



## How can child welfare systems **apply the principles of the Indian Child Welfare Act as the “gold standard” for all children?**

The Indian Child Welfare Act (ICWA) was passed by Congress in 1978 to protect American Indian and Alaska Native (AI/AN) children and families. Before ICWA, as many as one-third of all AI/AN children were removed from their homes by state child welfare and private adoption agencies, and the vast majority of these children were placed outside of their families and communities. This mass family separation resulted in devastating losses of language, culture, and identity for individuals, families, and entire Tribes. ICWA was created to address this history and prevent further generational trauma.

ICWA was ahead of its time in recognizing core values and principles of child welfare best practice by requiring active efforts to keep children safely in their homes and connected to their families, communities, and culture. This law does not affect all children — its provisions apply only in child welfare cases involving members of federally recognized Tribes, and the Tribes, per their sovereignty, have the ability to define membership. However, the values and spirit embedded in ICWA are critical to the well-being of AI/AN children, youth, and families and should form the basis of child welfare practice for all.



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This brief describes four key principles inherent in ICWA, provides examples of these principles in practice, and offers questions for consideration to help agencies further explore how they should apply these principles to support the permanency and well-being of both Native and non-Native children, youth, and families.<sup>1,2</sup>

## Principle 1: Children's right to their families and communities

ICWA specifically promotes children's right to be connected to their extended family, elders, community, and culture. Sheldon Spotted Elk, program director of tribal justice relations at the National Council of Juvenile and Family Court Judges, describes these connections as concentric circles. When children are situated within these circles, they naturally build resilience. Awareness of connectedness to family, community, and environment has been found to be a protective factor for American Indian and Alaska Native youth.<sup>3</sup>



In recognition of the importance of these connections, ICWA has a **higher standard to prevent removal** of an Indian child from their families than other child welfare statutes — including a requirement that children may not be removed without the testimony of a culturally qualified expert witness, except in emergencies (narrowly defined as when a child is in danger of imminent harm). ICWA also governs placement decisions. When children must be removed from their homes, the law dictates that agencies and courts first consider placement with relatives or, if that is not possible, with other families within their Tribal community where they can remain connected to their culture and identity.

For Adams County (Colo.) Children and Family Services, this sometimes means putting extra supports in place or working with a family member to resolve barriers to placement approval. In one case, when a close family friend could take some but not all of a sibling group of four, the agency was able to license a second friend and neighbor to keep the siblings connected. As in this instance, **tribal definitions of family relationships should be acknowledged** in placement decisions whenever possible.

[The Native Village of Barrow \(Alaska\) Iñupiat Traditional Government Children's Code](#) explicitly recognizes children's right to family, extended family, and identity:

*A child has the right to learn about and preserve his identity throughout his life, including the right to maintain ties to his birth parents, his extended family and his village. A child has the right to learn about and benefit from tribal history, culture, language, spiritual traditions, and philosophy.*

In the Navajo view, the land, our language, and our way of life make us who we are. We want our children to stay within our people so we can help them be successful into the future.

— JONATHAN NEZ,  
PRESIDENT, NAVAJO NATION

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The responsibility to support a child’s identity in these ways is assigned to parents, extended family members, and the Tribe as a whole. When separation from birth parents is necessary, the code specifies that the preferred placement is *lñuguq*, or placement with an extended family member. The word *lñuguq* “refers to a traditional Inupiat adoption process in which a child gains, but does not lose, a parent.”

Implementation of ICWA requirements currently falls far short of achieving the statute’s goal. [AI/AN children are still three times more likely to be removed](#) by state child welfare systems than non-Native children. While recognizing the particular urgency for AI/AN children, child welfare agencies also can act on the knowledge that all children fare best when they can remain safely with their own families, and that when they must be removed from their homes, [placement with relatives produces the best outcomes](#).

## Questions to consider:

- In what ways do your agency’s policies assert and protect all children’s rights to their families, communities, and culture?
- How could your jurisdiction reassess removal criteria and keep more families safely together with in-home support?
- How can your agency apply an equity lens to understanding and addressing the root causes of a family’s involvement with the agency?
- In what ways do your agency’s placement priorities and resource family approval policies align with ICWA by prioritizing placement for all children within their extended families and communities?

- How does your agency honor the definition of relatives as determined by the family, clan, and Tribe?

## Principle 2: “Active efforts” to preserve and reunify families

ICWA’s requirement of “active efforts” is a higher standard of engagement than the Title IV-E program’s “[reasonable efforts](#)” requirement. [Active efforts](#) are defined in regulation as “affirmative, active, thorough, and timely” efforts by the agency to maintain or reunify children with their families.<sup>4</sup> They are intended to help parents complete their case plans and access or develop resources necessary to keep or bring their child safely home. Examples include **helping parents overcome barriers to services** (such as making phone calls together rather than handing a parent a list of phone numbers), **helping parents access supportive community resources** (including housing, financial, and mental health support), and **facilitating transportation** to ensure parents and their children can attend appointments or visits.

Adams County acknowledges that providing active efforts can be time intensive. The county supports these efforts in ICWA cases by having a **dedicated ICWA caseworker** who is knowledgeable about the requirements. The county strives to keep that dedicated caseload low, when the agency’s workflow allows, to support spending extra time on each case. The ICWA caseworker also serves as an expert and resource throughout the agency, providing assistance to other caseworkers who may have ICWA cases.

Native Americans do not have a colonized understanding of family. In my family, my cousins were considered siblings, and my ‘aunties’ are my children’s grandmothers. To protect children’s cultural identity, courts and agencies need to understand how their Tribes define relatives.

— SHANA KING ,

(MHA NATION | THREE AFFILIATED TRIBES), PARENT MENTOR, ICWA LAW CENTER

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ICWA requires that active efforts be provided in a **culturally competent manner**, and “in partnership with the Indian child and the Indian child’s parents, extended family members, Indian custodians, and tribe.” Regulations describe engaging with the child’s Tribe early to determine what types of services would be most culturally appropriate and what cultural resources or programs are available within the Tribe. It also includes ensuring all services are trauma-informed and follow **best practices in addressing historical and intergenerational trauma**. Being trauma-informed means that agencies must be skillful and patient in building trusting relationships with families and communities that may have significant personal and historical reasons to mistrust state and county government systems.

## Questions to consider:

- What active efforts do your agency’s caseworkers regularly make to safely preserve and reunify all families? Do they equal the efforts everyone would want for their own families?
- What additional steps could help ensure that your agency’s efforts on behalf of all children and families are not just “reasonable” but “active”?
- In what ways does your agency consider children and parents’ culture when creating case plans and providing services? How could your agency better partner with families and their communities to ensure programs and services are culturally appropriate, and to ensure active efforts are successful?

- In what ways could your agency’s services be more trauma-informed, particularly in addressing historical and intergenerational trauma?
- How can your agency provide training and ongoing coaching and support to caseworkers to build relationships with families that are centered on trust and cultural humility?

## Principle 3: Valuing inclusive and diverse cultural practices

ICWA was created to address harm inflicted on AI/AN communities due to the imposition of dominant cultural values, including assimilation. Therefore, the law requires jurisdictions to view child welfare matters from a different cultural perspective — that of the family’s own tribal community. [ICWA regulations](#) state that jurisdictions are to “conduct Indian child-custody proceedings in a way that reflects the cultural and social standards prevailing in Indian communities and families.”

One way this is done is requiring a [qualified expert witness](#) to testify from a social and cultural perspective as to whether children are at risk of serious emotional or physical harm, prior to removal. Jurisdictions with ICWA courts also have found that **cultural training by local Tribes** can greatly increase understanding and appreciation of a Tribe’s traditional child-rearing practices and cultural values.

This change in approach requires **cultural humility**. In particular, child welfare professionals may need to critically analyze long-held assumptions about which

Active efforts happen within a relationship of trust. As a social worker, attorney, or judge, if I don’t have a culturally humble and ‘listen first’ orientation, my efforts will miss the mark. I could be the most active social worker in the world, but my efforts will not have the intended impact if I have not established a relationship of trust with you.

— SHELDON SPOTTED ELK,

(NORTHERN CHEYENNE TRIBE), PROGRAM DIRECTOR, TRIBAL JUSTICE RELATIONS, NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES



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family structures or communities can best support child well-being. For example, courts sometimes have required children in ICWA cases to be moved from unrelated foster homes to relatives' homes, even after the children have bonded with the foster family. While this may contradict western ideas about the best interests of children, it is important to understand and honor Tribal values that prioritize long-term, multigenerational connections among family, Tribe, and culture over children's short-term connections to one specific nuclear family. “The relationships that we develop with our tribal partners, and our understanding of their values, are so critical,” emphasizes District Judge Katherine R. Delgado, Adams County, Colo., ICWA Court, “I would encourage other judges and child welfare leaders to go visit some of their local Tribes, develop those relationships, and be open to understanding the issues that our Native Nations face.”

## Questions to consider:

- What cultures are present among the children and families your agency serves? How can your agency learn more about the range of childrearing practices and values that exist in different cultures and communities?
- In what ways do dominant cultural assumptions influence agency decisions about the best interests of children? Is it possible that more children could remain safely with their families if these assumptions were reconsidered? What traditions and values are important to the family?
- Are there language and literacy barriers to be mindful of? What kind of community support is needed for the family and caseworker to have a meaningful dialogue?

- How could the concept of a culturally qualified expert witness be applied to non-ICWA child welfare cases?
- How might your agency work with local cultural resource providers to support greater cultural competence of services to families?
- How could your agency work alongside families and communities to better support healing for the generational and historical trauma experienced by children, youth, and families of color?

## Principle 4: Authentic engagement with Tribes

ICWA provides for a Tribe to be included in child welfare cases concerning member children. Although the Tribe's perspective does not always prevail, the law guarantees Tribes the right to participate fully in the case, be heard by the court, provide expert witnesses, and define placement preferences for their children.

ICWA specialty courts make a particular effort to include Tribe leaders and representatives in all cases involving their children, something that COVID-era virtual hearings have made a little easier. This also can be facilitated by **scheduling ICWA cases at a consistent date and time that is convenient for the Tribe** so that representatives are present even at early shelter hearings that offer limited opportunities for advance notice. There is emerging [evidence](#) that when a Tribe representative is present at a child's first hearing, permanency occurs four months faster on average and reunification occurs seven months faster. “I see big differences in how caseworkers are working with the Tribes, the response back from the Tribes, and their efforts to work together toward reunification,” notes Judge Kathleen Quigley, Pima County, Ariz., ICWA

What we would want for our own family should be the overriding goal for all cases. If my daughter's family was in child protection court, what would I do? I would make sure my daughter had a ride to everything, and that my grandchildren were well cared for. That's the gold standard to me.

— JUDGE SALLY TARNOWSKI,  
ST. LOUIS COUNTY, MINN., ICWA COURT

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court, “Without the Tribe’s participation, our ICWA court would not be where it is.”

Some ICWA courts **incorporate cultural art, Tribal flags, and Native practices** such as smudging in the courtroom. Other jurisdictions have found that **creating ICWA units with dedicated caseworkers, supervisors, and attorneys** facilitates relationship-building and collaboration between the state, Tribe social workers, and any local culturally appropriate service providers. **Family group conferences** can offer another opportunity to invite Tribe representation and relinquish agency control of the process.

On a systems level, power-sharing might look like creating **workgroups comprised of equal numbers of state representatives and Tribe members**. For example, Washington’s Tribal State Workgroup is a joint effort to review and update the Department of Children, Youth, and Families’ ICWA policies and procedures.

**Meeting Tribes and families where they are**, beyond the walls of child welfare agency offices, demonstrates respect and can help build cross-cultural understanding. Judge Delgado of Adams County recalls the impact of a trip she took to visit several nearby tribal nations and meet with tribal judges: “That trip really cemented my passion for not only the black-letter law of ICWA, but the

spirit of the law.” In Yellowstone County, Mont., members of the Yellowstone ICWA Court Team traveled more than 100 miles to meet with the Tribe’s Human Services Department to staff cases and to introduce themselves to new executive branch officials and Tribal Council members. During COVID, the State and the Tribe continue to collaborate on these cases through monthly zoom calls. This and other relationship-building efforts have resulted in increased kinship placements and fewer terminations of parental rights.

## Questions to consider:

- In what ways does your agency share power with families and communities by meeting them where they are?
- How could community leaders and representatives have a greater voice in your agency’s services and decision-making (for example, by ensuring they are included in all family group conferences)?
- How can your agency embrace and incorporate tribal culture and Native practices in its engagement with Native families both inside and outside the courtroom?
- How can your agency incorporate culturally sensitive practices for any family it works with?

To learn more, visit [Questions from the field](#) at [Casey.org](#).

- 1 Content of this brief was informed by consultation with members of the Knowledge Management Lived Experience Advisory Team on Oct. 5 and 21, 2021. This team includes youth, parents, kinship caregivers, and foster parents with lived experience of the child welfare system who serve as strategic partners with [Family Voices United](#), a collaboration between FosterClub, Generations United, the Children’s Trust Fund Alliance, and Casey Family Programs. Members who contributed to this brief include Dee Bonnick, Sonya Begay, Aleks Talsky, Gloria Torma, and Jeremiah Donier.
- 2 Content of this brief was informed by interviews with Judge Kathleen Quigley, Pima County, Ariz., on Aug. 17, 2021; District Judge Katherine R. Delgado, Adams County, Colo., on Aug. 17, 2021; Judge Sally Tarnowski, St. Louis County, Minn., on Aug. 10, 2021; Sheldon Spotted Elk, National Council of Juvenile and Family Court Judges, on July 9, 2021; Shana King, ICWA Law Center, on July 13, 2021; Angela Cuellar and Peter Pace, Adams County (Colo.) Children and Family Services, on Sept. 7, 2021.
- 3 Saniguz Ullrich, J. (2019). For the love of our children: an Indigenous connectedness framework. *AlterNative*, 15(2), 121-130.
- 4 In determining whether active efforts have been met, the courts have discretion to consider the facts and circumstances.

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