

AVCP AND THE INDIAN CHILD WELFARE ACT AND TRIBAL JURISDICTION



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INTRODUCTION TO THE ICWA DEPARTMENT

- Bethel Team:
- Valerie Chadwick, Director
- Renee Gregory, ALSC Attorney
- Dalarie Peters, CFSS Sub-Regional Manager
- Francis Bialy, ICWA Advocate III
- Hazel Keezer, ICWA Advocate II
- Vacant , ICWA Advocate
- Earl Polk III, Family Early Intervention and Prevention Manager
- Vacant ,Social Worker (Prevention),
- Pauline Polacios, Case Manager (Prevention),
- Marita Hanson, Family Service Specialist (Prevention)
- Minnie Sallison-Fritts, Family Resource Specialist (Foster Care)
- Anna Tinker, Office Manager

ANCHORAGE TEAM

- Nastasia Levi-Thompson, Advocate II
- Cynthia Ontiveros, Advocate II
- Liz Mering, ALSC Attorney
- Pearl Pickett, ALSC Attorney Supervisor

SUB-REGIONAL TEAM

- Charlene Striling, CFSS III (Alakanuk)
 - Martina Stanislaus (CFSS I, Alakanuk)
 - Anna V. Hunt (CFSS I, Kotlik)
 - Dale Pete (CFSS I, Nunam Iqua)
 - Vacant
 - (CFSS I, Emmonak)
- In Progress: Aniak, St.Mary's, Hooper Bay and Toksook Bay CFSS III (Vacant)

CFSS COMPACTED TEAM

Umkumiut

Theresa Simeon-Hunter: Chuathbaluk

Georgianna Wassillie: Akiachak

Napaimute

Helen Macar: Crooked Creek

Vacant: Chevak

Platinum

Nicole Ayagalria: Napakiak

Nastasia Ulroan: Hooper Bay

Nightmute

Andrew Larson: Oscarville

Teresa Nanuk: Hooper Bay

Hamilton

Olga Xavier: Pilot Station

Wassilie Tinker: Pitka's Point

Red Devil

Michelle Aguchak: Scammon Bay

Alyssa Gregory: Stony River

Ohogamiut

Nastasia Evan: Kalskag

Lillian Cleveland: Eek

Lime Village

Pauline Echuck: Goodnews Bay

Elena Dock: Kipnuk

Bill Moore Slough

Robert Pitka: Marshall

Elizabeth Steven: Napaskiak

Katie Nick: Russian Mission

Cheryl Mellick: Sleetmute

Adeline Lincoln: Tununak

Laura Kashatok: Tuluksak

Gwendolyn Charlie: Tuntutuliak

Anna Wiseman: Toksook Bay

Dale Pete: Nunam Iqua

Geraldine Woods: Algaaciq

Eleanor Merrit: Quinhagak



AVCP ICWA

- Our Vision Statement
- **Every Child in the YK Delta has a Safe and Healthy Home**
- Our Mission Statement
- **Build/Change systems that work to provide equity and good outcomes for all children and families**



SHARING WHAT WE KNOW

- 1 Overview of the ICWA
- 2. Transfer of Tribal Jurisdiction

- Learning Objectives

After this session, participants will:

1-Have an understanding of the Indian Child Welfare Act

2-Understand the process when requesting a transfer of jurisdiction from a State CINA case to tribal court

THE INDIAN CHILD WELFARE ACT

The purpose of the Indian Child Welfare Act (ICWA) is "...to protect the best interest of Indian Children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children and placement of such children in homes which will reflect the unique values of Indian culture..." (25 U.S. C. 1902).

ICWA provides guidance to States regarding the handling of child abuse and neglect and adoption cases involving Native children and sets minimum standards for the handling of these cases.

ICWA SETS OUT FEDERAL REQUIREMENTS REGARDING REMOVAL AND PLACEMENT OF INDIAN CHILDREN IN FOSTER OR ADOPTIVE HOMES AND ALLOWS THE CHILD'S TRIBE TO INTERVENE IN THE CASE.

1. Does ICWA apply? Has the Tribe verified membership and identified which Tribe will intervene?
2. Emergency Proceedings: Has the threshold been met for removal on an emergency basis?
3. Notice requirements: Do you know the time limits?
4. Active Efforts: What does this mean?
5. Jurisdiction: Exclusive, Concurrent and Criteria for ruling
6. Adjudication of Involuntary Proceedings: Standards of Evidence and QEW
7. Placement Preferences: what are the limits on good cause?
8. Voluntary Proceedings: without threat of removal by a state agency
9. Understanding what you can do when there are improper removal (p. 74: BIA guidelines)

Source: 2016 BIA ICWA Guidelines manual available on line www.bia.gov

ARE THERE ANY PROCEEDINGS INVOLVING THE PLACEMENT OF AN INDIAN CHILD WHERE ICWA DOES NOT APPLY?

- Yes. ICWA does not apply to custody disputes between parents or family members (such as in divorce proceedings), juvenile delinquency proceedings based on crimes that would be criminal even if the child was an adult (e.g., theft), or to cases under tribal court jurisdiction.

HOW DOES ICWA PROTECT NATIVE AMERICAN/ALASKA NATIVE CHILDREN AND THEIR FAMILIES?

When ICWA applies to a child's case, the child's tribe and family will have an opportunity to be involved in decisions affecting services for the Indian child.

- ❑ Indian children involved in state child custody proceedings are covered by ICWA. A person may define his or her identity as Indian **but in order for ICWA to apply, the involved child must be an Indian child as defined by the law.**

ICWA defines an "Indian child" as:

- Unmarried,
- Under 18, and

1.) A tribal member OR 2.) eligible for membership and the biological child of a tribal member (25 U.S.C. § 1903).

WHAT DO WE ADVOCATE FOR?

1. OCS provides notice (so that we can intervene) (BIA publication of list of Tribes' designate for ICWA notices –AVCP and CFSS for compacted tribes at www.bia.gov)
2. CFSS worker and Advocate must get decision from Tribal Council/Court (definition of Indian child) (AVCP ICWA MOA)
3. AVCP team members will complete intervention and have Council sign and will work with ALSC to file with the State of Alaska Court System
4. AVCP team will work to ensure ICWA compliance regarding: Notice, Removal Findings, Placement, Active Efforts, QEW, and Permanency planning

THE EFFECTS

- Tribal State Collaboration Group: WRO Data Indicators
- 2014 (272 children in custody)
 - 188 repeat maltreatment cases
 - 46% of children in custody were in relative placement
 - 14% of children were in Out Of Preference placement
 - 34% Tribal Intervention
 - 60% of children were reunified with their families
 - 6 children were adopted to Non-Alaska Native/AI and Non-Relative homes

WHERE WE ARE



THE EFFECTS

Tribal State Collaboration Group: WRO Data Indicators

2017 (297 children in custody) 2018 (281 children in custody)

22.1% repeat maltreatment cases (2018- 18.5% estimate)

55% of children in custody were in relative placement (2018-69%)

19% of children were in Out Of Preference placement (2018-16%)

66% Tribal Intervention (2018-73%)

66% of children were reunified with their families (2018-78%)

0 children were adopted to Non-Alaska Native/AI and Non-Relative homes (2018- 1 child adopted to non-AN/AI and Non relative)

A TRIBE OR A PARENT CAN ALSO PETITION TO TRANSFER JURISDICTION OF THE CASE TO THEIR OWN TRIBAL COURT

AVCP team and ALSC can assist in preparing the court documents when a Tribe requests a case be transferred to tribal court.

Prior to final decision, we work with Tribes to discuss a plan of action that ensures

1. The Children's safety continues
2. Families are provided the resources they need to ensure their children will be safe
3. The community will support the CFSS worker in ensuring tribal court case plans and services are monitored

GUIDELINES FOR GOOD CASE WORK

- Knowing your tribal citizen's needs and expectations
- Where does the family live? In the community or some where else?
- Are there special needs? (medically fragile, etc)
- Who will monitor case plan progress and provide wrap around services?
- What culturally specific resources can we provide to ensure that we are helping?

CONSIDERATIONS

- Guiding Question: Can the Tribe ensure the safety of the child on it's own?
- Understanding Due Process requirement
- Tribes do not have a IV-E maintenance agreement for foster care licensing payments
- OCS will respect tribal jurisdiction and not provide assistance
- Compacted tribes receive IV-B funds through AVCP ICWA department
 - Is there a case plan in place with the goal of preventing the break up of Indian families or support reunification efforts?

TRIBAL JURISDICTION

- Exclusive Jurisdiction: Chevak and Barrow
- Concurrent Jurisdiction: Concurrent jurisdiction exists when two sovereigns have the **potential** authority to adjudicate the same legal issue or matter.

Tribes share jurisdiction over Indian children with the State of
Alaska

TRANSFER OF JURISDICTION

Under ICWA, Tribes can petition for transfer of state Child in Need of Aid cases to the tribal court

- After termination of parental rights, there is mixed authority on whether or not tribes have a RIGHT to transfer, under ICWA
- is still *permissible*, if the State Court agrees

Tribes have the freedom to operate their own governments, and tribal councils may sit as tribal courts

- The parent, Indian Custodian, or the Indian Child's Tribe may petition for the transfer; however, CINA Rule 23 says **Tribes must intervene first**
- Parents may "veto" the transfer – they do not need to have a good reason

Tribal Courts may refuse to accept jurisdiction

TRANSFER OF TRIBAL JURISDICTION

- What are the child welfare codes?
- Will the orders match the codes?
- Tribal courts have sovereignty but still have to comply with constitutional due process rights.
- What are due process rights?

Procedural due process refers to the constitutional requirement that when the federal government acts in such a way that denies a citizen of a life, liberty, or property interest, the person must be given notice, the opportunity to be heard, and a decision by a neutral decision-maker.
- **So for tribes, what are the minimum due process requirements?**
 - Notice to all parties of tribal court proceedings, tribal adoptions, custody orders, etc.
 - Opportunity for parties to share their thoughts, concerns, and position about the case
 - Fair and impartial judges

LEGAL LOGISTICS OF TRANSFER OF JURISDICTION

CINA Rule 23 says that Tribes must serve the petition to transfer, together with the original custody petition and notice of rights, by certified mail, restricted delivery, upon the parents.

- ICWA Regulations say that intervention can be requested orally on record.

Each party has 20 days from the date of the filing to take a position on whether it agrees to the transfer – the Judge will not order the transfer until either:

- Each party has taken a position; or
- 20 days have gone by

The transfer **MUST** be ordered unless a parent vetoes, or the Judge finds “good cause” not to order the transfer.

“Good cause” is NOT:

- Concern that the Tribe *might* order a change of placement
- Concern that tribal courts, services and support will be inadequate
- Advanced stage, if the Tribe was not given notice
- Failure to seek transfer in prior proceedings

PRE-TRANSFER

If OCS has custody, the Tribe gets custody immediately upon transfer – that means the Tribe will be responsible for the child's care from the moment transfer is effective.

- Will there be a change of placement?
 - No? *No problem*
 - Yes? Let's figure out how that will work
- Who will **physically be responsible for the care of the child** once custody is transferred?
- **When will the transfer happen**, knowing that all parties have 20 days to raise an objection?
- **Who will pay for any necessary transportation of the child? And of the escort?**
 - Who will arrange and pay for any necessary lodging and food?

If arrangements are to be made after approval of transfer, but before effective, how much time is needed to make final arrangements?

Because timing of transport is so important, and may change the way the order transferring jurisdiction is written, these decisions should be made before the petition is filed

ACTUAL TRANSFER TO TRIBAL JURISDICTION

Tribe decides to take jurisdiction and makes plans to take the case over from the state, placement planning, lining up services to support the family, decisions about PFD's, etc.

- Tribe fills out the transfer of jurisdiction documents
- Tribe informs the State Court parties know that it intends to take jurisdiction

State Court holds a hearing in which the Tribal paperwork is reviewed, parents are given a change to oppose the transfer; and the Court determines there is no "good cause" for the case to stay in State Court

- The State Court orders the case transferred to Tribal Jurisdiction
- The Tribe immediately takes jurisdiction and can take action in after the State Court proceeding

PFDS & TRANSFER OF JURISDICTION

OCS holds youths' PFDS in Trust – and keeps them until there is EITHER:

1. A court order for their release – OCS interprets this to mean state court; OR
2. The child is no longer in OCS custody

Tribe can file for release of PFD funds in State Court, if it chooses, and ask, for example:

1. That funds be released according to Tribal Court order at a later date;
2. That the funds be released to the Tribe for the Tribe to manage on behalf of children
3. That the tribe is requesting the funds be given to the children's placement

More detail added to the Tribal Court order mean a greater risk that State Court Judges will feel tempted to second-guess the decisions made by a Tribal Court

OVERVIEW

- 2018 BIA ICWA Guidelines manual is available at www.bia.gov or AVCP ICWA
- Child safety remains paramount
- Case plans help guide our work
- Tribal Courts can petition for a transfer of jurisdiction in ICWA cases at any time during a state child welfare proceeding
- AVCP ICWA provides the resources to assist in submitting forms
- Any additional discussion items?
- Quyana

FROM ALL OF US WE THANK YOU

