

# Indian Child Welfare Act (ICWA) Overview



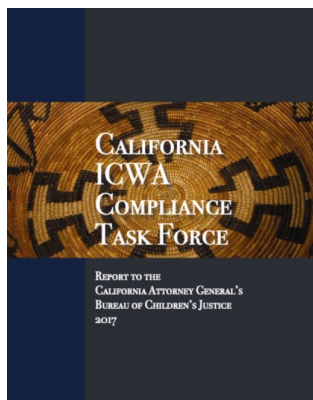
**CALIFORNIA  
TRIBAL FAMILIES  
COALITION**

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## WELCOME AND INTRODUCTIONS

- Welcome
- Presenter Intro
- Land Acknowledgement

## CALIFORNIA TRIBAL FAMILIES COALITION



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

CTFC is a successor organization to the California ICWA Compliance Task Force. The California ICWA Compliance Task Force Report may be found at: [www.caltribalfamilies.org](http://www.caltribalfamilies.org)

## BUT ENOUGH ABOUT ME, LET'S TALK ABOUT YOU...

- How long have you been a foster family?
- Do you have experience fostering Native American children?
- What has your experience been interfacing with Tribal representatives through the process of fostering?

INTENT & OVERVIEW  
OF THE TRAINING  
SESSION

**Keeping tribal children connected to their family, community and tribal culture is at the heart of this training**

- WHAT IS ICWA?
- WHY DO WE NEED ICWA? THEN & NOW
- ICWA MIN FED STANDARDS OVERVIEW - EMPHASIS ON PLACEMENT
- HELPFUL RESOURCES TO LEARN MORE

KNOWLEDGE CHECK: PLACEMENT

Historic biases have contributed to tribal children getting lost in the foster care system./How and why are tribal children and families disconnected from their tribes/

- A. Federal policies (i.e. assimilation, relocation, Indian child adoptive practices, and boarding schools)/
- B. Historic bias in child welfare practices and assessment/
- C. Self-isolation (i.e. due to substance use, unhealthy coping mechanisms)/
- D. Guilt and shame due to not having opportunities to learn about tribal culture./
- E. All the above/

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## KNOWLEDGE CHECK: PLACEMENT

When must the ICWA placement preferences be applied?/

- A. Only when the tribe has intervened in the case./
- B. Only when the child is enrolled in a federally recognized tribe
- C. In any and all ICWA cases all the time consistent with the tribe's designation of order of placement preferences
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## Classroom Philosophy and Environment - *content warning*

- An individual or a groups' experience with privilege, diversity, race, and oppression can be unsettling and, at times, divisive. This is especially true when one closely examines the history and experiences of American Indian peoples; much of it remains unresolved, troubling, and ongoing. If you find that you are having deep emotional reactions to training content, I encourage you to be attentive to those emotions.
- Training content is not meant to place blame, alienate, or oppress anyone for their beliefs or values. Instead, its purpose is to enlighten, create awareness, and move us toward our common goals of creating better outcomes for children and families. Being able to work through the situations and mindsets where we are having negative reactions are all a part of our personal and professional growth and development in the classroom, in the field and in our lives as human beings.



LEGAL  
DEFINITIONS OF  
INDIAN CHILD  
&  
INDIAN PARENT

*\*Terminology Note\**

- An Indian Child is:  
an unmarried minor that is either a member or is eligible for membership★ in an Indian tribe and a biological child of a member. (ICWA also applies for non-minor dependents unless the youth opts out).
- An Indian parent is:  
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. The biological parent does not have to be Indian to have the protections of the Act.

★ Membership can only be determined by the Tribe

## PURPOSE OF THE ICWA

Passed by Congress in 1978, ICWA legislates protections for tribes, parents and children, intended to:

- **Protect** the best interest of Indian children and Indian tribes
- **Prevent** the breakup of Indian families;
- **Maintain** the citizenry of tribes; and,
- **Remedy** historical policies that led to the disproportionate removal of Indian children from their families and communities.

ICWA's protections for tribes means a tribe is involved in all aspects of decision making when an eligible or enrolled citizen child is involved in a child welfare case.

## HOW DID WE GET TO ICWA?

- **Federal trust responsibility** between tribes and the Federal Government – tribes have a political relationship with the Federal Government.
- **Influence of various federal policies**, including policies that allowed Indian lands to be taken from tribes and Indian children to be removed for assimilation.
- **Disproportionality of Indian children** in the child welfare system, A/I and N/Alaskan children are in foster care at double the rate of nonminority children – In California, tribal children are 4.7 times more likely than white children to be in care.

## BUT HOW DID WE GET THERE? - HISTORICAL CONTEXT BEHIND THE PURPOSE OF ICWA

[“How the US Stole Thousands of Native American Children”](#) -  
13 minute video

### Small group break-out discussion

On a scale of 1-5, how familiar were you previously to this history of Native American child and family separation? What was new or particularly impactful to you from the video?

*Remember, ICWA was passed as a REMEDIAL statute intended to remedy past harms imposed on tribal nations by previous assimilationist laws, policies and practices. Undermining the spirit and intent of ICWA and tribal authority to self-govern is a contemporary extension of harm.*

## WHY DID WE NEED ICWA ?

In hearings prior to the passage of ICWA, Congress found that assimilation policies and the trauma on families resulted in:

- An alarmingly high percentage of Native American Families were broken up due to unwarranted removal and many were placed in non-native foster and adoptive homes.
- Nationally: 25-35% of Native American children were removed from their families and communities.
- In California: over 90% of those removed were placed in non-Native homes. And Native American children were more likely to end up in adoptive placement.

State courts have often failed to recognize:

- Essential tribal relations of Native people.
- Cultural and social standards prevailing in Native families and communities.

## WHY DO WE CONTINUE TO NEED ICWA ?

- Nationally, Native American children are **2x** as likely to be in foster care.
- In California, four counties with less than 10% of the population reported as Native American had high rates of Native children in foster care:





## NATIVE RESILIENCE

- Revitalization of cultural practices and languages – *culture is medicine*
- Politicization and resistance – *advocacy and activism*
- Re(claiming) and Re(naming) – “*Land Back*”
- Return to traditional values and community - *prevention*
- Return to traditional child rearing practices and rites of passage - *intervention*
- Founding of organizations and services to help families and communities – *building our own solutions*
- Strengthening Tribal Sovereignty – *nation building*

*Native resilience is characterized by achieving positive outcomes despite significant adversity or adaptive characteristics to recover from trauma*

## WHAT IS ICWA?

Federal law that sets minimum standards for Indian child custody proceedings. Includes:

- Inquiry
- Notice
- Active efforts
- Tribal intervention
- Transfer to tribal courts
- Placement Preferences
- Heightened evidentiary preferences



California has adopted the federal ICWA provisions in state law in the Welfare and Institution Code through SB 678 in 2006 and AB 3176 in 2018.

## TRIBAL SOVEREIGNTY- WHAT IS IT?

[BESE EXPLAINS TRIBAL SOVEREIGNTY](#) 3 minute video

**Tribal sovereignty is something Indian tribes have retained, not something granted to them by the federal government. As part of the sovereign status of Indian tribes, tribal governments generally have the authority to do the following:**

- Select their own form of government
- Define their tribal membership criteria and determine membership
- Enact and enforce civil, criminal, and regulatory legislation, including regulating domestic relations
- Provide specific areas of law enforcement and establish a court system.
- Assert jurisdiction over their people and lands
- Regulate trade within their borders
- Impose and collect taxes, including taxing non-Indians engaged in economic activity on tribal lands

## CONTEMPORARY TRIBAL GOVERNANCE & SERVICE DELIVERY

In addition to each tribe having the authority to adopt its own tribal codes and ways of governing their communities, tribal social services departments vary.

Each tribal governance or tribal agency has different programming, staffing, services, resources, grant funded initiatives, decision making processes, service eligibility criteria, and more.

Be careful not to assume that because one tribe or tribal agency handles a case one way or provides a certain service that all tribal agencies will handle cases the same or provide the same services.

Get to know your tribal agency partners and learn about their services.

## Tribes as Partners. Why?

- Tribe acts as another parent or extended family member to the child.
- Tribe's interest and child's best interest are inherently tied together.
- To support the continued existence of tribes.
- To support the cultural connections and identity development of the child. *Caregivers are partners in this too!*
- Full party to any ICWA case and can pursue invalidation of the proceedings at any point.
- To remedy 500 years of historical oppression.

## Tribal Providers as Partners. In What Ways?

*"It's not how you integrate culture into services, but how you integrate services into the culture."*

- In assessments - tribe often has extensive knowledge of the family and their history in the community.
- In the development of culturally relevant plans, engagement and teaming with the family.
- In the provision of services beyond those available in the mainstream community.
- In helping the family navigate complex systems and being an advocate.
- In identifying cultural connections and supports for the child & family.
- In bridging the cultural humility gap between agencies and the family

## Working with Tribal Agency Providers. Who?

- Generalist Tribal Social Worker
- ICWA Social Worker
- TANF Caseworker or other TANF staff
- Tribal Head Start/Early Head Start Family Services Coordinator
- Tribal Education Program Advocate
- Indian Health Services Medical Personnel (such as a pediatrician)
- Elected Tribal Leaders - engagement should be viewed as similar to working with state governors or other elected federal officials
- Others?

## Points of Contention: Tribes, CWS, Parents, and Child

- Should the tribe be invited?
- Should the referral be investigated?
- Is the child safe to stay with the family?
- Should this be a court case?
- Where should the child be placed if removed?
- What should be included in the case plan for the parents and child?
- How should children be allowed to visit with their parents and other family members?
- Is the parent making progress on their case plan?
- Should the child be medicated?
- Should the child go to a group home?
- Should the child return home?
- If a child cannot return home should they be adopted, placed in guardianship or kept in long term foster care?
- Should a case be closed?

## ICWA PLACEMENT STANDARDS

The Indian Child Welfare Act (ICWA) created placement preferences for Indian children that applies to all state court cases.

### PLACEMENT PREFERENCES: keeping children close

#### Foster Care Placements

- Member of extended family
- Foster home approved by the tribe
- Indian foster home
- Institution approved by the tribe or operated by an Indian organization

#### Adoptive Placements

- Member of extended family
- Other members of child's tribe
- Other Indian families

The child should be put in a setting that:

- Is least restrictive
- Is most like family
- Is within reasonable proximity to the child's family
- Meets any special needs the child may have

## FAMILY FINDING - BEST PRACTICES

County Child Welfare agency is required to perform and thoroughly document their diligent search to comply with ICWA's placement preferences. This should include, at a **minimum**:

1. Contact with tribe's social service program/designee
2. Contact the child's extended family
3. Contact with other tribes and Native organizations with available placement resources
4. Search of state and county lists of foster homes

*Note: ICWA placement preferences apply regardless of whether the child's tribe intervenes in the case or whether the child's tribe can identify a home or preferred placement. \*\*\*[ACL 18-42](#)*

## PLACEMENT PREFERENCES Essential tribal roles in placement

- Active Efforts - The agency **must consult** with the tribe, and use available tribal services, when making a placement of an Indian child. *\*Family Finding\**
- The tribe may establish a different order of placement preference by resolution. *Another reason increased communication/collaboration necessary.*
- If a child is not placed according to the placement preferences, the agency must prove "good cause", including proof by **clear and convincing evidence** of a diligent search for a suitable Indian home.



# ICWA

The Indian Child Welfare Act authorizes tribes to approve homes for placement of their children removed from the custody of their parents or Indian custodian (25 USC § 1915, CA Health & Safety §1505).

## ICWA CULTURAL & SOCIAL STANDARDS IN PLACEMENT

**WIC § 16519.5 (c)(ii) requires:**

“in the case of an Indian child for whom the child’s tribe is not exercising its right to approve a home, the county shall apply the prevailing social and cultural standards of the Indian community to resource family approval for that child”.

Tribally Approved Homes (TAH)  
vs.  
Tribally Specified Homes (TSH)



TRIBALLY APPROVED  
HOMES

A **Tribally Approved Home (TAH)** is a home that has been licensed or approved by an Indian tribe for foster care or adoptive placements of an Indian child using standards established by the tribe pursuant to ICWA.

It is not required to be licensed by the state or county and is equivalent to a state or county-licensed home for the purposes of services and foster care funding provided the TAH meets the minimum federal standards\* prior to placement of an Indian child.

\*Reference [ACL 19-71](#)



## TRIBALLY SPECIFIED HOMES

A **Tribally Specified Home (TSH)** means a home that a tribe designates as its preferred placement option for an Indian child who is in the custody of the county.

These homes are completing the Resource Family Approval county process for approval. Under AB 686, the RFA process must apply the prevailing social and cultural standards of the Indian child's tribe.

## PLACEMENT COLLABORATION - BEST PRACTICES

Tribe decides: approve home as a TAH? Or go through RFA process?

1. RFA process: County does fingerprints; are there exemption hits? If exemptions needed, county should apply the Tribe's cultural and social standards to the exemption. This requires consultation with the Tribe including info sharing on "hits".
2. For TAH, the Tribe issues a letter to the County designee approving the home and then County moves forward on background checks. A TAH should be treated as equivalent to an RFA home with respect to funding, status, support, etc.
3. For RFA, the County invites the Tribe for participation in each step (caregiver interviews, home visit approvals, identifying resource needs/concerns, and final decision to approve the RFA).

We have a shared responsibility to foster connections for Native children between their family, tribal community and tribal culture.  
Why?

### TRAINING RESOURCE FAMILIES – PRACTICE CONSIDERATIONS

Resource parents need to understand the impact of trauma on child development. They should have a clear understanding of the child's tribal culture and how success and child well-being are defined by that culture.

- Are there opportunities for trainings or resources that provide families with awareness of the culture and history of tribes?
- Do families have an understanding of tribal approaches to child rearing?
- Do families understand what the tribe expects of them in caring for an Indian child?
- Is it clear how connection to culture is a protective factor for an Indian child and contributes to their resilience?

*All of these points can be accomplished through good relationship building between the tribal representative(s) and caregivers from the onset of placement AND a commitment to ongoing education and networking.*

## SUPPORTING RESOURCE FAMILIES – PRACTICE TIPS

- Fostering opportunities to participate in cultural activities and support knowledge growth to help caregivers feel secure in caring for Indian children
- Provide resource families with details about tribal community events where resource families can celebrate with other community members and build relationships with child's extended family & tribal community
- Support resource families to have a sense of belonging with the community, tribe, and other resource families. Help resource families gain access to elders & culture keepers and ensure that they are learning how to incorporate cultural practices in their parenting
- Help resource families feel valued and appreciated and ensure they are comfortable expressing their needs and sharing their accomplishments (peer support activities, trainings, and listening sessions)
- Other examples, ideas?

And always make sure a child's address is up to date with their Tribe so that you are receiving important correspondence such as info about services, benefits, activities, monthly newsletters, etc.

*Help make sure this important detail hasn't been overlooked.*

## Cultural Humility Activity Suggestions To Learn More

### *Getting to Know our Tribal Communities*

Building our capacity to support Native children to build healthy and productive relationships to their tribal community and culture is a critical care taking responsibility. We too must immerse ourselves in those communities and contribute in times of celebration and wellness and not just in times of struggle and trauma.

In California, we are blessed to be living and learning in places with rich and diverse tribal populations that in many ways are flourishing and even leading the way when it comes to cultural preservation, assertion of tribal sovereignty, natural resource preservation, community healing & wellness efforts and much more.

*Task: Research and attend tribally sponsored community events in your local areas. Share those experiences with your family and network and even attend events together. - **Local examples??***

## Getting to Know Local Tribal Agencies & Programs

As a group, map out any tribal programs, agencies and resources that you are aware of in your county or region.

Assign a tribal resource to team members to research further and bring back to the group. Research/visit/call/follow their social media and report out on the following:

1. Agency Name, Location, mission, history
2. What services do they provide?
3. What specific populations/service area do they serve?
4. Any upcoming events that folks might be interested in knowing about?

## “Book Club”

Doesn't necessarily need to be a book, could also be a podcast, video, webinar, article, etc.

As a group, choose a monthly “book” and come together to “book club”.


Here are some of our suggestions:

[The Imprint Youth & Family News Weekly Podcast](#)

[Ka'm-t'em: A Journey Toward Healing](#) (Lara-Cooper & Lara, 2019)

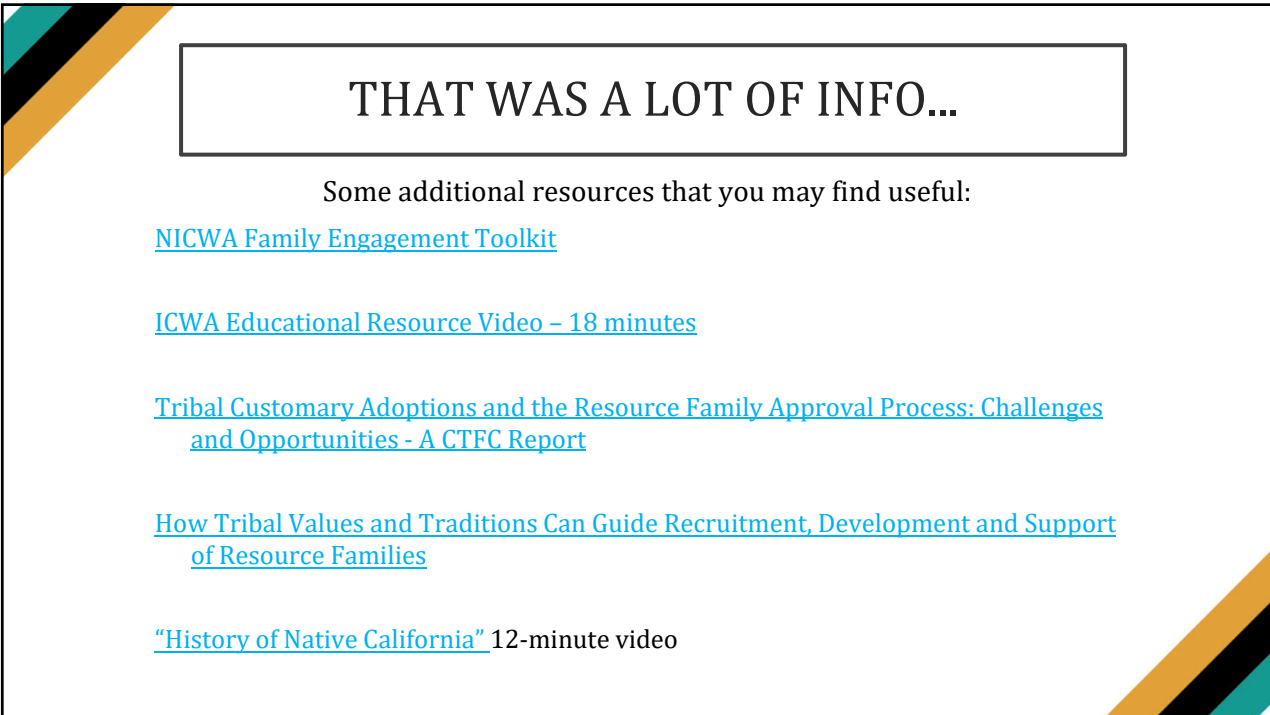
[“Tribal Justice”](#) Film – Makepeace Productions

[Dawnland](#) Film – Upstander Project



We are nearing the end of our time together...

Questions, Comments, etc.?



**THAT WAS A LOT OF INFO...**

Some additional resources that you may find useful:

[NICWA Family Engagement Toolkit](#)

[ICWA Educational Resource Video – 18 minutes](#)

[Tribal Customary Adoptions and the Resource Family Approval Process: Challenges and Opportunities - A CTFC Report](#)

[How Tribal Values and Traditions Can Guide Recruitment, Development and Support of Resource Families](#)

[“History of Native California” 12-minute video](#)



Thank you!

And don't forget to follow us on the Gram @caltribalfamilies



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