

Asserting Tribal Sovereignty: Intervention, Child Permanency, and Transfer

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Overview

- Tribal Sovereignty
- Intervention in State ICWA Cases
- Child Permanency Options
- Transfer to Tribal Jurisdiction



Tribal Sovereignty

- 228 federally recognized Tribes in Alaska
 - 574 federally recognized Tribes in USA
 - 40% within Alaska
- Federal recognition means that the U.S. government via the BIA recognizes a government-to-government relationship with Tribes
- A government-to-government relationship recognizes that Tribal Governments, as sovereign nations with the right of self-governance, are administratively equivalent to the U.S. federal government



Inherent Tribal Sovereignty

- Tribes were already governing themselves before outsiders arrived, and the United States recognizes those retained self-governing powers
 - – General Principles of Federal Indian Law, UAF
- These powers are not granted from the U.S. to Tribes but are inherent powers that Tribes have retained
 - – United States v. Wheeler (1978)
- *"inherent powers of a limited sovereignty which has never been extinguished."*
 - – Cohen's Handbook of Federal Indian Law

Sovereignty

- Make laws and be governed by them
- Self-Determination
- Establish government
- Determine citizenship
- Administer justice within certain areas of law
- Govern; protect; and enhance the health, safety, and welfare of its citizens within jurisdiction



Public Law 280

What it did

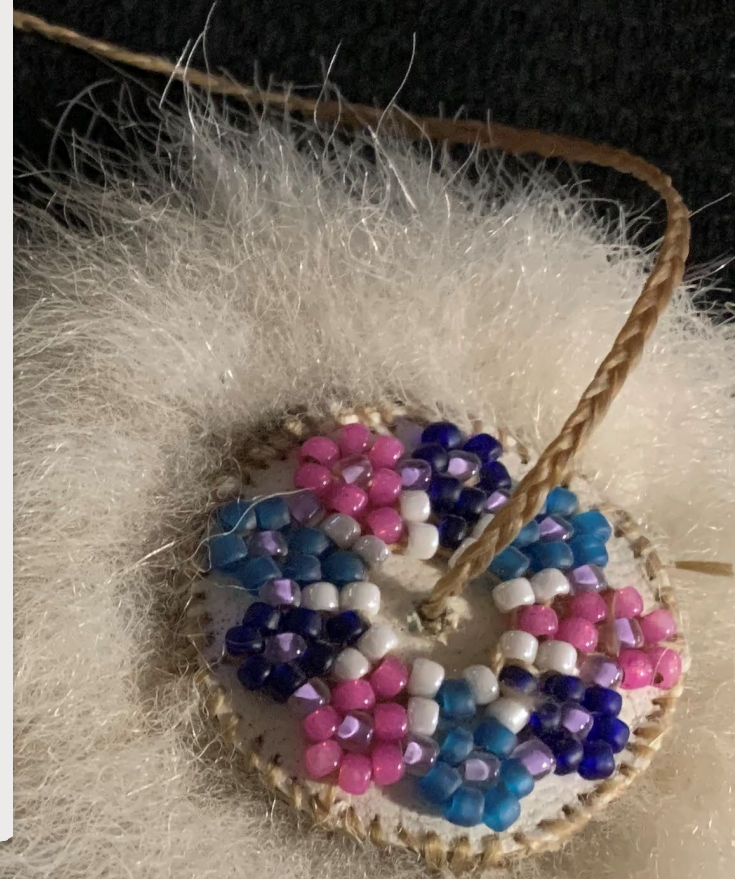
- Allowed to exercise State jurisdiction in Indian country = concurrent
- Impacts federal Public Safety and Justice funding


What it did not do

- Did not terminate Tribes
- Did not extinguish Tribal sovereignty
- Did not take away Tribal jurisdiction

Tribal Child Welfare

- *“...Tribes retain concurrent jurisdiction to legislate, to initiate, and to adjudicate CINA cases in Tribal Courts. There is nothing in ICWA that prohibits, or limits Tribes from passing laws that would allow the Tribe to initiate CINA cases in Tribal Court.”*
- - Alaska Superior Court - Tanana Case, May 2007



A landscape photograph showing a wide valley. In the foreground, there is a field of tall, dry grass with numerous white, fluffy flower heads. A small, shallow pond is visible in the middle ground. The background features steep, rocky mountains with some snow patches, partially obscured by low-hanging clouds. A dark, semi-transparent banner is overlaid on the left side of the image, containing the text "Intervention in State Court".

Intervention in State Court

The background of the slide is a photograph of a rugged mountain landscape. In the foreground, there is a rocky, brownish-yellow slope with sparse vegetation. In the middle ground, a wide, flat valley stretches out, possibly a dry lake bed or a high-altitude plain. In the background, steep, rocky mountains rise under a sky filled with heavy, grey clouds. A white rectangular text box is overlaid on the left side of the image, containing the text.

Intervention Process

The Indian child's Tribe (and Indian Custodian) has the right to intervene at any point in the State foster care or termination of parental rights proceeding.

The earlier the Tribe intervenes the sooner they will become a legal party and receive discovery (documentation). It allows the Tribe to advocate to the court and to the parties about the Tribe's positions on the case.

AK CINA Rule 26 – Amendments take effect October 16, 2023

Notice of intervention filed with court and served on all parties
OR oral notice of intervention given on record

Notice is effective upon filing and the Court shall issue written acknowledgement of intervention



Indian Child's Tribe

- If the Tribes are unable to reach an agreement, the State court will take into consideration:

- Preference of the parents for membership of the child;
- Length of past domicile or residence on or near the reservation of each Tribe;
- Tribal membership of the child's custodial parent or Indian custodian; and
- Interest asserted by each Tribe in the child-custody proceeding;
- Whether there has been a previous adjudication with respect to the child by a court of one of the Tribes; and
- Self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-identify.

Service of documents

-Telling the other parties in writing

- Anything filed with the court will also need to be served on the legal parties, usually by mailing them copies
- Service protects due process by providing parties with notice and an opportunity to respond.





Permanency Options

Relinquishment

Parents can agree in court to relinquish their parental rights.

The agreement must be in-writing and in front of a Judge to be valid.

The relinquishing parent can retain rights and privileges such as visitation, information/updates, cards/gifts/letters.

A parent can change their mind and withdraw the relinquishment within 10 days after signing.

The Judge cannot sign the order until 10 days after the parents have signed.



Consent to adoption



Parents can agree in court for their child to be adopted by a specific individual.

The agreement must be in writing and in front of a Judge to be valid.

Generally, there are very few retained rights that a biological parent can keep after consenting to an adoption.

Commonly, a parent will specify who they want to adopt their child; however, the parent will not necessarily get notice of the Adoption Hearing.

Consent can be withdrawn at any time up until the moment when the adoption is finalized.

If the person(s) are ultimately not able to adopt the child, the consent is null and void.

Adoption Options:

Cultural Adoption Packet	Tribal Court Adoption Order
Adoption is considered by tribal council	Adoption considered by tribal council or tribal court (may be the same for some tribes)
Parents on birth certificate <i>must</i> sign consent forms unless an exception applies (deceased or had notice of adoption, but could not be contacted)	Parents <i>do not need</i> to sign consent forms. The tribal court can order adoption despite a parent's objection, so long as the court provides due process.
Adoption approved through <i>Tribal Resolution Form</i> <ul style="list-style-type: none">• Pre-printed from Alaska Health Analytics & Vital Records	Adoption approved through <i>Tribal Court Order</i> <ul style="list-style-type: none">• Tribe writes its own order
State of Alaska is custodian of original documents <ul style="list-style-type: none">• Will not give copies to parents or child without tribal permission• All certified copies needed for most legal purposes cost \$30	Tribe is the custodian of original documents <ul style="list-style-type: none">• Tribe decides who and how child and parents will access records

Transferring to Tribal Court





What ICWA Says About Tribal Jurisdiction

- Tribes shall have exclusive jurisdiction over any child custody proceeding involving an Indian child who resides within the reservation of the Tribe, or
- Where the Indian child is a ward of the Tribal Court regardless of residence or location of the child
- An Indian child not domiciled or residing within jurisdiction of the Tribe, the court shall transfer the proceeding to the Tribe unless either parent objects, or
- Upon petition of either parent or the Indian Custodian to transfer the proceeding to Tribal Court



The Legal Process

- The child's Tribe, a parent, or Indian custodian can petition to transfer the proceeding in state court to the Tribal Court
- The parties have 20 days to file a response

“In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.” 25 U.S.C. § 1911(b)

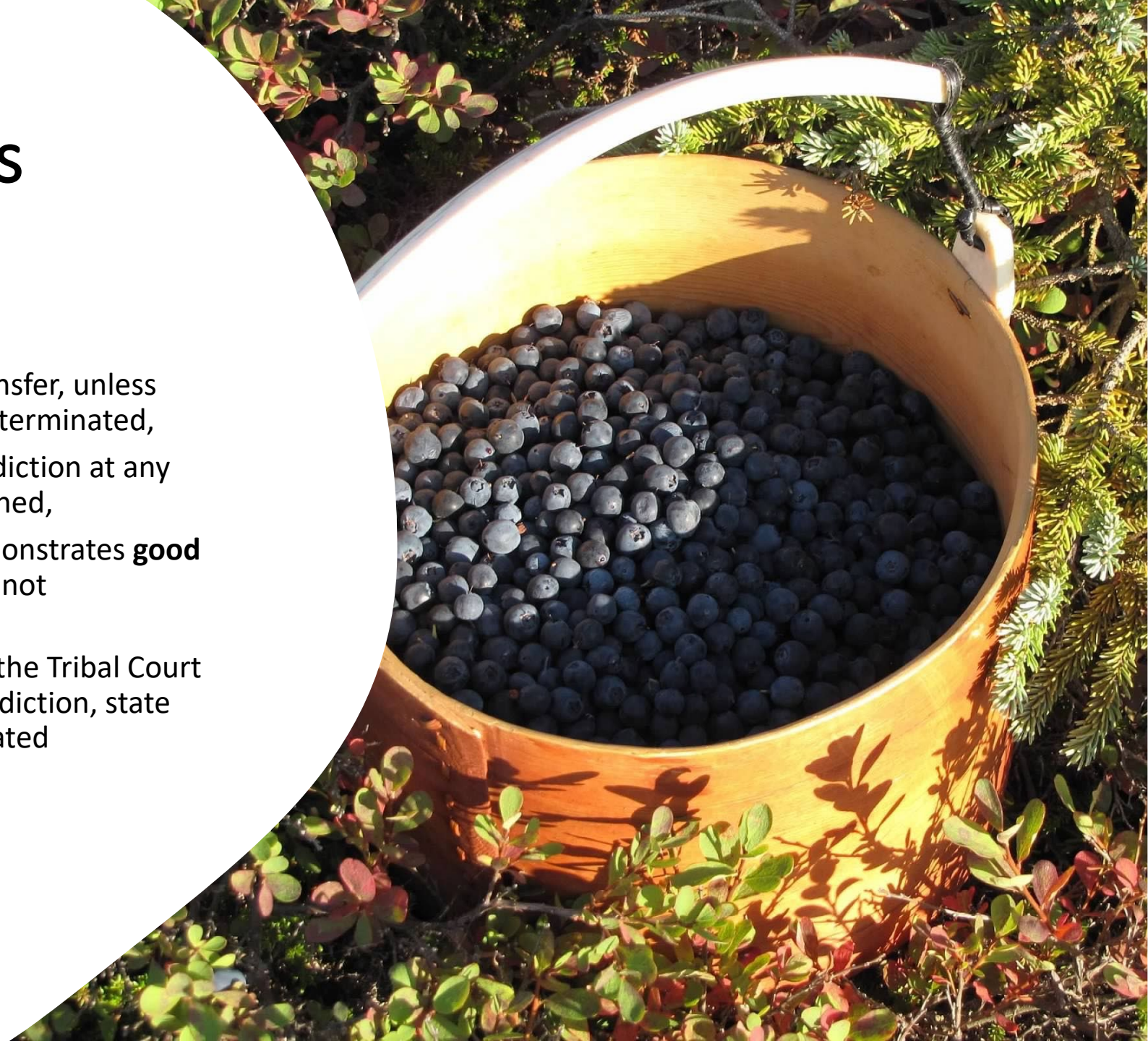




- AK CINA Rule 23 – Amendments take effect October 16, 2023
- Inform parties of intent to transfer
- Line up services for the family
- Prepare for the transfer of the children to the new placement (if applicable)

The Legal Process cont.

- The petition will not be granted if
 - either parent opposes the transfer, unless the parent's rights have been terminated,
 - the Tribal Court declines jurisdiction at any time before the petition is signed,
 - a party of the state court demonstrates **good cause** why jurisdiction should not be transferred
- If the jurisdiction is transferred to the Tribal Court and the Tribal Court exercises jurisdiction, state court appointed counsel is terminated



Ensuring a Smooth Transition

- Prepare the child(ren) for transfer (if change in placement will occur)
- Ensure children and parents are set up with applicable services
- Ensure miscellaneous items are taken care of (children's PFD, birth certificates, social security cards)



Questions to Ask Before Transferring

- Can the Tribe manage the case?
- What services are the children and parents receiving?
- What services can the Tribe provide?
- Will there be a change in placement?
- Who will pay for transportation of the child if there is a change in placement post transfer?





What Does Case Management Look Like?

- Communication with OCS and other legal parties prior to transfer
- Ongoing communication with the parents, children, placement provider, service providers, etc.
- Providing support and case management to the parents and children
- Paying for services for the parents and children



Services the Tribe may need to provide

- Placement/Foster care – will they be compensated?
- Potential travel for visitation
- Medical needs
- Educational needs
- Miscellaneous services:
 - Food, clothing, housing
 - Obtaining documents such as birth certificates or social security cards
 - TANF
 - Medicare/Medicaid

Types of Services

- Culturally relevant services
- Trauma healing for parents and children
- Talking Circles
- In-home parenting
- Medication management for mental health needs
- Counseling
- Psychological evaluation
- Substance abuse treatment
- Domestic Violence counseling or classes
- Sexual offender evaluation





Questions?

Thank you! Chin'an!

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