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What lessons can we learn from ICWA courts?

“This work is not just a job — it comes from a desire to do my part to ensure that ICWA is truly a remedial statute, that we are preserving Indian children for the next generation. These children are going to be the next generation’s teachers, doctors, social workers, and Tribal Council members. That’s the heart of why I do what I do.”

— Brooke Baracker-Taylor, Assistant Attorney General, Montana descendent, Turtle Mountain Band of Chippewa Indians

Indian Child Welfare Act (ICWA) courts are created to better support American Indian/Alaska Native families in child protection cases. More than simply a specialized docket, ICWA courts actively strive to improve collaboration between state and tribal partners and increase compliance with both the letter and spirit of ICWA.

ICWA principles represent a [gold standard](#) for child welfare. [ICWA courts](#) preserve these principles in practice for tribal children and families, including ensuring that **active efforts** (a higher standard than Title IV-E’s “reasonable efforts”) are made to keep children with their families. When children cannot remain safely at home, ICWA courts help ensure that ICWA’s **placement preferences** are honored to keep children connected to their kin and culture.

Throughout the proceedings, ICWA courts aim to actively partner with the child’s tribe and parents in a spirit of **cultural humility**, which involves an ongoing process of curiosity and self-reflection, including acknowledgment of one’s own biases. Cultural humility extends beyond the concept of cultural competence, which posits that defined skills and knowledge are sufficient to engage with people from diverse cultures.

“The people working in ICWA courts are driven to have positive impacts in the law. ICWA is a reparative law, written to repair egregious rates of separating children from their families. ICWA courts on their best days are not only getting the law correct, but they are capturing the spirit of connectedness of children to their families, relatives, communities, and cultures. They are operating out of a place of cultural and intellectual humility to elevate the voice of families and tribes.”

— Sheldon Spotted Elk, Senior Director,
Judicial and National Engagement, Casey Family Programs

Impacts of ICWA courts

[Evidence is emerging](#) that ICWA court practices have a positive impact on permanency outcomes for children, in part by encouraging more and earlier participation of both parents and tribal representatives. A mother’s presence in court throughout the case, and the tribe’s presence at the first hearing, are both positively correlated with reunification. When a tribal representative is present at the first hearing, permanency and reunification both occur an average of four months faster. More children in preferred placements (including with kin and tribe), both in earlier stages of the case and at final disposition, is another documented outcome.¹ Some courts also have reported significantly fewer terminations of parental rights (TPRs).

Key principles of ICWA courts

The National Council of Juvenile and Family Court Judges (NCJFCJ) identified five key principles of ICWA courts: judicial leadership, tribal engagement, ICWA training, gold standard practice, and data collection. While each of these principles is evident in ICWA court practice, they are by no means limited to a specialty court. All courts should strive to practice these principles in order to fulfill the spirit and promise of ICWA for tribal children and families.

Judicial leadership

Judicial leaders set the tone for how an ICWA court will operate, particularly in terms of cooperation with and respect for tribes. A survey of more than 100 professionals associated with 24 ICWA courts in a variety of roles showed high agreement that judicial leadership is apparent in their courts, particularly in respect for tribes and tribal culture and family engagement. Specific examples offered by respondents included making adjustments to the court process to honor cultural practices and beliefs, incorporating cultural elements such as the display of tribal flags and traditional medicines in the courtroom, and respecting tribal holidays and cultural events when scheduling hearings.² Hybrid and remote participation options are also important to tribes, as they frequently must juggle concurrent cases in multiple jurisdictions and time zones.

Many ICWA court judges intentionally position themselves in the courtroom differently: for example, coming down from the bench and sitting at a square or circular table alongside all parties. In many cases, judges with ICWA dockets allow for more time to engage with families, including allowing families to address their concerns directly to the judge and team. Some ICWA courts use pre-hearing staffing to ensure hearings are high quality and issues are being addressed and resolved.

Judicial leadership means being an advocate for compassion and common sense, says Judge Jeannice Reding of **Hennepin County, Minn.** Noting that policies should serve as guidelines to improve families’ lives, not rules to harm, Reding (Stockbridge-Munsee Mohican) said she approaches cases with curiosity: “What can we do, within the law, to make this work for families?” She says she extends the same compassionate treatment in her courtroom to attorneys, who often are stretched thin due to limited resources: “I give them a break when I can.”

Tribal engagement

Partnership with tribes is the heart of ICWA. Tribal representatives in hearings and team meetings provide essential guidance and ensure adherence to tribal traditions and values. According to survey respondents, tribal representatives also support ICWA court teams in designing family reunification plans and connecting families with Native-led, culturally appropriate services such as housing support, parenting classes, and addiction treatment.

ICWA courts intentionally build relationships of trust with tribes. In the past, this has been done through visits by judges and other court staff to tribal communities, sharing meals together, and attending tribal cultural events.

In **Montana**, Assistant Attorney General (AAG) Brooke Baracker-Taylor, a descendant of the Turtle Mountain Band of Chippewa, has partnered with the state's Court Improvement Project and the Yellowstone County Attorney's Office to bring qualified expert witness trainings to tribal communities in order to enhance relationships and recruitment. In addition to increasing the number of tribes represented by a qualified expert witness, these trainings also have allowed state and county representatives the opportunity to hear directly from tribes about their concerns.

The **Sitka Tribe of Alaska** employs two full-time ICWA caseworkers, as well as legal counsel with specific ICWA expertise. The tribe is committed to showing up for every case involving a tribal child, anywhere in the country — flying to appear in person if the courtroom does not allow for phone or video participation. As a result of this relentless effort, the Sitka Tribe has one of the lowest child removal rates in all of Alaska and places 95% of children in need of out-of-home care with extended family or tribal citizens. In the rare cases of a non-ICWA placement, caregivers sign agreements ensuring they will maintain the child's cultural connections.

ICWA training

Training is a necessity for everyone who touches child welfare cases involving Native children and families. It must reflect the spirit of the law, in addition to the letter. ICWA court survey respondents give their courts generally high marks for the training, while citing some room for improvement in regular and ongoing ICWA training, and in sessions specifically focused on relationship building between tribes and states.

In **Montana**, AAG Baracker-Taylor opens statewide ICWA trainings with a discussion of tribal sovereignty. Montana trainings also incorporate tribal panels, cultural trainings, and discussion of the importance of long-term identity and connection to culture.

In **Alaska**, tribal and state caseworkers attend both the state's three-week Child Welfare Academy and the Sitka Tribe's ICWA-related trainings together to better understand their counterparts' perspectives. The two teams also participated in a Native Wellness Institute joint [training on healthy relationships](#), which laid groundwork for more courageous conversations and respectful disagreement. Reding in **Hennepin County** says joint trainings like these are important opportunities to hear about the concerns of people in other court roles, although role-specific trainings may offer safer spaces to ask questions. "Both are important," she says.

Gold standard practice

ICWA courts model gold standard practice in all aspects. Survey respondents describe courtroom settings and interactions intentionally designed to reduce trauma for Native children and families, including the integration of support services such as counseling and ICWA-specific advocates to guide families.

ICWA court attorneys aspire to raise the bar beyond [high-quality legal representation](#) to "[gold standard lawyering](#)," which includes a focus on compassion and cultural humility, a commitment to anti-racism, and limiting child welfare involvement to cases in which there is a clear safety concern. Reding notes that the attorneys she most admires do not shy away from making hard arguments — whether that is advocating

for a parent's request even when it is unlikely to be granted, or speaking up when the department or jurisdiction takes an action that is inconsistent with ICWA. **Montana** AAG Baracker-Taylor views her role as the State's attorney to work cooperatively with her attorney counterparts to reach optimal solutions: "It is my job to ensure due process and that we're achieving justice."

For child welfare agencies and their social workers, gold standard practice starts well before a case comes to the ICWA court, with upstream prevention services and [pre-petition](#) practices that keep children safe at home with their families whenever possible. Once a child is removed from their home, the focus shifts to ensuring active efforts to reunify. This must include addressing [poverty](#) as a common root cause of family crises. When reunification is not possible, many ICWA courts increasingly are turning to [guardianship](#) as a better option than termination of parental rights, which is an outcome that many tribes will reject.

Data collection

Data collection is still in development in many jurisdictions, and survey responses on the subject of ICWA courts varied widely. Many courts have begun the process of data collection by looking at American Indian/Alaska Native disproportionality within their jurisdiction. Existing data can help courts learn which tribes are appearing most frequently and reflect on practice issues (such as [inquiry and notification](#) issues) that present barriers to ICWA compliance. Finally, courts may solicit perspectives from families and tribal representatives who have lived experience of practice in the jurisdiction. Using this data, courts can build an action plan around specific outcomes they want to address. Some survey respondents mentioned using a dedicated system to track ICWA cases and monitoring compliance with placement preferences. Other courts focus on ensuring active efforts are documented and evaluated.

Jurisdictional examples

All jurisdictions can improve their ICWA outcomes and serve American Indian/Alaskan Native families better by improving tribal communication, organizing their hearings and collaborating with cultural humility, and providing culturally relevant services. Two specific jurisdictional examples are provided below.

"There's nothing magic about an ICWA court. It's a great community where there can be a larger focus on ICWA. We can really make sure everyone is in the right mindset for an entire docket of hearings. But the law is the same. The practices are the same. And everything we talk about with ICWA courts can be applied in any case. You don't need to get an ICWA court going to raise the level of practice in ICWA cases in your community."
—Superior Court Judge Elizabeth Stanley, Clallam County (Wash.)

Yellowstone County, Mont.

Created in 2021 in response to a large spike in dependency cases that also involved drug-related criminal findings, the ICWA FRC allows Souza to address both matters simultaneously. A small docket (10 to 12 cases) enables the FRC team to spend more time with families both inside and outside the courtroom. The judge sees families weekly in the beginning, and a multidisciplinary team also meets weekly to staff cases. With everyone at the table, including tribal representatives, the team can make immediate decisions and take quick action with the benefit of everyone's perspective. The ICWA FRC has received both federal and state grants to support families with financial barriers to recovery, providing access to necessities such as rent, food, or a phone.

In the courtroom, Souza fosters a less formal atmosphere by removing his judicial robe and stepping down from the bench to join participants at floor level. Families are encouraged to talk to the team, not just listen. As a result, "the families truly believe and understand that the judge and the team care about them and their children," Baracker-Taylor says.

Due to a highly collaborative representation model, very few hearings are contested. When reunification is not successful, guardianship is the rule rather than the exception. “If there’s even a thought of termination, the workers know that we absolutely have to get the support of the tribe,” Baracker-Taylor says. “They know we’re not going to file without the tribe’s support.”

Hennepin County, Minn.

The Hennepin County ICWA court is an urban court serving families from many different tribal nations. When the court was first developed, judges worked to build trust by traveling to meet with tribes around the state and hearing about their interests and concerns. Since the pandemic, a standing rule allows all tribal representatives to appear remotely before the court. This is helpful for engaging tribes a long distance away, but it also decreases the opportunity for essential personal contact.

Reding notes it is important for everyone involved with ICWA courts, and especially non-Native people, to lead with humility and awareness of their own cultural lenses. She recommends learning more about tribes by reaching out to community-based organizations and attending talks, powwows, and other cultural events. She also notes that, in an urban ICWA court, Native people have very different experiences and preferences — some are more traditional and want cultural engagement and services, while others do not. She urges listening and seeking compromise guided by common sense: “There is not a right and a wrong. We’re looking for an outcome that works for both sides, especially the family.”

Reding finds evidence that her approach is working in the way cases proceed to resolution. Tribal representatives are open and forthcoming about their opinions. As a result, “when I make a decision, I don’t get much pushback from the tribe,” Reding says. “Even if the decision is not what the tribe wanted, they know they’ve been heard.” Even tribal nations that have the capacity to take cases back to their own courts typically are comfortable leaving their cases in the hands of the ICWA court. Reding acknowledges that the cases in her court are complex, and it can be difficult to move the needle on outcomes. But when families are unable to reunify, she does see a growing willingness on the agency’s part to file for a transfer of legal custody, which leaves the door open for reunification in the future, in place of a termination of parental rights.

“If I had to put my finger on one thing that makes this court successful, it is the relationship and trust with the tribes, from the tribal leaders down to the tribal liaisons and social workers. If they didn’t trust us, we wouldn’t be able to do a lot of what we do.”

—Judge Jeannice M. Reding, Hennepin County, Minn.
(Stockbridge-Munsee Mohican)

¹ Gatowski, S., Summers, A., and Bussey, B. (2023). The effectiveness of an ICWA court at achieving improved ICWA implementation and outcomes: A pre-post intervention study. *Juvenile and Family Court Journal* 74, 51-70.

² Examples come from interviews with Brooke Baracker-Taylor, Assistant Attorney General, Yellowstone County (Mont.) on December 6, 2024; Judge Jeannice M. Reding, 4th Judicial District Court of Minnesota (Hennepin County) on January 2, 2025; and responses to the recent ICWA court survey (December 2024), which received more than 100 responses from individuals connected to 20 of the 25 ICWA courts: [What is Happening in ICWA Courts: ICWA Court Survey Results](#). Enter passcode: **Wx=Z*1+I**

Casey Family Programs is the nation's largest operating foundation focused on safely reducing the need for foster care and building Communities of Hope for children and families in the United States. By working together, we can create a nation where Communities of Hope provide the support and opportunities that children and families need to thrive. Founded in 1966, we work in all 50 states, Washington, D.C., Puerto Rico, the U.S. Virgin Islands and with tribal nations across North America to influence long-lasting improvements to the well-being of children, families and the communities where they live.

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