJ is “timely notified” of his/her rights and responsibilities.		X
Tribal court ensures that a defendant is notified of their right to file “a petition for a writ of <i>habeas corpus</i> in a court of the United States.”		X
Tribal court ensures that “all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise special domestic violence criminal jurisdiction over the defendant” are provided.		X
Tribal court ensures that “all applicable rights under the special domestic violence criminal jurisdiction provisions” are provided.		X

All Tribes have been authorized to start exercising SDVCJ starting **March 7, 2015**.

As of December 19, 2014, Alaska Native tribes are now also be authorized to exercise SDVCJ.

Between March 7, 2013, the date VAWA was reauthorized, and March 7, 2015, tribes were required to apply to the Department of Justice to participate in a "Pilot Project." The following three tribes were approved as pilot project tribes on February 6, 2014 (two additional tribes – Fort Peck and Sisseton Wahpeton – were approved on March 6, 2015 which was the last day of the pilot project period):

Confederated Tribes of the Umatilla Indian Reservation

Tribe's website: <http://ctuir.org/>

Reservation land base: 173,470 acres ~ Population: 2,927 (as of 2000 Census)

The Cayuse, Umatilla and Walla Walla people make up the Confederated Tribes of the Umatilla Indian Reservation. The three bands were brought together on the Umatilla Indian Reservation, established by a Treaty with the U.S. Government in 1855. The bands were united as a single tribal government in 1949 when their leaders adopted a constitution and by-laws. The Umatilla Tribes began exercising special domestic violence criminal jurisdiction on February 20, 2014. During the pilot project period, Umatilla convicted two non-Indians, one for assault and one for violation of a protection order. A third assault case was pending, with a guilty pleas anticipated.

Pascua Yaqui Tribe

Tribe's website: <http://www.pascuayaqui-nsn.gov>

Reservation land base: 1,194 acres ~ Population: 3,315 (as of 2000 Census)

The Pascua Yaqui Tribe is located in southwest Arizona on a land base of 1194 acres. With a tribal population of 3315 (and over 90% American Indian), the Pascua Yaqui Tribe began exercising special domestic violence criminal jurisdiction on February 20, 2014. During the pilot project period, Pascua Yaqui has processed 18 SDVCJ cases. There was one jury trial, resulting in an acquittal and subsequent extradition to the State of Oklahoma for an outstanding arrest warrant. The second jury trial was scheduled for April 28, 2015.

Tulalip Tribes

Tribe's website: <http://www.tulaliptribes-nsn.gov/>

Reservation land base: 22,567 acres ~ Population: 9,246 (as of 2000 Census)

The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, Skykomish and other allied tribes and bands signatory to the 1855 Treaty of Point Elliott. The Tulalip Tribes began exercising special domestic violence criminal jurisdiction on February 20, 2014. During the pilot project period, the Tulalip Tribes processed five SDVCJ cases. Three cases resulted in guilty pleas, one was dismissed for insufficient evidence, and one was transferred for federal prosecution primarily because children were involved and SDVCJ does not include assault of a child.

Learn more at:

- www.ncai.org/tribal-vaawa
- www.tribal-institute.org/lists/vawa_2013.htm



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Implementation Chart: VAWA Enhanced Jurisdiction and TLOA Enhanced Sentencing

Revised 5/26/2015

Implementation Chart: VAWA Enhanced Jurisdiction and TLOA Enhanced Sentencing

	State	Indian Tribes	ITWG* or Exploring VAWA	Implemented VAWA	Close to VAWA Implementation	TLOA Enhanced Sentencing Implemented ¹	Close to TLOA Enhanced Sentencing Implementation ²	Exploring or Implementing Enhanced Sentencing ³	Utilized Bureau of Prisons	Notes
1	OR	Confederated Tribes of the Umatilla Indian Reservation	ITWG	Pilot Project 2/6/14		•			•	
2	AZ	Pascua Yaqui	ITWG	Pilot Project 2/6/14			•			
3	WA	Tulalip Tribes Of Washington	ITWG	Pilot Project 2/6/14		•			•	WA granted retrocession, 2001
4	MT	Fort Peck Tribes	ITWG	Pilot Project 3/6/15		•				
5	SD	Sisseton-Wahpeton Oyate	ITWG	Pilot Project 3/6/15		•				
6	MI	Little Traverse Bay Band of Odawa Indians	Interested in Joining	3/7/15						http://www.indianz.com/News/2015/016818.asp
7	NC	Eastern Band of Cherokee Indians	ITWG		Within 6 months	•			•	
8	OK	Cherokee Nation of Oklahoma	ITWG		Within 6 months	•				
9	MS	Mississippi Band of Choctaw Indians	ITWG		Within 6 months					
10	CA	Hopland Band of Pomo Indians	Exploring VAWA		Within 6 months					
11	ND	Three Affiliated Tribes of the Fort Berthold Reservation	ITWG		6-12 months		•			
12	WA	Port Gamble S'Klallam Tribe	ITWG		6-12 months		•			
13	ND	Standing Rock Sioux	ITWG		6-12 months		•			
14	MI	Nottawaseppi Huron Band of the Potawatomi	ITWG		6-12 months					
15	MN	Mille Lacs Band of Ojibwe	Exploring VAWA		6-12 months			•		
16	WA	Shoalwater Bay	Exploring VAWA		6-12 months			•		
17	MI	Grand Traverse Band of Ottawa & Chippewa Indians	Exploring VAWA		6-12 months					
18	SD	Cheyenne River Sioux	Exploring VAWA		6-12 months					
19	WA	Yakama Nation	Exploring VAWA		6-12 months					
20	MN	Red Lake Nation	Exploring VAWA		6-12 months					
21	AZ	Hopi Tribe	ITWG			•				
22	AZ	Salt River Indian Community (AZ)	ITWG			•				
23	AZ	Gila River Indian Community	ITWG			•				
24	OK	Muscogee Creek Nation	ITWG				•			Code revision needed for TLOA
25	MI	Pokagon Band of Potawatomi Indians	ITWG				•			
26	WA	Puyallup Indian Tribe	ITWG				•			
27	NM	San Carlos Apache Nation					•			
28	WA	Quinault Indian Nation	ITWG				•			
29	WA	The Suquamish Tribe	ITWG				•			
30	CO	Ute Mountain Ute					•			
31	NM	Pueblo of Laguna	ITWG				•			
32	NM	Pueblo of Zuni					•			
33	KS	Prairie Band Potawatomi Nation	ITWG				•			
34	WI	Menominee Nation	ITWG				•			
35	OK	Chickasaw Nation	ITWG				•			
36	WA	Chehalis Tribe						•		
37	OK	Iowa Nation						•		
38	WA	Makah Nation						•		
39	LA	Chitimacha						•		
40	OK	Comanche Nation						•		
41	WI	St. Croix						•		
42	WI	Ho-Chunk Nation						•		
43	MT	Crow Nation						•		
44	MN	White Earth Band of Ojibwe	ITWG							concurrent jurisdiction approved by DOJ under TLOA PL 280 provision
45	AZ	Colorado River Indian Tribes	ITWG					•		

Implementation Chart: VAWA Enhanced Jurisdiction and TLOA Enhanced Sentencing

Revised 5/26/2015

	State	Indian Tribes	ITWG* or Exploring VAWA	Implemented VAWA	Close to VAWA Implementation	TLOA Enhanced Sentencing Implemented ¹	Close to TLOA Enhanced Sentencing Implementation ²	Exploring or Implementing Enhanced Sentencing ³	Utilized Bureau of Prisons	Notes
46	OK	Kickapoo Tribe of Oklahoma	ITWG							
47	ID	Nez Perce	ITWG							
48	WI	Oneida Tribe of Wisconsin	ITWG							
49	ME	Passamoquoddy Tribe	ITWG							
50	CA	Pauma Band of Mission Indians	ITWG							
51	NM	Pueblo of Isleta	ITWG							
52	NM	Pueblo of Santa Clara	ITWG							
58	AZ	Tohono O'odham Nation	Exploring VAWA					•		
59	OR	Warm Springs Confederated Tribes	Exploring VAWA							
60	MT	Fort Belnap	Exploring VAWA							
61	AZ	Navajo Nation	Exploring VAWA							
62	OK	Osage Nation	Exploring VAWA							

KEY:

TLOA = Tribal Law and Order Act


VAWA = Violence Against Women Act of 2013

ITWG= InterTribal Working Group: tribes that have been involved in pilot project process since 2013

Exploring VAWA= Tribes expressing interest recently but not in ITWG pilot project process since 2013

A Discussion About ICWA: What Works

Addie Smith, Staff Attorney
National Indian Child Welfare Assoc.
&
Kathryn Hansen, DDA
Umatilla County





NICWA
National Indian Child Welfare Association
Protecting Our Children • Preserving Our Culture

AI/AN Child Welfare Disproportionality: Oregon

**Comparisons of Disproportionality by State
American Indian/Alaska Native**

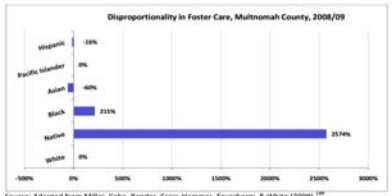

Across the United States, American Indian/Alaska Native children are overrepresented in foster care at a rate of 2.4 times their rate in the general population. While not all states show disproportionality, 21 states do have some overrepresentation. Twenty-four percent of the states that have overrepresentation have a disproportionality index of greater than 4.2. In Minnesota, the disproportionality is index 13.6, in Washington State it is 4.3.

Rates of American Indian Disproportionality in Foster Care

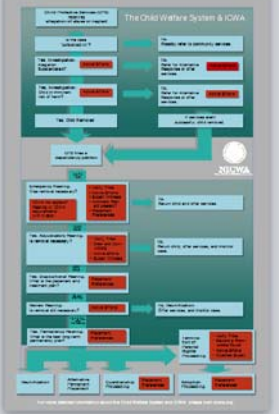

Summers & NCJFCJ, 2015

AI/AN Child Welfare Disproportionality: Multnomah



Curry-Stevens, A., Cross-Hemmer, A., & Coalition of
Communities of Color, 2010

Overview


1978 Indian Child Welfare Act

Congress found:
...that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe.
25 U.S.C. § 1901 (3)

New ICWA Guidelines


- February 25, 2015 DOI/BIA released revised ICWA Guidelines for State Courts and Agencies
 - These supersede and replace the 1979 Guidelines
 - Clarify minimum Federal standards
 - Ensure compliance consistent with
 - Language
 - Intent
 - Canons of statutory construction/interpretation



FAQ: Tips and Tricks
Question 1

How do I get expert witness testimony at shelter, given Oregon's 24 hour shelter hearing requirement?

How do I deal with the provision that "no proceedings shall be held until at least ten days after receipt of notice"?




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FAQ: Tips and Tricks
Question 2

Do I have to make oral findings in court?

- I often rely on the DHS court report and findings are made in the written document.
- Docket time is short and stating everything in court when I already have documentation seems like a waste of precious time.




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FAQ: Tips and Tricks
Question 3

Do I have to need to ask whether or not a case is an ICWA case if it has already established that it is?


What about a new petition for the same family?



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FAQ: Tips and Tricks
Question 4


Do I need to make active efforts findings after the plan has been changed from return to parent?



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FAQ: Tips and Tricks
Question 5


Does the "foster care placement preference" provision apply to shelter or just jurisdiction?



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FAQ: Tips and Tricks
Question 6


If parties stipulate to the allegations on the petition do I still need expert witness testimony?



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FAQ: Tips and Tricks
Question 7


What do I do if there is "reason to know" this may be an ICWA case, but the tribe never responds?



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FAQ: Tips and Tricks
Question 8

Who and how do I know what is the Indian child's tribe when there are two possible tribes?



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FAQ: Tips and Tricks
Question 9


How do I determine if services are culturally appropriate?



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FAQ: Tips and Tricks
Question 10


The placement preferences under the ICWA are often not available, is that "good cause"?



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When in Doubt

- Review the OR ICWA Regs & Procedures Manual
 - https://www.dhs.state.or.us/policy/childwelfare/icwa/icwa_manual_proof.pdf
- Review the NCJFCJ Bench Cards
 - <http://www.nrc4tribes.org/files/ICWA%20Checklist%20Full%20Doc.pdf>
- Review the Guidelines
 - <http://www.bia.gov/cs/groups/public/documents/text/idc1-029637.pdf>
- Review the NARF Practical Guide to ICWA
 - <http://www.narf.org/nill/documents/icwa/>
- Review the ICWA Handbook
 - http://www.amazon.com/gp/product/1590318587/ref=pd_lpo_sbs_dp_ss_1?pf_rd_p=1944687662&pf_rd_s=lpo-top-stripe-1&pf_rd_t=201&pf_rd_i=1570731365&pf_rd_m=ATVPDKIKX0DER&pf_rd_r=05GK798TSFNY2K7Q1X5N
- Call on us at NICWA, NARF, or NCJFCJ!



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FULL FAITH AND CREDIT TRIBAL COURT PROTECTIVE ORDERS

- **Federal law:** Violence Against Women Act
- **State law:** governing foreign restraining orders

ORS 24.190

“foreign restraining order”

a restraining order that is a foreign judgment as defined by ORS 24.105.

“foreign judgment”

Any judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state
ORS 24.105

Violence Against Women Act (VAWA)

Restraining orders rendered in accordance with specified due process protections and issued by an Indian tribe are to be accorded full faith and credit by the court of another state

18 USC § 2265

VAWA restraining order requirements

(1) the court issuing the restraining order has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory;

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

ORS 24.190 cont.

- ORS 24.190 also provides that:
- (b) A foreign restraining order is not enforceable as an Oregon order if:
 - (A) The person restrained by the order shows that:
 - (i) The court that issued the order lacked jurisdiction over the subject matter or lacked personal jurisdiction over the person restrained by the order; or

ORS 24.190 cont.

- (ii) The person restrained by the order was not given reasonable notice and an opportunity to be heard under the law of the jurisdiction in which the order was issued; or
- (B) The foreign restraining order was issued against a person who had petitioned for a restraining order unless:
 - (i) The person protected by the foreign restraining order filed a separate petition seeking the restraining order; and
 - (ii) The court issuing the foreign restraining order made specific findings that the person was entitled to the order.

Jurisprudential Backdrop of 2013 VAWA Amendments

DURO V. REINA, SCOTUS 1990

JUSTICE KENNEDY: CONCERNS ABOUT TRIBAL COURTS JUSTIFIES DENYING TRIBES CRIMINAL JURISDICTION OVER NON-MEMBERS:

- "SPECIAL NATURE" OF TRIBAL COURTS
- TRIBAL COURTS "INFLUENCED BY THE UNIQUE CUSTOMS, LANGUAGES AND USAGES OF THE TRIBES THEY SERVE" WITH "UNSPOKEN PRACTICES AND NORMS"
- THEY ARE "SUBORDINATE TO THE POLITICAL BRANCHES OF TRIBAL GOVERNMENT"
- BILL OF RIGHTS DOES NOT APPLY. NO RIGHT TO COUNSEL UNDER ICRA
- JURIES DRAWN ONLY FROM TRIBAL MEMBERSHIP

Implementing TLOA and VAWA 2013 at Umatilla

PRESENTED BY:
M. BRENT LEONHARD



TLOA and VAWA Build On Each Other

- TLOA has 6 key areas that need to be addressed for a tribe to exercise felony sentencing.
 1. Felony crime or previous conviction (not necessary for VAWA)
 2. Effective assistance of counsel same as US Constitution (*Strickland*: 1. not objectively reasonable, 2. reasonably likely effected outcome)
 3. Licensed attorneys for indigent defendants (tribal licensing possible: must apply standards that ensure competence and professional responsibility)
 4. Law trained and licensed judges (sufficient training to preside over criminal proceeding; tribal licensing possible, but no explicit competence/professional responsibility provision)
 5. Laws, rules of evidence, and procedures publicly available
 6. Recorded proceedings

TLOA and VAWA Build On Each Other

- VAWA requires that TLOA defense rights areas be given non-Indians regardless of whether or not a felony, and adds 2 (or more) requirements.
 1. Jury pool includes non-Indians (fair cross-section/no systematic discrimination)
 2. Timely notice of *new* habeas corpus privileges/rights
 3. Catchall: Any other constitutional right necessary to exercise inherent authority (included before the non-Indian jury pool became a requirement at SCIA, not likely to require grand juries as 5th amendment has not been incorporated against states)

Umatilla Implemented TLOA in March 2011

- CTUIR already did everything required under TLOA, but wasn't explicitly guaranteed by statute.
- Amended Criminal Code to define felony and misdemeanor offenses and explicitly guarantee rights.
- Ensuring felonies were felonies in a state or federal jurisdiction was fairly simple (CTUIR crimes mirrored Oregon's since PL280 retrocession).
- Made 2nd DV and Elder abuse a felony.
- 2 Housed in BOP Pilot Project. Another application is pending.

VAWA Added Condition #1

- Jury pool drawn from sources that reflect a fair cross-section of the community.
- Jury system does not systematically exclude any distinctive group in the community (read: including non-Indians).
- Umatilla's jury pool already includes these things:
 - Any resident of the reservation over 18 is included in the jury pool.
 - Take the County's voting district that is a rough overlay of the reservation and use that list to draw a jury pool from.

VAWA Added Condition #2

- Timely notice of habeas corpus privileges and rights.
- VAWA 2013 changes those rights.
 - Anyone can file habeas corpus petition in federal court claiming ICRA violation (since 1968)
 - New right gives them ability to request a stay of tribal detention
 - Stay shall be granted if:
 - Substantial likelihood petition will be granted AND
 - Clear and convincing evidence that if released won't flee or pose danger. Victims can be heard on this.
- Umatilla has always notified defendant of habeas privilege at arraignment.
 - With new rights, we issue **everyone** in custody a one-page notice of all rights and have them sign it. If they refuse, the police note it.

Umatilla "Implemented" VAWA in July 2013

- Amended Criminal Code in July 2013 to be compliant with VAWA 2013's non-Indian requirements. Formal approval for early exercise in Feb. 2014 (Along with Tulalip and PYT).
- All rights are guaranteed to everyone, regardless of misdemeanor, felony, or race of defendant.
- Also required prosecution to plead and prove jurisdictional elements of VAWA 2013.
- Made jury verdict unanimous.

Additional Actions Associated With VAWA

- CTUIR has an explicit constitutional separation of powers between BOT and Court (2008 amendment).

"The judicial power of the Confederated Tribes is vested in the Tribal Court, which shall have general authority to adjudicate disputes and enunciate principles of law."

- In anticipation of VAWA, also adopted a comprehensive Court Code.

Additional Actions Associated With VAWA

- Court Code governs appointment of judges (eligibility, compensation, duties – was in the Criminal Code) creates a public rule making process (new), and sets out rules of judicial conduct (new).
- Judge serves for 10 year periods, with first year probationary. Salary cannot be lowered. Removal can only be "for cause" and the rules of conduct provide an objective basis for that determination. (This used to be in the Criminal Code).

Additional Actions Associated With VAWA

- Created a comprehensive set of rules of evidence similar to federal rules. (Old rule was one paragraph, although in practice looked to federal and state rules as appropriate).
- DOJ wanted some additional clarifications, so issued a Court Directive covering those. Issues addressed:
 - Right to public defender on appeal.
 - Record retention period clarification (CTUIR retains for 10 years).
 - Tribe must prove VAWA's jurisdictional requirement beyond a reasonable doubt.

Additional Actions Associated With VAWA

- To deal with questions about tribal exhaustion and the new habeas corpus rights, CTUIR created a tribal habeas corpus process to the Trial Court.
- Previously appeals were only direct appeals and there was no explicit vehicle to bring claims outside of that context (e.g., denial of right to effective assistance of counsel brought post-conviction, extradition, etc.)

Tribes Implementing TLOA & VAWA to date

- **8 tribes have implemented TLOA:**
 - CTUIR (OR), Tulalip (WA), Fort Peck (MT), EB Cherokee (NC), Cherokee Nation (OK), Hopi (AZ), Salt River (AZ), Gila River (AZ).
- **5 tribes were approved by USDOJ for the VAWA 2013 Pilot Program:**
 - Feb. 2014: CTUIR (OR), Tulalip (WA), Pascua Yaqui (AZ)
 - March 2015: Sisseton-Wahpeton (SD), Fort Peck (MT)
- **2 tribes have implemented VAWA since March 6, 2015: Little Traverse Bay Band (MI), Eastern Band Cherokee (NC).**



Judge Leonard Edwards
Santa Clara Superior Court (Ret.)

Improving State Court-Tribal Court Relations

Two separate court systems operate in California. One is the state court system which includes trial and appellate courts headed by the California Supreme Court. The other is a collection of tribal courts, operating in a number of tribal reservations within the state. These court systems are separate, yet they have a number of issues which cross over, one to the other.

For example, will a state court recognize a tribal court order? If a state court issues a domestic violence restraining order, will a tribal court give full faith and credit to that order? Will law enforcement outside of Indian Country enforce a restraining order issued by a tribal court judge?¹

Will the case of an Indian child in a state court delinquency or dependency proceeding be transferred to a tribal court?

These are but a few of the many relationship issues that state and tribal courts encounter on a daily basis. While some state courts and tribal courts have developed protocols for the management of these issues, many have not. My proposal is that the tribal and state courts that have over-lapping jurisdictions form a local Tribal Court – State Court Council. The

Council would be comprised of representatives from both courts and include members from each community, including judges, law enforcement, attorneys, social service representatives, probation, court clerks, and others. The council would meet from time to time and would develop protocols and procedures that address legal and other issues where the two court systems interact. There are several existing models for collaboration between state courts and tribal courts in California. My suggestion is not intended to change any of these collaborations, but to encourage the development of new ones.

My proposal is that the tribal and state courts that have over-lapping jurisdictions form a local Tribal Court – State Court Council.

The issues outlined above would be reasonably easy to address effectively as several model protocols have been developed by tribal and state courts including the Hoopa Valley Tribe and the Humboldt County Superior Court, the Shingle Springs Tribal Court and Superior Court of El Dorado County, and the Riverside Alliance.²

This idea comes from an article I wrote many years ago suggesting the creation of a Domestic Violence Council in every community in the United States³. The spread of domestic violence councils in California and around the country has been impressive. The establishment of a council gives credence to the notion that creating a problem solving atmosphere can produce positive changes in a community.

Moreover, there is technical assistance available for the start-up of a Tribal Court-State Court Council from the Judicial Council of California's Tribal/State Programs. And there is judicial expertise and leadership that can be tapped through the Tribal Court – State Court Forum, a coalition of the various tribal court and state court leaders who come together as equal partners to address areas of mutual concern. Jennifer Walter, supervising attorney of the Tribal/State Programs and counsel to the Forum, can provide materials and facilitate site visits by experts in tribal court – state court relations.

I urge state and tribal court judges to reach out to one another and start to work together. Creating such a Council will serve all persons involved.

Continued on page 36

APPENDIX A – SUGGESTIONS FOR STARTING A COUNCIL

1. Who should take the lead in organizing the Council? Is either a Superior Court Judge or a tribal judge ready to contact the other and suggest creating a Council?
2. Where should meetings take place and how should they be run?
 - a. Explore the logistics that create a safe, welcoming environment that promotes a positive government-to-government relationship, a sustainable partnership, and dialogue about areas of mutual concern.
 - b. Consider having rotating locations for the meetings both in the county and on the reservation.
 - c. Explore creating infrastructure so that partnerships forged go beyond the individual relationships and are sustained as turnover occurs.
 - d. Who should be invited (are there representatives from all stakeholders)?
3. What are the barriers facing Native victims of domestic violence in the community?
 - a. Explore why native victims may not report domestic violence.
 - b. Explore why county law enforcement may not enforce protective orders in tribal communities?
 - c. Explore why native victims may not go to court for protection in either tribal or state courts.
 - d. What are the available services for native victims of domestic violence in the county and on reservations?
4. What are the procedures in place for ensuring that protective orders (whether issued by the tribal court or state court) are recognized and enforced? These would include procedures developed by law enforcement (city, county sheriff, state highway patrol, federal, and tribal police).
 - a. What protocols for collaboration regarding enforcement have been developed by these agencies?
 - b. Are there Inter-Court collaborative protocols/rules of court or other procedures between the state and tribal courts?

- c. What is the role of each stakeholder in protocol implementation?
 - d. Do the protocols in fact work to protect victims of domestic violence?
5. What education is provided in the county?
 - a. About the tribal communities in the county?
 - b. About tribal courts in the county?
 - c. About inter-jurisdictional legal issues?
 - d. About culturally competent resources?
 - e. Is education provided for specific audiences such as for judges, attorneys, service providers, law enforcement, probation, social services and others?
6. How can tribal representatives assist state courts in the implementation of the Indian Child Welfare Act (ICWA)?
 - a. Are tribal representatives regularly noticed of cases involving Indian children?
 - b. How do the new Bureau of Indian Affairs (BIA) Guidelines impact tribal court/state court relations?
 - c. Will county social services provide services to Indian children living on the reservation?

Judge Leonard Edwards can be reached via email: leonard.edwards@jud.ca.gov

Endnotes

- 1 Appendix A contains a list of issues that the Council might discuss as well as suggestions for establishing a Council.
- 2 <http://www.riverside.courts.ca.gov/juvenile/triballiance.shtml>
- 3 “Reducing Family Violence: The Role of the Family Violence Council,” *Juvenile and Family Court Journal*, Vol. 43, No. 3, 1992, 1-18. It can be found in the publications blog at judgeleonardedwards.com. 📄

Books for Those Who Work in Juvenile Court

Somebody Else’s Children by John Hubner and Jill Wolfson, Three Rivers Press, N.Y., 2006

The Boy Who Was Raised as a Dog, by Bruce Perry and Maia Szalavitz, Basic Books, N.Y., 2006

Three Little Words, by Ashley Rhodes-Courter, Atheneum, N.Y., 2008

Finding Fish, by Antwone Fisher, HarperCollins, N.Y., 2001

Hope’s Boy, by Andrew Bridge, Hyperion, N.Y., 2008

Beyond the Best Interests of the Child, by Joseph Goldstein, Anna Freud, Albert J. Solnit, The Free Press, N.Y., 1973

I Speak for This Child, by Gay Courter, iUniverse.com, Inc., Lincoln, NE, 1995

Child Protection in America: Past, Present, and Future, by John E.B. Myers, Oxford U. Press, 2006

Handbook on Questioning Children, (2nd Edition) by Ann Graffam Walker, ABA Center on Children and the Law, Washington, D.C., 1999.

There Are No Children Here: The Story of Two Boys Growing Up in the Other America, by Alex Kotlowitz, 1992.

Walk to Beautiful, by Jimmy Wayne, 2014

Born for Love: Why Empathy is Essential - and Endangered, by Bruce Perry (2011)

Creative Interventions with Traumatized Children (Creative Arts and Play Therapy), by Bruce Perry (2014)

GDog and the Homeboys: Father Greg Boyle and the Gangs of East Los Angeles by Celeste Fremon, (2004).

No Matter How Loud I Shout: A Year in the Life of Juvenile Court, by Edward Humes (1997) 📄

CALIFORNIA TRIBAL COURT/STATE COURT FORUM

Charge and Scope of Work

Charge

The California Tribal Court/State Court Forum is a coalition of the tribal courts of the Native American tribes in California and the courts of the State of California, which come together as equal partners to address issues common to both, such as recognizing and enforcing court orders that cross jurisdictional lines, determining jurisdiction for cases that might appear in either court system, and sharing services between jurisdictions. The forum will convene for the express purposes of improving the working relationship between its members and enabling the courts to issue and enforce their respective orders to the fullest extent allowed by law. The forum will make recommendations—including legislative, rule, and form proposals—to the Judicial Council either directly or jointly with the appropriate, relevant advisory committees.

Scope of Work

1. Information and Resource Sharing

The forum will identify opportunities to share educational resources, develop judicial curricula, and establish a clearinghouse for the exchange of resources to benefit the people served by tribal courts and state courts.

- ***Education and training.*** The forum will identify relevant educational opportunities for tribal court and state court judges. The Administrative Office of the Courts (AOC) will continue to make available to tribal court judges existing in-person and distance-learning educational programs and materials that are available to state court judges through its secure website. The AOC will seek funding to continue financing the attendance of tribal, state court judges, and personnel at statewide trainings.
- ***Curriculum development.*** The forum will make recommendations to the AOC to revise state court judicial education and training materials; revisions to include information regarding federal Indian law and the interjurisdictional issues that face tribal and state courts.
- ***Clearinghouse of other resources.*** The forum will identify other resources that can improve tribal court and state court relationships and support tribal court and state court capacity to serve Native Americans. Examples include (1) local protocols between tribal and state courts; (2) technical assistance to enhance or establish supervised visitation

tribal programs, self-help tribal programs, and tribal CASA programs; (3) Judicial Council forms in a format that interested tribal courts may adapt; (4) tribal grant opportunities; and (5) collaborative grant applications and letters of support for grant applications.

2. Jurisdictional Issues

The forum will identify jurisdictional issues across case types to ensure the recognition and enforcement of tribal court and state court orders.

- ***Recognition and enforcement of protective orders.*** Although the federal Violence Against Women Act mandates full faith and credit and enforcement for protective orders, tribal courts currently have no mechanism for entering their protective orders into CLETS (California Law Enforcement Telecommunications System) or CARPOS (California Restraining and Protective Order System). Tribal advocates and tribal judges report that law enforcement agencies do not always recognize or enforce tribal court orders as valid court orders.

The failure to recognize and enforce tribal court orders creates real issues in ensuring the protection of victims of domestic violence. Law enforcement typically will not enforce an order if it cannot verify the order in CLETS. Developing a statewide solution that does not rely on local protocols for tribal court protective order entry into CLETS would be helpful.

- ***Recognition and enforcement of other civil orders (e.g., animal control, debt collection, housing, environment, traffic).*** Tribal court judges report that in some cases where a civil matter has been fully litigated to judgment in tribal court, the tribal court judgment will not be recognized or enforced outside the reservation. They report that some state court judges do not recognize tribal court judgments and require the matters essentially to be relitigated in state court.

Relitigating matters is an inefficient use of judicial resources and increases the cost to litigants as well. Developing a clear, consistent statewide procedure for enforcement of orders would be helpful.

- ***Recognition and enforcement of other criminal orders (e.g., crimes occurring on tribal lands).*** Many jurisdictional complexities and limitations in Indian country result in the lack of recognition and enforcement of criminal orders. The difficulty in determining jurisdiction and provisions for concurrent jurisdiction of certain cases can cause conflict and confusion for law enforcement, prosecution, courts, service providers, and crime victims.

3. Sharing, Coordination, and Transfer of Jurisdiction; Access to Records Across Jurisdictions

The forum will identify jurisdictional issues and make recommendations that will permit tribal courts and state courts to effectively share, allocate, and transfer jurisdiction across case types.

- ***Child protection, child welfare, and juvenile justice cases.*** The Indian Child Welfare Act sets out a specific preference for tribal court jurisdiction over cases involving Native American children and requires transfer of these matters to tribal court except where there is good cause not to transfer. California statute restricts access to juvenile court records in these confidential proceedings.

Currently, federal and state statutes codify the Indian Child Welfare Act, and a rule of court gives guidance on implementation, including the transfer of cases from state court to tribal court. However, no formal mechanism exists for allocating shared jurisdiction or transferring a case in the other direction from tribal court to state court, which can result in an inefficient use of judicial resources and potentially conflicting judgments that increase the cost of litigation and undermine tribal and state justice systems.

Welfare and Institutions Code section 827 enumerates the individuals and entities that have access to confidential juvenile court records. Under this statute, tribes do not have access to these records unless they have intervened as parties. This law can result in tribal court placement orders that put children at risk of harm because the tribal courts and agencies would not have the same access to information that the state courts and local county agencies would have.

- ***Other civil cases.*** In other civil cases, there may be concurrent jurisdiction. Currently, no formal mechanism is in place to inform tribal and state courts of what cases are pending in each other's courts. Also, there is no formal mechanism for allocating shared jurisdiction, transferring cases between tribal and state court jurisdictions, and sharing records between jurisdictions. This lack can result in an inefficient use of judicial resources and potentially conflicting judgments that increase the cost to litigants and undermine tribal and state justice systems.
- ***Probation and parole oversight.*** Interjurisdictional management of probationers and parolees is another area where more interaction among agencies is warranted. In California, probationers and parolees often cross jurisdictional lines for work or family or to relocate permanently. Because tribal and state justice systems have an interest in tracking offenders, it would improve offender accountability if tribal and county probation departments and tribal and county law enforcement agencies shared this information.

4. Data Issues

The forum will work to eliminate barriers to the collection and exchange of essential tribe-specific information.

- ***Law enforcement, child welfare/protection, and state court case information.*** Local and statewide databases do not collect tribe-specific information. California's law

enforcement agencies are first responders to calls for assistance on tribal lands and, as such, report crime-related data to the state of California. When reporting crime data in Indian country, however, law enforcement agencies report only aggregate numbers. They are not required by statute to report data on ethnicity or tribal affiliation—or even whether calls come from Indian reservations or other Indian lands. No provision or specific funding exists for case management systems within local and state agencies to track tribe-specific data for information relating to crime and victimization, child welfare / child protection, and state court case information.

CALIFORNIA TRIBAL COURT–STATE COURT FORUM

September 2014

Forum Accomplishments—Highlights

(2010-2014)

Below are some of the key accomplishments of the forum:

1. Sharing of Resources: judicial education and technical assistance to support each other's court capacity to meet the needs of its citizens. Resources have extended to areas of court forms, collaborative justice, court security, grants, human resources, protective order database information, supervised visitation, and self-help.
2. Developing New Resources: curriculum on civil and criminal jurisdiction in a Public Law 280 state, educational offerings at tribal and state court sponsored trainings, updates to existing judicial curriculum and benchguides, and creation of a website to serve as a clearinghouse of resources.
3. Collection of Tribe-Specific Data and Information
 - population characteristics
(<http://www.courts.ca.gov/documents/Tribal-ResearchUpdate-NAStats.pdf>)
 - domestic and other violence and victimization statistics
(www.courts.ca.gov/documents/NatAmStatsAbUpdate.pdf)
 - tribal court directory (www.courts.ca.gov/14400.htm) and map
(<http://g.co/maps/cvdq8>)
 - tribal justice systems
(<http://www.courts.ca.gov/documents/TribalJusticeSystemRU.pdf>)
4. Focus on Domestic Violence: recognition and enforcement of protective orders
 - *Statewide Needs Assessment*. This assessment informs the work of the forum as it implements solutions identified in the California reports relating to domestic violence, sexual assault, stalking, and teen dating violence in Native American communities (www.courts.ca.gov/8117.htm);
 - *California Courts Protective Order Registry*. By sharing information on restraining and protective orders, state courts and tribal courts are better able to protect the public, particularly victims of domestic violence, and avoid conflicting orders. (www.courts.ca.gov/15574.htm)

- *Domestic Abuse Self-Help Tribal Project*. Assistance for litigants with obtaining restraining orders in tribal courts and state courts. In this project, a nonlawyer works under the supervision of a reviewing attorney to assist the litigant. The attorney can supervise from any location through the use of technology, training, and review of the nonlawyer's work.
(www.courts.ca.gov/documents/FactSheetDASH.pdf)
 - *Efficient and Consistent Process*. Following effective local tribal and state court protocols, effective July 1, 2012, the Judicial Council adopted rule 5.386, which provides that state courts, when requested by a tribal court, must adopt a written procedure or local rule to permit the fax or electronic filing of any tribal court protective order that is entitled to be registered under Family Code section 6404.
(www.courts.ca.gov/documents/SPR11-53.pdf)
 - *Public Law 280 and Family Violence Curriculum for Judges*
(www.courts.ca.gov/documents/Tribal-FamViolenceCurriculum.pdf)
 - *Recognition and Enforcement of Tribal Protective Orders (Informational Brochure)*
(<http://www.courts.ca.gov/documents/Tribal-DVProtectiveOrders.pdf>)
 - *Tribal Advocates Curriculum*
(www.courts.ca.gov/documents/TribalAdvocacyCurriculum.pdf)
 - *Tribal Communities and Domestic Violence Judicial Benchguide*
(<http://www.courts.ca.gov/documents/Tribal-DVBenchguide.pdf>)
 - *Judicial Toolkit on Federal Indian Law*
(<http://www.courts.ca.gov/27002.htm>)
5. Focus on Child Support: rule governing title IV-D case transfers to tribal court
- Developed a rule proposal, which provides a consistent procedure for the discretionary transfer of Title IV-D child support cases from the state superior courts to tribal courts where there is concurrent jurisdiction over the matter in controversy. The Judicial Council adopted the rule proposal, effective January 1, 2014.
(www.courts.ca.gov/documents/ChildSupportProposalSPR13-17.pdf)
6. Focus on Civil Money Judgments
- SB 406: Tribal Court Civil Money Judgment Act, which will simplify and clarify the process by which tribal court civil money judgments are recognized and enforced in California. For Judicial Council reports, see Invitation to Comment 2011: <http://www.courts.ca.gov/documents/LEG11-03.pdf>; Invitation to Comment 2012: <http://www.courts.ca.gov/documents/LEG11-04.pdf>; and Final Report: www.courts.ca.gov/documents/jc-20121214-itemG.pdf. For chaptered bill, see http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0401-0450/sb_406_bill_20140822_chaptered.pdf.

7. Focus on Elder Abuse and Protective Proceedings

SB 940: California Conservatorship Jurisdiction Act, which will address issues involving conservatorships for members of Indian tribes located in California. The forum initiated a joint working group with the California Judicial Council's Probate and Mental Health Advisory Committee to identify tribal/state issues relating to elder abuse and protective proceedings. This working group reviewed the California Law Revision Commission's (CLRC) recommendation that California adopt a modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). Working in coordination with the Policy and Coordination Liaison Committee and the Office of Governmental Affairs, the forum submitted legislative language to CLRC to address issues involving conservatorships for members of Indian tribes located California. As a result, the CLRC-sponsored legislation, the California Conservatorship Jurisdiction Act (SB 940), incorporates the forum's recommended revisions, and if adopted, will codify a modified version of the UAGPPJA in California. See http://leginfo.ca.gov/pub/13-14/bill/sen/sb_0901-0950/sb_940_bill_20140815_enrolled.pdf
8. Focus on Juvenile Cases: rule proposals, legislative proposals, and legislative reports
 - Appeals: developed a rule proposal to revise the rule governing sending the record in juvenile appeals to clarify that, if an Indian tribe has intervened in a case, a copy of the record of that case must be sent to that tribe. The Judicial Council adopted the rule proposal, effective January 1, 2013.
(<http://www.courts.ca.gov/documents/SPR11-12.pdf>)
 - Access to Records (AB 1618): developed a legislative proposal to amend Welfare and Institutions Code section 827 to share juvenile records between tribal and state courts. This proposal was adopted by the Judicial Council and introduced by Assemblymember Wesley Chesbro. Chaptered as Stats. 2014, Ch. 37, effective January 1, 2015.
(http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1601-1650/ab_1618_bill_20140625_chaptered.pdf)
 - Psychotropic medication: recommended a rule proposal to provide notice to tribes in juvenile cases where psychotropic medication is being considered.
(www.courts.ca.gov/documents/SPR13-18.pdf)
 - Tribal Customary Adoption: Provided expertise in the preparation of the statutorily mandated report on tribal customary adoption from the Judicial Council to the State Legislature.
(www.courts.ca.gov/documents/lr-Tribal-Customary-Adoption-Report_123112.pdf)

Cross-Cultural Court Exchanges

The forum has planned a series of local tribal court/state court exchanges to both model the collaborative relationships among tribal and state court judges at a local level and foster partnerships among tribal and non-tribal agencies and service providers. Through these exchanges, which are judicially-convened on tribal lands, participants identify areas of mutual concern, new ways of working together, and coordinated approaches to enforcing tribal and state court orders. Since no court order is self-executing, these exchanges serve to support both state and tribal courts by ensuring that those who are providing court-connected services are working together to meet the needs of their tribal communities regardless of whether citizens walk through the tribal or state courthouse doors.

To date, the Tribal/State Programs staff has assisted tribal and state court judges in convening five exchanges on the following tribal lands: Bishop Paiute, Hoopa, Karuk, Quechan, and Yurok.

CONFERENCE OF CHIEF JUSTICES

Resolution 5

To Encourage Greater Collaboration Between State Courts and Tribal Courts to Protect Native American Children

WHEREAS, tribal courts serve the children and families of sovereign nations with the same authority and responsibility as state courts; and

WHEREAS, collaboration between state courts and agencies responsible for child protection and education has greatly contributed to the improvement of the process and outcomes of child protection cases around the country; and

WHEREAS, the federal Indian Child Welfare Act (ICWA) requires close communication and cooperation between state and tribal courts when a Native American child not residing in Indian Country is removed from her/his home or is offered for adoption; and

WHEREAS, close communication and cooperation between state and tribal courts have been inhibited by:

- the lack of contact information for tribal judges in many states;
- the difficulty in electronically exchanging information regarding child protection cases between tribal and state courts;
- the lack of information regarding the requirements of ICWA, the reasons for those requirements, and the relationship of ICWA to other federal legislation on child welfare such as the Adoption and Safe Families Act (ASFA) and the Fostering Connections Act;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices encourages each court system in states that include Indian Country to:

- (1) Encourage the state court judges who hear child protection and adoption cases to communicate and collaborate with their tribal court counterparts when a Native American child or family may be involved in a case;
- (2) Provide a brief discussion and description of the state's tribal courts in new judge orientation programs and materials;
- (3) Include on the state court website contact information for each tribal court in the state;
- (4) Offer each tribal court in the state the case management system module(s) on child protection used by the state; and
- (5) Present training on the requirements of ICWA and the relationship of ICWA to other federal legislation on child welfare such as the ASFA and the Fostering Connections Act for state court judges and invite tribal judges to participate in that training.

Adopted as proposed by the CCJ/COSCA Courts, Children and Families Committee, Tribal Relations Committee, and Access, Fairness, and Public Trust Committee at the CCJ Midyear Meeting, January 26, 2011.



P2P Worksheet

Purpose: _____
exists to _____

1. Purpose
Why is the work important to you and the larger community?

2. Principles
What guiding principles are most important to achieve our purpose?

3. Participants
Who can contribute to achieving our purpose and must be included?

4. Structure
How should we organize and how should leadership be defined and shared to achieve our purpose?

5. Practice
What are we going to do? What will we offer to our users/clients and how will we do it?"



Practices:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

Principles:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

Participants:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

Structure:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.