

*The Effects of ICWA and Human Trafficking
in Tribal Communities*



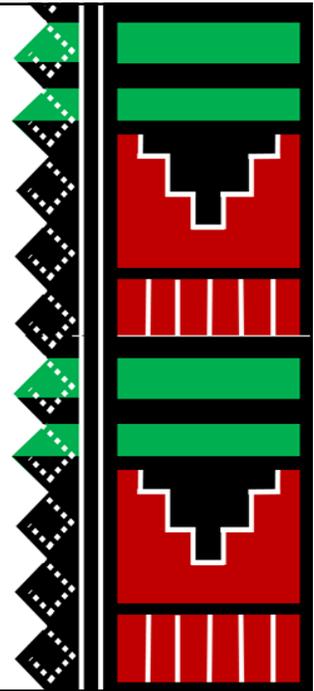
TEXAS CENTER
FOR THE JUDICIARY

Indian Child Welfare Act

Leah Lopez, LMSW

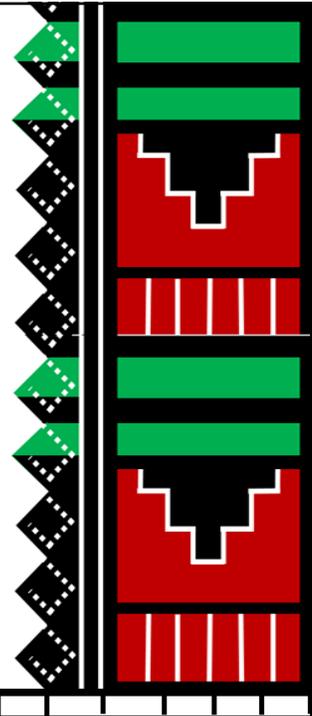
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What is ICWA and why was it passed?

- "ICWA" stands for the [Indian Child Welfare Act](#), which is a federal law that was passed in 1978.
- ICWA was passed in response to the alarmingly high number of Indian children being removed from their homes by both public and private agencies.
- The intent of Congress under ICWA was to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families." (25 U.S.C. § 1902)
- ICWA sets federal requirements that apply to state child custody **proceedings involving an Indian child who is a member of or eligible for membership in a [federally recognized tribe](#).**



Boarding Schools & Historical Trauma

- Carlisle Indian Industrial School
- "Kill the Indian, Save the Man"
– Capt. Richard H. Pratt
- Pueblo Revolt of 1680
- Ysleta del Sur Pueblo est. 1682
- 4,520 enrolled members



When Does ICWA Apply?

- Any child custody proceeding involving an Indian child, if the court knows or has reason to know that an Indian child is involved.

25 U.S.C.A. § 1912(a)

- Foster care placement
- Termination of parental rights
- Pre-adoptive or adoptive placements
- Voluntary proceedings when parent cannot regain custody
- Emergency proceedings
- Status offenses with out-of-home placement



“Reason to Know”

- Courts must ask each participant in the proceedings.
- Courts must instruct parties to tell the court of any later received information.
- If court has reason to know but not sufficient evidence:
 - Confirm through appropriate channels
 - Treat as Indian child unless or until determined not to be

25 C.F.R. § 23.107

TX. Fam. Code §§ 262.201(f); 263.202(f-1); 263.306(a-1)(3)



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.
- A tribe or a parent can also petition to transfer jurisdiction of the case to their own tribal court.
- 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.
- ICWA also sets federal requirements for States to provide **active efforts** to a family for reunification.



What are Active Efforts?

- ❑ The definition of **active efforts** is left open in the Indian Child Welfare Act to accommodate individual case decisions. However, federal guidelines do exist.
- ❑ **ICWA mandates the state to make active efforts in every ICWA case in two areas:**
 - ❑ 1. Provide services to the family to prevent removal of an Indian child from his or her parent or Indian custodian
 - ❑ 2. Reunify an Indian child with his or her parent or Indian tribe after removal.
 - ❑ Active Efforts must be proven in all termination hearings for burden of proof. Requires more than Reasonable Efforts.

25 U.S.C. § 1912(d); 25 C.F.R. § 23.2



Reasonable Efforts vs. Active Efforts

➤ Reasonable Efforts:

- Refer a client for services
- Notify client of appointment
- Basic level case management

➤ Active Efforts:

- Transport client to services
- Better level of care
- Intensive level of case management

Active efforts would be to arrange for the best-fitting services and to help families engage in those services.



Best Practice

Caseworkers must make several considerations when handling an ICWA case, including:

1. Working actively to involve the child's tribe to provide intensive case management.
25 U.S.C. 25 U.S.C.A. § 1912(d); 25 C.F.R. § 23.2
2. Providing active efforts to the family.
25 C.F.R. § 23.129-132
3. Identifying a placement that fits under the ICWA preference provisions.
25 C.F.R. § 23.111
4. Notifying the child's tribe and the child's parents of the child custody proceeding.

25 C.F.R. § 23.111



Applying ICWA during Termination Proceedings

- In order for an **Enrolled Tribal Member** to have his/her parental rights terminated in a family court of law, certain federal provisions must be applied and proven in court in order for a fair judgement to be granted for severance or termination of parental rights.



What needs to be applied in Termination Proceedings

- | | |
|---|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> Written notice must be provided to the parents and to Indian Tribe by registered mail, return receipt requested. <input type="checkbox"/> Proof that active efforts were made to provide remedial services. <input type="checkbox"/> Proof that services and rehabilitative programs designed to prevent the breakup of the family were unsuccessful. <input type="checkbox"/> Whether efforts were made to ensure that the parents understood the case plan. | <ul style="list-style-type: none"> <input type="checkbox"/> Display why the active efforts were unsuccessful. <input type="checkbox"/> Whether there is evidence beyond a reasonable doubt. <input type="checkbox"/> Evidence that continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child. <input type="checkbox"/> Testimony of an Expert Witness on ICWA. <input type="checkbox"/> Testimony of Qualified Expert Witness. 25 U.S.C. 1903 |
|---|---|



Types of Witnesses

Expert Witnesses

- Family's history
- Protective issues with family
- Particular incidents
- Case History
- The child's needs
- Agency responses
- Tribe's services

Qualified Expert Witness

- Member of the Tribe
- Knowledgeable in tribal customs
- How children are viewed by the tribe
- Child rearing in the tribe
- Use of discipline
- Cultural expectations
- Tribe's and family view of situation

Ysleta Del Sur Pueblo ICWA Program

- YDSP has no Child Welfare Court
- YDSP has no Family Code
- YDSP relies on the assistance from State of Texas
- YDSP has created an MOU with the State
- YDSP Social Services intends to be a part of the case from start to finish
- YDSP will monitor out of town cases as well
- YDSP adopts a family model and provides services to non-tribal spouses as well
- YDSP can provide services to members enrolled in another tribe

Memorandum of Understanding

- ❑ Currently YDSP has a MOU with Texas Department of Family and Protective Services. The MOU reads that the State is to notify the Tribe of any report of child abuse or neglect if received on its Tribal Members.
- ❑ The MOU states that the State and Tribe will work the case together.
- ❑ The MOU also reads that the State and the Tribe are to provide training to one another in Cultural Sensitivity, Child Abuse/Neglect, and/or related matters at no cost.



Protocols

- At Intake, Screener may call YDSP Social Services for additional information to inquire if family is Tribally affiliated.
- YDSP Social Services staff will accompany CPS Investigators if family/child or parent resides on the Reservation, but will also accompany off the Reservation.
- At any stage of services, CPS staff should notify YDSP Social Services upon learning that the family is Tribal.
- YDSP Social Services has a 24-Hour Emergency Phone.



Protocols, cont.

- Family Team Meetings are held for all Tribal cases unless YDSP and CPS agree that it's not necessary.
- If case is opened for services at the State Level (Family Preservation/Conservatorship), services will be monitored by the Tribe.
- Tribe will offer additional services that the State cannot provide to its members.



Why it's important to ask for the Tribe to be involved

- Family may have access to services not available to non-tribal members.
- Tribes may already have information on family, or have addition information or additional concerns.
- Tribes may choose to intervene legally or may already have custody of children through their Tribal Court.



The Ysleta del Sur Pueblo ICWA Model

- Working together to ensure the Safety and Well-Being of a child.
- Working together with Texas Department of Child Protective Services and Juvenile Probation Department.
- Teamwork between State Courts (65th Judicial District Court) and the Tribal Court.



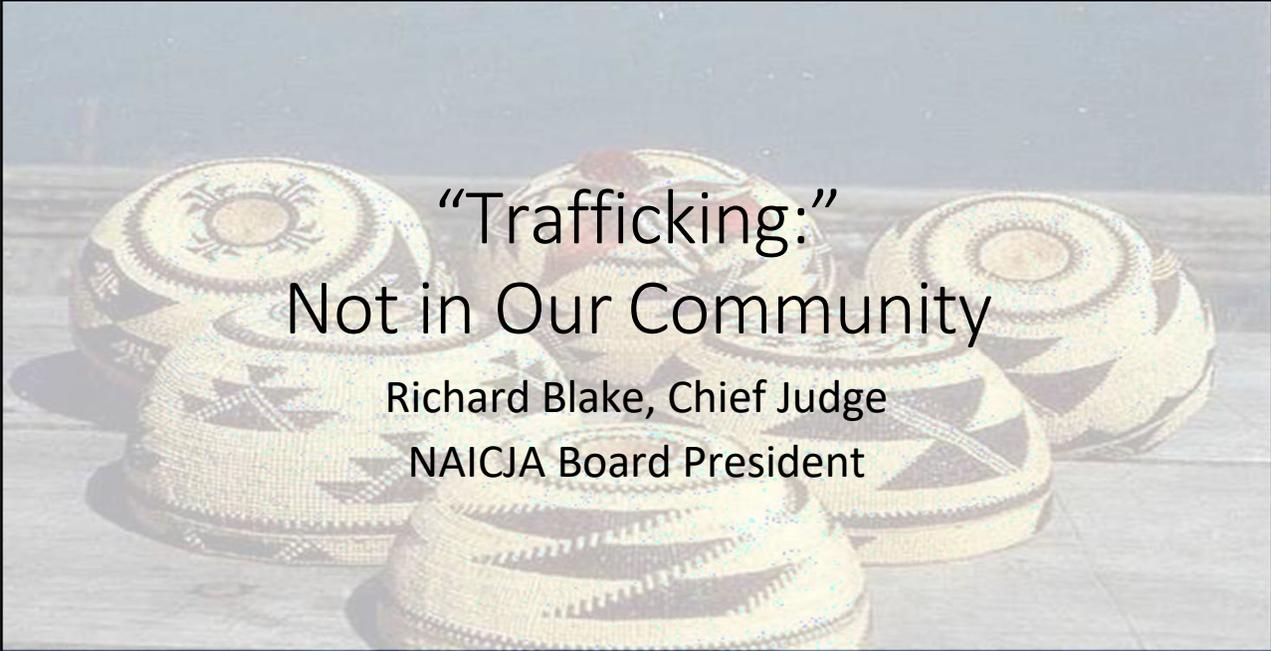
Why It's Important to Collaborate

- ❑ Provides a better enhanced service delivery to families.
- ❑ Allows State and Tribal Courts to work together.
- ❑ Reconnects children to their native community.
- ❑ Facilitates Tribal children in Foster or Kinship care learning about their Pueblo customs, traditions, and history.



Take Aways

- Enrolled members/eligible for enrollment
- Qualified Expert Witnesses
- Each tribe is different
- Tribes want to be involved
- Healing



“Trafficking:” Not in Our Community

Richard Blake, Chief Judge
NAICJA Board President

Or does trafficking exist in our communities?

- Who are the victims?
 - Victims of sexual exploitation can be of any age, ethnicity, race, religion, socio-economic class, gender, and sexual orientation.
 - Trafficking victims have been identified in cities, suburbs, and rural areas in all 50 states, Washington DC, and Guam.
- No consistent type or profile of a trafficking victim, however there are **common vulnerabilities that are disproportionately present in trafficking populations.**



Who is at risk?

- Majority of trafficking victims in the U.S. are women and girls.
- In 2015, of the 1,435 reports of sex trafficking, 3.3% involved children and 91.4% were female.
- 70% of women involved in prostitution were introduced into the commercial sex industry before the age of 18.
- Average age of entry into trafficking is 15.8 years of age.
- High percentage of trafficking victims are minorities.



How does recruitment happen in our community?

Force

- Brute force (kidnapping, enslavement) is unusual as a recruiting technique but common as coercive tactic.

Purposeful manipulation and “grooming”

- Most common and highly effective
- Trafficker focuses on victims whose behaviors indicate vulnerability and a high likelihood of successful recruitment



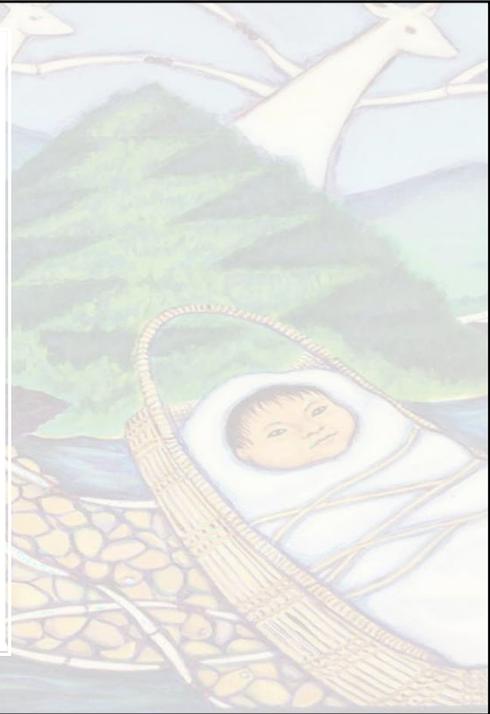
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Trafficking in Native Communities: Other Factors

- Tribal communities may be remote
- Tribal communities may or may not have Tribal Law enforcement
- Substance abuse issues
- Mental Health Issues
- Domestic violence
- Education barriers
- Homelessness
- Lack of resources for potential trafficking victims

Why and how trafficking happens in our communities

- History of Abuse & Violence
- Intimate Partner Violence
- Poly-victimization
- Family Conflict, Disruption & Dysfunction
- Runaway/Throwaway Youth
- Compromised Education/Developmental or Learning Disability
- Gang Involvement
- Sexual Orientation
- Child Welfare Involvement and/or System-Involved Youth



TRIBAL SOCIAL SERVICES/ICWA

“Child Trafficking and the Child Welfare System”

- National Foster Youth Institute (2019): “Estimated 60% of child sex trafficking victims have a history in the child welfare system.”
- Human Trafficking Search (2018): “ Native Americans are victimized by human trafficking at rates higher than the general population.”
- “Traffickers recruit foster youth directly from group homes with false promises of money and a family.” (2018)
- Potential gaps in collaborative efforts between tribes/state.
- Understaffing/underfunding of tribal/state/federal systems.
- “Foster youth leave/missing from foster care” Foster youth state “No one comes looking for us.”

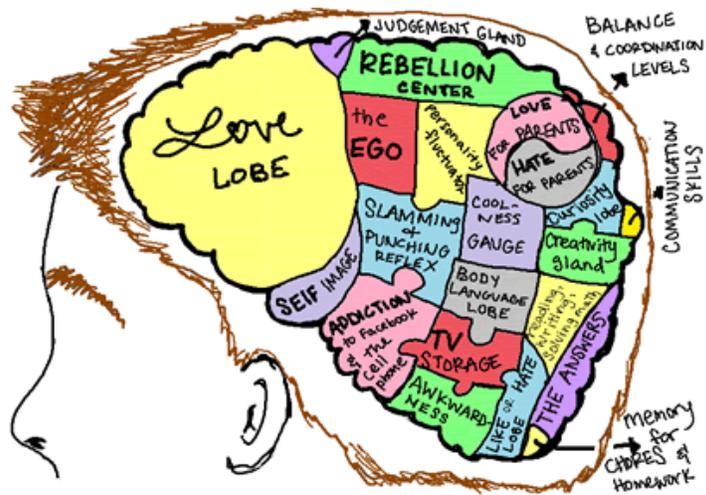


Just Foster Youth at Risk?



A story about a girl who we will call Haley

THE AVERAGE TEENAGE BRAIN



The life and times of Haley

- Lives at home, with parents, brother, and younger sister
- No wants for anything, has own room, television, computer, internet....
- Ambitious: graduated high school by age 16
- Aspirations: college, attorney, police officer, probation officer, guidance counselor, just somewhere new!!!
- Previously actively involved in softball and cultural dancing



Other Factors

- Social life declines due to peers still being in school
- Dating is almost non-existent.. No boyfriend...
- Starting to lose motivation to Change the World
- No motivation to continue education or seek employment
- Unsure when friends might stop by and visit or invite out



Details...details...and the rest of the story



Who is Haley...is she real????



How do we protect our children?

- Recognize that Child Sex Trafficking is an International Problem
- Implement anti-trafficking laws
- Raise awareness in tribal communities
- Provide inter-department trainings to promote awareness
- Increase efforts to identify victims and potential victims
- Establish working relationships with State and Federal Agencies
- Seek grants to provide trainings, staff, and resources to combat this epidemic



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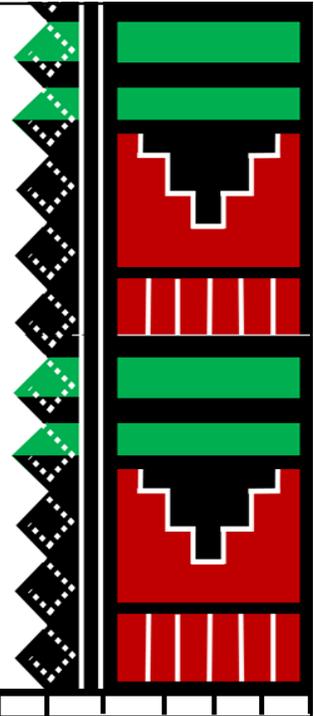
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Thank You