Indian Child Welfare Act (ICWA)
Overview, Tribal Engagement & Brackeen Breakdown

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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 2017 California ICWA Compliance Task Force which can be found at: www.caltribalfamilies.org
Learning Objectives

Strengthen your knowledge and answer your questions regarding ICWA

1. Strengthen overall knowledge regarding the Indian Child Welfare Act (ICWA) and review the ICWA Minimum Federal Standards.

2. Understand why ICWA remains essential and the potential implications of the recent *Haaland v. Brackeen* Supreme Court case.

3. Identify the elements of ICWA that may be most applicable to mental health providers.
PURPOSE OF 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.
WHAT IS ICWA?

- Federal law that sets minimum standards for Indian child custody proceedings. Including:
  - Inquiry
  - Notice
  - Active Efforts
  - Tribal intervention
  - Transfer to tribal courts
  - Placement Preferences
  - Heightened evidentiary preferences

California adopted federal ICWA provisions in state law through SB 678 in 2006 and AB 3176 in 2018. Nine other states have codified ICWA in whole or in part into state law and at least 10 others are considering related provisions this year! Read more…
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.
WE CONTINUE TO NEED ICWA

- In California, Native children are still 3-4x as likely to be in foster care.
- Four counties with less than 10% of the population reported as Native had high rates of Native children in foster care:
  - Humboldt County: 38%
  - Inyo County: 36%
  - Del Norte County: 29%
  - Lake County: 15%
WE CONTINUE TO NEED ICWA

But we know it works!

• Highest rate of placement in kinship care: Children in kinship care have fewer placements and are more likely to safely reunify with parents. (NICWA 2022)
• Lowest rate of aging out of care without a permanent family. (Juvenile and Family Court Journal 2023)
• When the tribe is present at the first hearing, a child’s days spent in care before returning home decrease by 221 days. (ICWA Baseline Measures Report 2022)
Wow, you get to practice in partnership with Tribes, their children, and their families?? What an honor and a privilege!

*ICWA is the Gold Standard of child welfare practice*
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
INQUIRY & NOTICE

PURPOSE: to determine Indian status of the child as early in the intervention as possible to ensure tribes are notified timely so they can actively participate or assume jurisdiction AND to prevent the breakup of Indian families.
• ICWA requires the agency to make active efforts from the referral level to provide remedial services and rehabilitative programs designed to prevent the break-up of the Indian family.

• Finding by clear and convincing evidence that active efforts were provided by the agency but were unsuccessful, must be made before a child is placed out of the custody of the parent or Indian custodian. Finding beyond a reasonable doubt before parental rights are terminated.

• CA law requires the agency to make active efforts to follow the ICWA placement preferences and to place the child in a home that will commit to allowing visitation with extended family and participation in cultural events of the Tribe.
### ACTIVE EFFORTS - EXAMPLES

<table>
<thead>
<tr>
<th>PARENTS</th>
<th>CHILDREN/NON-MINOR DEPENDENTS (NMDs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Substance Use Disorder (SUD) Counseling</td>
<td>• SUD Counseling</td>
</tr>
<tr>
<td>• SUD In-patient or Out-patient Treatment <em>(with or w/out children)</em></td>
<td>• SUD In-patient or Out-patient Treatment</td>
</tr>
<tr>
<td>• Intellectual or Developmental Disability assessment or services for self or children</td>
<td>• Intellectual or Developmental Disability Services</td>
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<tr>
<td>• Mental Health Assessment</td>
<td>• Mental Health Assessment</td>
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<td>• Mental Health Treatment</td>
<td>• Mental Health Treatment</td>
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<tr>
<td>• Transportation to Services</td>
<td>• Visitation with Parents in Programs/Services</td>
</tr>
<tr>
<td>• Regular text/communication and reminders to attend services</td>
<td>• SUD Prevention Programs</td>
</tr>
<tr>
<td>• Assistance completing paperwork and intake documents for services</td>
<td>• Transportation to cultural events or ceremony</td>
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<tr>
<td>• Supervised visitation with children/NMDs at cultural events or ceremony</td>
<td>• Visitation with extended relatives</td>
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<tr>
<td>• Cultural considerations incorporated into assessments</td>
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Tribes 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 case plans, engagement and teaming with the family.
- In the provision of services beyond those available in the mainstream community.
- In understanding the child’s tribal cultural and social standards which must inform every decision made in a case.
- In family finding and identification of ICWA compliant placements.
- In identifying cultural connections and supports for the child.
**PREPARING FOR TEAMING: IDENTIFYING TEAM MEMBERS**

**Use What You Already Know**
- Identifying team members begins at first meeting with the family. Think back to the child welfare agencies inquiry and what they know about family finding. They should already have a good idea of who some of the child and family’s people are.
- Already having identified these individuals it is time to talk with the family and the tribe about who should be part of the team.

**Ask the Family and Child**
- Help the family identify team members, work with what you already know and utilize the Circles of Support tool as help if needed.

**Ask the Tribe**
- Meet with the tribal representative and discuss additional supportive family or other service providers that the family has not identified.
- Remember sometimes families may not identify important supports for a variety of reasons including disagreement or shame.

**Required Team Members:**
- Parent/Guardian
- Child/Youth
- Social Worker
- Tribal Rep's
- Individuals identified by family & tribe
Haaland v. Brackeen
We won!*

*the fine print:
Yup, really really
won.... 7-2
The U.S. Supreme Court issued a decision on June 15, 2023 denying all challenges to ICWA including:

1. Article I Authority to Govern Indian Affairs
2. Anti-commandeering
3. Equal Protection

"In adopting the Indian Child Welfare Act, Congress exercised that lawful authority to secure the right of Indian parents to raise their families as they please; the right of Indian children to grow in their culture; and the right of Indian communities to resist fading into the twilight of history. All of that is in keeping with the Constitution’s original design."

- Justice Gorsuch, Haaland v. Brackeen Concurrence
• Overall 21 "Pro-ICWA" Briefs including:
  • Nearly 500 tribes & ALL 109 tribes in CA!
  • 87 Members of Congress & 23 States
  • American Psychological Association
    (specifically TX, LA, and IN) & Society of Indian Psychologists

"The brief cited a large body of research indicating that the placement of a Native American child with Native American families promotes healthy psychological development (e.g., greater self-esteem, decreased substance misuse), while placing Native American children with non-Native American families significantly increases the risk for Native American children to experience a number of adverse outcomes (e.g., greater rates of suicide). APA’s brief provided the court with research on the various psychological principles that are unique to Native American children and families, including theories related to identity development and confusion, enculturation, historical trauma, and resilience."
We are nearing the end of our time together...

Follow-up Questions, Comments, Wonders, Worries, Excitement, etc.?
Thank you!

And don’t forget to check out our resources at caltribalfamilies.org