



**A DESK REFERENCE FOR
ALASKA TRIBAL WORKERS IN
INDIAN CHILD WELFARE CASES**

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A Desk Reference for Alaska Tribal Workers in Indian Child Welfare Cases

The following guide is intended to be a resource for Alaska Tribal staff who are working on state cases involving the Indian Child Welfare Act. Although we have included a short section regarding out-of-state cases and materials on cases not involving the state child protection agency, the bulk of these materials focus on cases in Alaska where the Office of Children's Services (OCS) is involved.

This guide includes a mix of information and rules from state and federal law, court rules, and OCS policy. This guide is not intended as legal advice but rather legal information to help Alaska Tribal workers to be informed of law and policy when working with parents, lawyers, the court, OCS, guardians ad litem, and others in the state child welfare system.

Laws, court rules, and policies change over time. At the bottom of each page is the date that this guide was last updated. If you believe that this guide is out of date in some way, please contact us so that we can update the guide as needed.

Acknowledgements

Many people graciously contributed their knowledge and experience to this manual over many years. Please know that we appreciate your work!

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Contents

| | |
|--|----|
| Introduction..... | 4 |
| What is the Indian Child Welfare Act? | 4 |
| What Kind of Cases Does ICWA Apply To? | 6 |
| What Makes ICWA Cases Different than Other Child in Need of Aid Cases?..... | 7 |
| Key ICWA Concepts | 8 |
| What is an Indian Custodian? | 8 |
| What are the ICWA Placement Preferences? | 9 |
| Tribe's Role in State Child in Need of Aid Process | 12 |
| Active Efforts to Reunify the Family | 13 |
| The Child Welfare Process | 14 |
| What is the Child Welfare Timeline? | 14 |
| What Happens When OCS Investigates Reports of Tribal Children Being Abused or Neglected? | 15 |
| Investigations of Sexual and/or Physical Assault | 16 |
| Maltreatment Findings | 17 |
| When Can OCS Remove a Child Before Court?..... | 18 |
| How Does OCS Step in When There's a Serious Concern but No Emergency?..... | 19 |
| Court Hearings and Legal Processes..... | 20 |
| Hearings and Meetings | 20 |
| What Is Probable Cause and How Do We Prepare? | 23 |
| What Is Adjudication and How Do We Prepare?..... | 25 |
| What Is Disposition and How Do We Prepare? | 27 |
| What Is Permanency and How Do We Prepare? | 29 |
| What Is Termination and How Do We Prepare? | 31 |
| Other Hearings..... | 34 |
| Out of Court Meetings that Occur Throughout an ICWA Case | 36 |
| What if We Want to Transfer the Case to Tribal Court? | 38 |
| Who is Involved in a Child in Need of Aid Case in Alaska State Court? | 40 |
| Working with Families and Children | 41 |
| Cultural Services for Healing and Wellness..... | 41 |
| Diligent Relative Search | 43 |
| Helping Foster Youth with Documentation | 44 |
| Supporting Youth with Disabilities | 45 |
| Supporting Youth with Juvenile Delinquency Cases..... | 46 |
| Supporting Youth Exposed to Sexual and/or Physical Abuse | 47 |

Case Management and Best Practices 49
 Documenting & Tracking Active Efforts 49
 How Can Tribal Representatives Address Bias in Child Welfare?..... 50
 Remember Self-Care 52
 Monthly ICWA Case Review 53
Special Topics..... 54
 Complaints During an OCS Case 54
 Guardianship and Adoption Options in Tribal Court and State Court 56
ICWA Bookmarks for your Computer..... 60
ENDNOTES 61

Introduction

What is the Indian Child Welfare Act?

For thousands of years, Alaska Native families thrived in communities centered around traditional values. Cultures vary widely across the many Tribes in Alaska. Still, common themes exist:

Show Respect to Others

Each Person Has a Special Gift

Share What You Have

Giving Makes You Richer

Know Who You Are

You Are a Reflection on Your Family

Accept What Life Brings

You Cannot Control Many Things

Have Patience

Some Things Cannot Be Rushed

Live Carefully

What You Do Will Come Back to You

Take Care of Others

You Cannot Live without Them

Honor Your Elder

They Show You the Way in Life

Pray For Guidance

Many Things Are Not Known

See Connections

All Things Are Related

Western contact and colonialism disrupted traditional ways of life. Disease, land theft, boarding schools, child removal, and racist public institutions, among other things, created many traumas and hardships for Alaska Native/American Indian (AN/AI) people.

Many generations later, Congress passed ICWA in 1978 to turn the tide on the unnecessary removal of children from their homes and separation of children from their cultural identities and communities. ICWA looks for ways to keep families together and to strengthen Tribal sovereignty. The purpose of ICWA is "...to protect the best interest of Indian Children and to promote the stability and security of Indian tribes and families..." (25 U.S. C. 1902).

Because ICWA is a federal law, it applies in every state in the United States. It is part of the U.S. Code at 25 U.S.C. 1901-1951. ICWA governs cases in **state court** where judges may remove children from their homes. ICWA does not apply in Tribal Courts, which are better situated to understand the needs of Tribal families.

Find the text of ICWA here: www.Tribal-institute.org/lists/chapter21_icwa.htm

When federal laws use broad terms that states interpret differently, the federal government can pass regulations to clear up confusion. This happened with ICWA in 2016. The Department of the Interior's Bureau of Indian Affairs is in charge of passing rules to carry out ICWA's purposes.

They published rules in the Code of Federal Regulations at 25 C.F.R. Part 23. State courts must follow these too. The regulations can be found here:

<https://www.federalregister.gov/documents/2016/06/14/2016-13686/indian-child-welfare-act-proceedings>

The BIA also published guidelines in 2016 that are not laws but offer helpful interpretations of ICWA's wording.

<https://www.bia.gov/bia/ois/dhs/icwa> (Click link for "Guide")

The Alaska Supreme Court publishes opinions in ICWA cases that help explain how judges in Alaska interpret ICWA's terms and examples of how the law applies to different factual circumstances. You can look up cases here and type in search terms like:

ICWA & "placement preference" & "child's preference"

https://govt.westlaw.com/akcases/Index?_lrTS=20230622182919518

What Kind of Cases Does ICWA Apply To?

Office of Children’s Services (OCS) Child in Need of Aid Cases

These are the most common ICWA cases – when OCS seeks to remove a child from their home and place the child in foster care. ICWA also applies when the child stays at home, but OCS seeks a court order for legal (decision-making) custody of the child. This may be referred to as a “supervision” or an “in-home” case.

Guardianship & Adoption of Tribal Children

Whether OCS is involved or not, anyone asking a state court to adopt or to become legal guardian of a Tribal child must follow ICWA.ⁱ They must notify the Tribe, follow ICWA protections, and recognize the Tribe’s right to intervene. This includes cases brought by private adoption agencies, even if the biological parents agree to the adoption, or “safe surrenders” of infants less than 21 days old. (explained at: dfcs.alaska.gov/ocs/Pages/safesurrender/default.aspx).

Third Party Custody of Tribal Children

Like guardianship and adoption, ICWA governs when anyone **other than a parent** is asking for custody of a Tribal child.ⁱⁱ For example, if an auntie and uncle are seeking custody of a child against the wishes of the child’s mother, ICWA applies. ICWA does not cover parent versus parent custody cases.ⁱⁱⁱ

Some Juvenile Delinquency Cases

ICWA applies when a child is charged with a crime that is only a crime because of age, like truancy, and the juvenile justice agency wants to place the child outside the home.^{iv}

Commitment of Minors to Psychiatric Institutions

Although not yet decided in Alaska, the wording of ICWA suggests that ICWA applies when there is a case to involuntarily commit a child to an institution.^v

Practice Note: Even if the Tribe is unable to intervene in a case due to limited resources, the Tribe may still want to send an email confirming that ICWA applies to the case. That way, the family will still get ICWA protections. And if the child is not a citizen of the Tribe, it is a chance to have them become an enrolled citizen before a custody change.

What Makes ICWA Cases Different than Other Child in Need of Aid Cases?

When Alaska's Office of Children's Services (OCS) suspects child abuse or neglect and deems home unsafe, it initiates a Child in Need of Aid (CINA) case. For Tribal citizens or eligible children, both ICWA (Indian Child Welfare Act) and state law apply. The primary goal is to keep children with their families whenever it is safe to do so. If impossible, ICWA ensures Tribal input in the child's upbringing by providing certain protections:

Notice & Intervention – ICWA Sections 1912(a) and 1911(c)

OCS and the state court have a duty to identify and notify the child's Tribe of a new case and the Tribe's right to intervene as a legal party. Intervention can happen at any time.

Higher Standards for Removal & Termination – ICWA Sections 1912(e) & (f)

Recognizing the historical bias of state agencies against Indigenous families, ICWA demands stronger proof when state agencies ask the court to approve the removal of Tribal children from their home or to terminate child-parent relationships.

Active Efforts – ICWA Section 1912(d)

ICWA requires states to provide not just "reasonable" but "active" efforts to prevent children from being removed from their homes, and to reunify children and parents if removal happens. Although efforts are focused on parents, the goal is to give children the best chance possible to be with their mothers and fathers.

Family Placement – ICWA Section 1915

While states recognize family placement as ideal for all children, ICWA requires state agencies to provide particularly strong reasons to place children in non-family, non-AN/AI foster care if there are family or Tribal homes available. ICWA looks to Tribal laws and customs to define "extended family" for the child, and Tribes can set their own placement preferences. *Note: ICWA treats AN/AI and non-AN/AI family the same.*

Indian Custodians – ICWA Section 1903(6)

ICWA recognizes that an Alaska Native or American Indian person may stand in the shoes of a parent if they have been raising a child and OCS wants to remove a child from their home.

Key ICWA Concepts

What is an Indian Custodian?

ICWA recognizes that it is culturally appropriate for Alaska Native and American Indian children to be raised by a relative or someone considered as family by the Tribe. ICWA protects those relationships just as it protects parent-child relationships.

ICWA often uses the phrase, “parent or Indian custodian.”

A child’s caregiver may be recognized as an Indian custodian and given the same rights as a parent in an ICWA case if:

- They are “Indian” (a non-AN/AI caregiver does not fit the definition) and
- They have legal or physical custody under state law, Tribal law, or Tribal custom; or
- A parent has entrusted them to care for their child.

Alaska law does not consider someone an Indian Custodian if OCS made the decision to place a child with them. Alaska law also does not consider someone an Indian Custodian if they had custody of a child in the past, but not when the ICWA case began.

What does it mean for an Indian Custodian to stand in the shoes of a parent in an ICWA case?

- OCS must notify them when a child is removed from their home.
- A child may only be removed if there is imminent harm or strong evidence that the child will suffer serious emotional or physical harm in the home.
- They must be notified of all court hearings and have the right to participate.
- They have the right to court-appointed counsel if they are unable to afford a lawyer on their own.
- They have a right to active efforts toward reunification.

What are the ICWA Placement Preferences?

Foster Care Preferences

When OCS places a child in foster care, OCS and the court must prioritize placement with, in descending order:

- 1) A member of child's extended family (regardless of Tribal affiliation)
- 2) A foster home licensed, approved, or specified by the child's Tribe
- 3) An Indian foster home licensed or approved by the state or non-Indian licensing authority
- 4) An institution for children approved by a Tribe or operated by an Indian organization that meets the child's special needs

Any placement outside this list is an OOPP "out of preference placement," sometimes referred to by OCS as a "5th preference."

Note: All extended family members share the same priority. For example, there is no preference for grandparents over cousins or step-parents - unless the Tribal law or custom gives preferences among family. This list also applies to guardianship.

What if OCS asks the Tribe to Approve an Out of Preference Placement?

The Tribe can decide to not object to a placement while OCS is seeking a higher preference placement. The Tribe should be clear, however, that its decision to not object does **not** make the placement a home "approved by the Tribe" as a second-tier placement. If the Tribe approves of an out-of-preference placement as a second preference placement, it may be harder for a child to move from that non-AN/AI foster home to a preference placement.

What if OCS asks the Tribe to Recognize a Non-Relative as Extended Family?

OCS may also ask the Tribe to accept a non-relative as extended family to make them a first-tier preference or gain eligibility for benefits. "Extended family" is defined by the Tribe's laws and customs. The Tribe has the authority to decide whether to designate someone as extended family, or not, regardless of the consequences under state rules. Tribes should be cautious about recognizing non-relatives as family and granting them equal priority for placement.

Adoption Preferences

When the court considers an adoption petition for a Tribal child, the court must prioritize placement with, in descending order:

- 1) A member of child's extended family (regardless of Tribal affiliation)
- 2) Other citizens of the child's Tribe
- 3) Other Indian families

What if the Tribe Wants to Change Preferences?

The Tribe can change the order of the placement preferences specified in ICWA if the Tribe wants to.

- If the Tribe chooses to change the order of placement preferences, it is often done by a Tribal Resolution.
- Note that even when the Tribe issues a Resolution specific to one family and one case, the court or OCS may (incorrectly) consider this change to apply to all the Tribe's cases, not just that one case. This may be something to negotiate or address with the help of a lawyer.

How Does a Family Member Make a Placement Request?

To be a placement, any family member or adult family friend can ask OCS for placement. In writing is best! They have the right to a decision within 45 days. If denied, they can ask the court to review OCS's decision. A form can be found here: <chrome-extension://efaidnbnmnnibpcajpcglclefindmkaj/https://public.courts.alaska.gov/web/forms/docs/cn-313.pdf>.

To seek guardianship or adoption of a foster child, a family member can file a guardianship or adoption petition, noting that there is a pending CINA case. The family member can also ask OCS for "immediate, permanent placement" of the child with them. Again, it is best to make this request in writing. OCS must then file a "proxy placement request" with the court right away, and then file a permanency report within 60 days. If OCS does not move the child to the relative requesting placement, the court should hold a placement review hearing within 90 days of the proxy being filed.^{vi}

Do relatives need to be licensed to get placement?

No. OCS can approve relatives as unlicensed placements if OCS has done a safety evaluation walk-through of the home and members of the household have passed background checks. There are many reasons relatives may be wary of licensing, including the intrusion into their privacy, paperwork, and reluctance to work with OCS. However, Tribes should ensure families have complete information about the process, including the fact that licensed homes receive more funding. OCS should make someone available to help the family with a variance application if needed to address an issue with licensing.

| Funding Differences: Licensed versus Unlicensed Homes | |
|---|--|
| Licensed Home | Monthly stipend: \$780.90 to \$1,415.70 per child per month, depending on the location and age of child |
| | Ability to get higher stipend for child with very high needs |
| | Eligible for guardianship or adoption subsidy if the case ends without reunification, but only if the home had a foster care license for the child for at least 6 months |
| Unlicensed Relative Placement | Emergency Funds (ERS): \$500 per child per month, with a two-month limit <i>(cannot be combined with TANF)</i> |
| | TANF Adult Not Included: \$452 for the first child, \$102 for every additional child |

Tribe's Role in State Child in Need of Aid Process

As an ICWA worker, you advocate for the Tribe inside the courtroom, in meetings, and wherever decisions are being made about Tribal families. You understand that the strength of the Tribe relies on healthy children and families.

You have a unique perspective on what is “in the child’s best interests.” You see how important it is for a child to have a deep connection to family, culture, and community for their sense of identity and security.

Depending on where you live, you may be the one person among all the legal parties who has a personal connection to the child and family. You will have the deepest understanding of the child’s culture and family history. You will also be most familiar with culturally based services, and what paths to healing may work best.

Often, you will be the bridge between the family and the state system, and their two languages. You can translate concerns by family members, which OCS may not understand, or may misinterpret. You can step in when family members have been traumatized by OCS and can’t work with them directly.

You will be seen as the expert in the Indian Child Welfare Act. The judge and other parties will look to you to understand what ICWA means and how to apply it. They will ask for your suggestions on a qualified expert witness to independently review OCS’ decisions about a contested removal or termination of parental rights. They may also look to you for guidance on the laws and customs of the Tribe and how preference placements and “extended family” are defined.

Not everyone understands the role of a Tribal representative in an ICWA case. Some parties worry about ICWA making it harder to remove children from unsafe homes. Some parents expect Tribal representatives to make cases go away. You may have to explain your role many times, with its focus on Tribal values and child safety.

Active Efforts to Reunify the Family

Visitation/ Family Contact

- Alaska law provides that parents and Indian custodians are entitled to “reasonable visitation.”^{vii}
- It also requires that OCS give siblings regular visits when they are separated. As a Tribal representative, you can advocate for as much family contact as possible, to the extent it is safe and healthy for the children.

What is reasonable for visits?

- If the parents and children are living in the same community, OCS typically sets up weekly supervised visits.
- More frequent visitation is often appropriate, particularly with younger children. If a child and parent are in different communities, OCS typically considers an in-person visit every 3 months to be reasonable.
- Contacts may also include attending the child’s appointments, parent teacher conferences at school, IEP meetings, youth activities and cultural events.

What if a child is not getting reasonable visits?

- Conversations with the other parties is a good first step. If that is not successful, the Tribe should raise visitation as an issue at the next scheduled court hearing.
- If that is not successful, the Tribe or any other legal party can file a motion with the court to hear concerns regarding inadequate visits.^{viii}

Why are visits usually supervised?

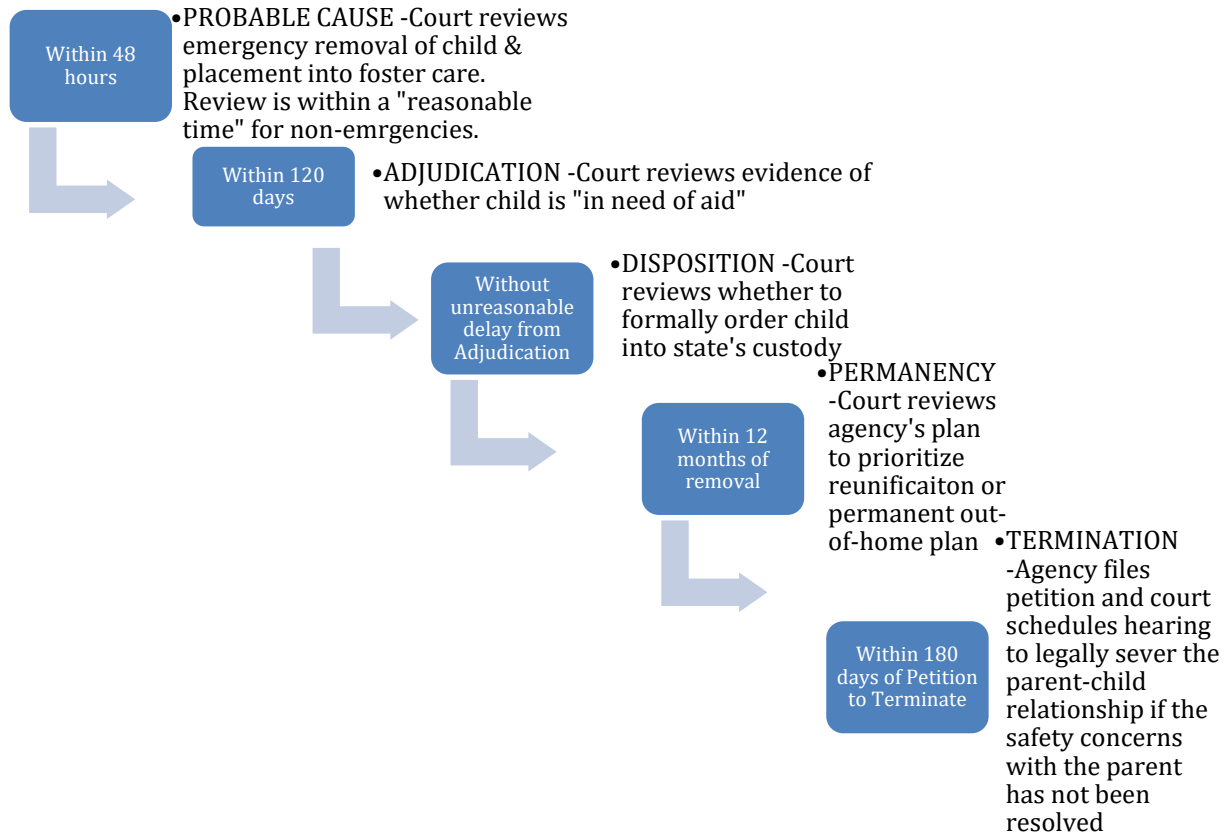
- OCS has a policy to ensure that visits are supervised until there are certain improvements in the parents’ behavior.
- The Tribe can always advocate for more or less supervision based on how visits are going and how the children are responding.
- The Tribe may have creative ideas about improving the setting for visits so they are more natural, such as Tribal family nights, harvesting, or working on regalia together.

OCS can also approve safe relatives and other people outside OCS to supervise visits. There are many Tribes who supervise visits, either at a Tribal office or in the community.

The Child Welfare Process

What is the Child Welfare Timeline?

You will hear the phrase “timeline” a lot in child welfare. Under the federal Adoption & Safe Families Act, OCS must file a petition for termination of parental rights if a child has been out of the home for 15 of the past 22 months unless a compelling reason exists not to do so. Where reunification does not occur during the necessary timeframe, this is the general timeline of a CINA case:



It is helpful for Tribal representatives to understand that when families enter the system, **the clock is ticking**. A family's timeline for healing may not line up with the court and agency's case timeline. In every case, the Tribal representative will need to help balance the time parents need to heal, and the time children can wait before needing to settle down in one home for the rest of their childhood.

Circumstances that are exceptions to TPR include the department documenting compelling reasons why TPR would not be in the best interests of the child, this may include the child being cared for by a relative. Another exception for filing a TPR petition at 15 months is if the department has not provided the parent with the family support services that the department has determined are necessary for the safe return of the child to the home. *(Citation: Alaska Stat. § 47.10.088)*.

What Happens When OCS Investigates Reports of Tribal Children Being Abused or Neglected?

Intake and the Protective Services Report (PSR)

When OCS receives a report that a child may have been abused or neglected, an intake worker decides if the information meets the criteria to either screen in or screen out the report (known as a PSR).

- **Screened out** means that the intake worker does not believe that the information gathered shows that a child is unsafe or at a high risk of harm by a primary caregiver.
- **Screened in** means that the intake worker believes that a child may be unsafe or at a high risk of harm by a primary caregiver.
- When a report is screened in, OCS assigns the report a priority response timeframe:
 - **Priority 1:** OCS must respond within 24 hours
 - **Priority 2:** OCS must respond within 72 hours
 - **Priority 3:** OCS must respond within 7 days

OCS will distribute screened in and screened out PSRs to Tribes that request them for their Tribal citizens. OCS should distribute PSRs within the priority response timeframes.

Investigation & Assessment (IA)

During the investigation, OCS must quickly identify, contact, and share information with the Tribe, to the extent permitted by law.

Tribes are entitled to IA information for the following purposes:

- Assisting OCS with its assessment (applies to all connected Tribes); or
- To aid in providing services or placing a child if releasing the information is in the child's best interest (applies to all connected Tribes); or
- The child's Tribe asks for information from OCS and indicates the request is for a purpose related to child protection.^{ix}

When one or more of the above conditions exist and the Tribe has signed the confidentiality agreement required by the State, the department will share all verbal and written information in its possession regarding the investigation. There is an exception for some information that gets special legal protections. The Tribal Agreement of Confidentiality and list of Tribes that have signed are available here: <https://dhss.alaska.gov/ocs/Pages/confidentiality.aspx>.

Investigations of Sexual and/or Physical Assault

Cases involving allegations of sexual abuse or assault are handled differently from other cases not just because of the severity of the allegations, but also because of the possibility that law enforcement will become involved to prosecute the alleged offense(s).

Accordingly, when OCS receives one of these reports, the assigned worker will make a referral to the Child Advocacy Center (CAC) serving the region the child lives in. In addition to providing victim-centered services to the child-victim and their non-offending caregivers, these CACs are equipped to evaluate for child sexual assault (SA) or severe physical abuse.

This can involve recorded forensic interviews by specially trained interviewers, medical exams by Sexual Assault Response Team (SART) specialists, and investigation reviews by multidisciplinary teams made up of CAC staff, OCS, law enforcement, and other specialized providers.

Depending on the amount of time between the abuse and the CAC appointment, the SART staff may also provide post exposure preventative care to the child. This can include contraceptives, tests for STDs and STIs, and forensic medical exams to screen for internal injury.

One consideration to be aware of is that much of the above information presumes that the non-offending parent or caregiver has agreed to cooperate with the agency making the CAC referral. If the alleged perpetrator is someone who does not live in the same home as the child, then OCS may not be involved at all.

However, when the non-offending parent or caregiver refuses to allow the child to go to the CAC, or if there is no non-offending caregiver, this creates a situation where OCS may have to take emergency custody of the child to transport them to the CAC. This is because even though the alleged perpetrator might be outside the home, OCS and law enforcement will expect the non-offending caregiver to take action to protect the child, and this includes transporting them to a CAC for the specialized services that only CACs are equipped to provide.

Maltreatment Findings

At the end of the investigation & assessment, OCS will determine if the allegations are:

1. Substantiated:

- OCS uncovered facts showing that the child's health or welfare was harmed or threatened.
- If a case is substantiated, OCS will decide if they want to open a case or close the investigation. The worker considers the protective capacities of the caregiver and the family's risk level.
- A finding of "substantiated" can have employment and other impacts and the parent has a right to an administrative appeal.

2. Unsubstantiated (or not substantiated):

- While a concern may be valid, the investigation did not produce supporting evidence.

3. Closed without a finding:

- OCS cannot find any evidence to prove what the reporter said is true.
- OCS may close an investigation with a referral for recommended services.

A parent who has a substantiated finding by OCS in their past could be denied foster care approval or certain jobs, such as working with children or vulnerable adults.

When this happens without a court case, parents may not realize the finding can have such big impacts.

The Tribe can help parents understand their right to have a judge review OCS's decision, and get their appeal filed within the 30-day deadline.

When Can OCS Remove a Child Before Court?

There are times when a child is in such immediate danger that they cannot wait for a court hearing. When OCS believes the danger is that severe, OCS can remove the child from their home **without** a court order.

However, OCS must then take immediate action to notify the parents and the court so the family can respond. ^x

- ***What is the legal standard for emergency removal?***
 - The child must face “imminent physical damage or harm.”

- ***What is considered “imminent”?***
 - It means something is just about to happen.
 - For example, if a VPSO has been at a home several nights in a row due to substance misuse and violence in front of the children, OCS may remove to prevent the children from getting in harm’s way the next night.

- ***What is not considered “imminent”?***
 - If OCS is worried about a child not getting adequate medical care for an ongoing condition, there could be future danger, but probably not “imminent harm.”

- ***What does OCS have to do after it removes a child?***
 - OCS must file a child in need of aid petition in court within 24 hours of taking emergency custody of the child. The petition must explain why the child is a child in need of aid and why removal is necessary to protect the child.
 - OCS must let the parents know about the removal and share a copy of the petition.
 - OCS must investigate to find out what Tribes may be affiliated with the child and share a copy of the petition with all potentially connected Tribes.

- ***What does the Court have to do when it gets a petition?***
 - The court must hold a temporary custody hearing within 48 hours of OCS filing its petition for emergency removal.

How Does OCS Step in When There's a Serious Concern but No Emergency?

- Step 1: OCS Files a Non-Emergency Petition^{xi}
 - OCS can request in its petition that the court allow OCS to have:
 - **Custody without removal:** the child may remain at home with at least one parent, but OCS will check in regularly and have legal custody to make decisions for the child in consultation with the parents.
 - **Custody and removal from the home (i.e., foster care or relative placement):** OCS can ask for an order removing the child from the home after the hearing.
- Step 2: The Court Sets a Non-Emergency Hearing
 - The court must hold a probable cause/temporary custody hearing within a “reasonable amount of time,” which is usually around 10 days.
 - If OCS asks for removal, a parent, Indian custodian, or the Tribe can ask to postpone the hearing for a short amount of time in order to prepare.
 - With a non-emergency petition, the court cannot authorize removal without complying with ICWAs requirements for notice to parents and the Tribe.

If either parent wants to contest removal at a hearing, OCS must present clear and convincing evidence that the child would be at substantial risk of harm if left in the home. That evidence must include the testimony of a Qualified Expert Witness.

With a non-emergency petition, the state should not ask the state court to open a case if the Tribe already has an open child protection case for that child.

If that happens, the Tribe should be prepared to share a copy of whatever Tribal Court orders explain that the Tribe has jurisdiction over the case.

Court Hearings and Legal Processes

Hearings and Meetings

The Value of Group Staffing: Child welfare is hard work. Staffing cases and coming up with Tribal positions as a group helps in many ways. Whether you are staffing with other ICWA workers, your social services department, or council, getting other perspectives on a case can help you see a case with fresh eyes. Other peoples' experiences may give you new ideas to support the family. It also helps to share the burden of tough decisions that impact peoples' lives. Finally, it will allow you to tell other parties "This is the Tribe's position" and not just your own opinion.

Timing: When you sit down to prepare for hearings, it is best to do it at least a week in advance. That will give you time to:

- Find out more information if needed.
- Try to negotiate solutions when there are issues.
- Confer with other parties, the child, and family, when appropriate.
- Draft a position in writing when there is a major decision parties disagree about.
- For contested hearings, look at the witness lists and exhibits.
- Contact a lawyer for help when needed if you do not already have a lawyer.

NOTE: Sometimes the Tribe does not have enough information to take a position on an issue. It is okay for the Tribe to tell the parties and the court: "We cannot take a position now because we need more information about..." and then describe what information it needs, and who it needs the information from.

Preparation is more important for hearings where the judge will make a decision like disposition or termination as opposed to a status hearing. However, every hearing is an opportunity to work with the family and help steer the case in a positive direction.

Prepping Parents: If you have a relationship with the parent, you can help make sure they are ready to dress for court, know courtroom etiquette, and are mentally prepared to hear painful and personal issues discussed in front of strangers.

Findings and Orders: For every major hearing, the judge must make decisions about the facts of the case, called "findings," and issue orders about what the parties need to do. Sometimes OCS will circulate a draft of proposed findings and orders before the hearing.

Looking at the draft before the hearing will let you know what is at stake. Then you can discuss whether the Tribe agrees with all the proposed findings and orders, or not. Other times, the court will make decisions at the hearing and one of the parties (usually OCS) will type up a summary of the judge's decision for them to sign afterwards.

Contested Hearings: For every hearing, the parents have the right to make OCS prove the facts it wants the court to find and justify the orders it wants the court to issue. Parents will confer with their lawyers to decide whether they want a contested hearing or not.

At a contested hearing, OCS will call witnesses to testify. Except for emergency hearings, OCS lets the other parties know in advance who they will call as witnesses by circulating a witness list. The assistant attorney general will ask them questions, called "direct examination." Then the judge will ask all the other legal parties if they have questions for the witness, called "cross examination." If the Tribe has intervened, that means you (or your lawyer if you have one) can ask the witness questions.

OCS will usually present documents, pictures, audio recordings, and videos labelled as exhibits and summarize them in an exhibit list. OCS will circulate its exhibit list and exhibits before the hearing to give the parties a chance to review them.

The other legal parties can also circulate their own witness lists, exhibit lists, and exhibits if they want to. They never have to, though, because OCS is the only party that has the burden of proving anything in court.

Uncontested Hearings: A parent can agree to have the judge issue the findings and orders that OCS is asking for at any stage of the case, without a contested hearing. A parent may not fight the proposed findings and order because it can be painful to hear witnesses talk about their struggles in court. A parent may also be ready to admit to problems they are having and want to focus on healing instead of fighting. Also, a parent who cannot care for their child because they are in jail will often forgo a contested hearing because it is easy for OCS to show that they are not available to parent.

Agreeing to temporary custody or adjudication findings is commonly referred to as “stipulating.” Before accepting a stipulation in ICWA cases, the court will typically want to have the parent in person or on video, and double check that the parent is making a truly free and voluntary decision.

Each parent can make different decisions. For example, one parent may choose to contest termination of parental rights while another decides to relinquish their rights. That is okay. The court will hold a trial regarding termination of the first parent’s rights and leave the other parent out of it.

Alternative Dispute Resolution: There is often value in the parties working out solutions themselves outside of court, and judges are always happy to hear there is an agreement that makes contested hearings unnecessary. There are many ways to try and solve problems outside of court, including:

- Family group conferencing
- Talking circles
- Court-sponsored mediation
- Judicial settlement conferences
- Team-Decision-Making meetings
- Meeting of the Parties

The Tribe can also make suggestions for other methods that draw on cultural practices.

What Is Probable Cause and How Do We Prepare?

PROBABLE CAUSE refers to the court deciding there's enough evidence to go forward with a child protection case, even though it's just at the beginning.

At **Probable Cause**, we consider if OCS should step into a family's life due to signs of child neglect and/or abuse.

Key Questions for the Tribe to Prepare for Probable Cause (aka Temporary Custody):

1. Do we have enough information to take a position on probable cause and removal, or do we need OCS to provide us with additional information?
2. Does the Tribe agree there's **probable cause** to believe the child was abused or neglected based on OCS's petition and the information at hand?
3. Does the Tribe believe that the home can be made safe enough for the child to stay there now, or is **removal** necessary to prevent imminent harm?
4. If the child is out of the home, does the Tribe agree with where the child is placed or does the Tribe know of a higher **ICWA preference placement** that they support?

Note: ICWA Section 1922, on emergency removal, separates Probable Cause hearings from regular ICWA custody hearings. Due to the emergency nature of the hearing, some ICWA protections that apply at other stages of the case do not apply here.

One example is the QEW. In an emergency, OCS can ask the court to order the removal of a child from their home if there is evidence of (1) imminent harm or (2) substantial likelihood of serious emotional or physical harm. OCS should let parties know which standard they will try to meet and must have a QEW ready to testify if they are relying on the "serious harm" standard at a contested probable cause hearing.

| PROBABLE CAUSE HEARING | |
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| Timing | For Emergency Petitions, the court must hold a Probable Cause hearing within 48 hours of OCS filing the Petition. |
| | For non-emergencies, the court must hold a hearing within a “reasonable time” – usually within two weeks. |
| | Any party can ask to continue for “good cause” – but only for a short time. Probable cause hearings are often continued a few times to make sure that both parents get a lawyer appointed to help them. |
| Who Proves What | OCS is the only party that has the burden to prove anything. OCS must prove: |
| | 1. There is probable cause to believe the child is a child in need of aid (per the reasons outlined in the Petition). “Probable cause” translates to a good reason to think something happened. |
| | 2. That they should be granted temporary legal custody of the child. |
| | 3. That the child faces imminent physical danger or harm, or that the child is likely to suffer serious emotional or physical damage at home (if OCS is seeking removal). |
| | 4. That it followed ICWA placement preferences or there is good cause to deviate from those preferences (in cases of removal). |
| Paths to a Probable Cause Order | A parent can forego a contested hearing and agree that there is enough evidence for the court to decide the child is in need of aid. A parent’s lawyer may advise that their client will “not contest” probable cause. Or a parent can say they want OCS to prove their case at a hearing. |
| Next Steps | If the court decides that probable cause does not exist, it will dismiss the case. If the court does find probable cause, the court will usually schedule a pre-trial hearing next, to hear from the parties about their preparation for adjudication. The parties should also schedule the Initial Case Conference. |

What Is Adjudication and How Do We Prepare?

At **ADJUDICATION**, the court considers what has happened with the family in the first months of the case and decides whether the child has been abused or neglected. The court also considers whether OCS is doing its job to help the family.

Questions for the Tribe to Prepare for Adjudication:

1. Do we have enough information to take a position on **adjudication** and **removal**, or do we need OCS to provide us with additional information?
2. For each type of **abuse/neglect** described in petition, does the Tribe agree there is strong enough evidence for the judge to decide it happened?
3. Does the Tribe believe that the home can be made safe enough for the child to stay there now, or is **removal** necessary to prevent serious emotional or physical harm?
4. If child is outside of home, does the Tribe agree with where the child is placed or does the Tribe know of a higher **ICWA preference placement** that they support?
5. Does the Tribe believe OCS is making **active efforts** to reunify the child and parents, including opportunities for family contact and services that are appropriate for this particular family?

| ADJUDICATION HEARING | |
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| Timing | By law, adjudication should happen within 120 days of the probable cause finding. |
| | Any party can ask to continue for “good cause.” |
| Who Proves What | OCS is the only party that has the burden to prove anything. OCS must prove: |
| | 1. It is more likely than not that the child is a child in need of aid (per the reasons outlined in the Petition). |
| | 2. There is clear and convincing evidence that the child is likely to suffer serious emotional or physical damage if they return home (if OCS removed the child from their home). |
| | 3. That active efforts to provide remedial services and rehabilitative programs were made to prevent the breakup of the family, and that those services have not yet been successful (in cases of removal). |
| | 4. That ICWA placement preferences were followed or there is good cause to deviate from those preferences (in cases of removal). |
| Paths to an Adjudication Order | A parent can ask for a contested hearing or can stipulate to adjudication. |
| Combining with Disposition | Some courts combine adjudication and disposition into the same hearing. In addition to the above findings, the court would also decide how long the child should be in the state’s legal custody. |
| Next Steps | <p>If the court finds that the child is not a child in need of aid, it will close the case.</p> <p>If it does find the child remains a child in need of aid, and if the hearing is not combined with disposition, the court will schedule a disposition hearing without unreasonable delay from Adjudication and give OCS and the GAL a deadline to file their disposition reports. If there is a combined adjudication/disposition hearing, the court will set a permanency hearing to review the child’s permanency plan at the one-year mark. The court may also schedule a status hearing in the interim to check on progress.</p> |

What Is Disposition and How Do We Prepare?

At **DISPOSITION**, we look at “what’s the plan?”

Here, the court considers whether a child still needs to be removed from home, and if so, whether the placement is appropriate. The court also makes orders about case planning and case plan goals, as well as visitation/family contact.

Questions for the Tribe to Prepare for Disposition:

1. Do we have enough information to take a position on **disposition** and **removal**, or do we need OCS to provide us with additional information?
2. Does the Tribe believe that the home can be made safe enough for the child to stay there now, or is **removal** necessary to prevent serious emotional or physical harm?
3. If child is outside of home, does the Tribe agree with where the child is placed or does the Tribe know of a higher **ICWA preference placement** that they support?
4. Does the Tribe believe OCS is making **active efforts** to reunify the child and parents, including opportunities for family contact and services that are appropriate for this particular family?
5. Does the Tribe agree with OCS’ proposal for **legal custody** for up to 2 years? Or a lesser amount of time so the court can review the case more quickly (e.g. when the Tribe expects a quick reunification or closure of a supervision-only case).

| DISPOSITION HEARING | |
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| Timing | Disposition can be scheduled at the same time as adjudication, or without unreasonable delay from adjudication. |
| | Any party can ask to continue for “good cause,” which can include late-filed OCS reports. |
| Report | OCS is required to file a pre-disposition report 15 days before the hearing and the GAL must file a report 10 days before the hearing. If the reports are not filed on time, any party can ask to postpone the hearing. Alternatively, the hearing can go on as scheduled and the court can give the parties time to object before it issues a disposition order. |
| | The Tribe does not have to file a disposition report, but it can file one if it wants to explain more about the facts of the case or explain its position on active efforts or another legal issue. The Tribe has the option of making a verbal report in court. However, filing positions in writing helps create a clear record when people are reviewing the case later. |
| | |
| Who Proves What | OCS is the only party that has the burden to prove anything. OCS must prove: |
| | 1. That active efforts have been made to reunify the family. |
| | 2. That there is clear and convincing evidence that the child is likely to suffer serious emotional or physical damage if they return home (If OCS removed the child from home). |
| | 3. That they should have legal custody of the child for up to 2 years, or a different period of time specified by the court. |
| | 4. That they followed ICWA placement preferences or there is good cause to deviate from those preferences (in cases of removal). |
| Paths to a Disposition Order | Parents can agree to disposition findings or ask for a hearing on one or more issues. Active efforts are the most common issue contested at disposition. |
| Next Steps | If the court agrees with OCS on all the proposed findings including active efforts, it will set a Permanency Hearing to happen within a year of the removal date. If the court finds OCS has not made active efforts, it will schedule a follow-up hearing for OCS to show more efforts. The court cannot enter a disposition order until it finds that OCS has made active efforts to reunify the family. |

What Is Permanency and How Do We Prepare?

At **PERMANENCY**, we look at “what’s the permanent plan for the child?”

The court hears recommendations from OCS and the other parties. It is the court that orders what plan the child will have, among these options:

- Reunification with one or both parents,
- Guardianship,
- Adoption (after termination of parental rights),
- Permanent placement with a fit and willing relative (long-term foster care), or
- Another permanent planned living arrangement (APPLA) - age 16 and older, after all other goals have been considered or tried, and a compelling reason is required.

Questions for the Tribe to Prepare for Permanency:

1. Do we have enough information to take a position on **permanency**, or do we need OCS to provide us with additional information?
2. Does the Tribe believe the home can be made safe enough for the child now, or is **removal** necessary to prevent serious emotional or physical harm?
3. If child is outside of home, does the Tribe agree with where the child is placed or does the Tribe know of a higher **ICWA preference placement** that they support?
4. Does the Tribe believe OCS is making **active efforts** to reunify the child and parents, including opportunities for family contact and services that are appropriate for this particular family?
5. Does the Tribe agree with OCS’ proposed **permanency plan**? **This is an important issue for Tribal advocacy.**
 - Overall, OCS should confer with the Tribe and other parties before changing the goal from reunification to another plan.
 - It helps to check with OCS before it writes its permanency report to ask if they plan to change the goal. This opens up the conversation and provides an opportunity to reach consensus on a goal.
 - At times, OCS disagrees with the Tribe about the parents’ progress. If so, the Tribe can ask the judge to keep reunification as the sole permanency plan and explain why there’s reason to believe at least one of the parents can reunify.

PERMANENCY HEARING

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| Timing | The Permanency Hearing must occur within a year of removal or within 30 days of a change in permanency goal. Then permanency hearings continue at least annually until the case closes. |
| | Any party can ask to continue for “good cause.” |
| Report | OCS is required to file a permanency report 10 days before the hearing. The Tribe does not have to file a report, but it can if it wants to. The OCS report makes a recommendation for a specific permanency goal for the child, and it is up to the court to pick that plan or not. |
| Who Proves What | OCS is the only party that has the burden to prove anything. OCS must prove: |
| | 1. The child is still a child in need of aid. |
| | 2. The parents have not made substantial progress to remedy the concerns that made the child in need of aid. |
| | 3. That active efforts to provide remedial services and rehabilitative programs have been made to prevent the breakup of the family, and that those services have not yet been successful (in cases of removal). |
| | 4. That ICWA placement preferences have been followed or there is good cause to deviate from those preferences (in cases of removal). |
| | 5. That “reasonable efforts” have been made to finalize a permanent plan for the child. |
| Paths to a Permanency Order | The parents can agree to OCS’s proposed permanency findings or ask for a contested hearing on one or more issues, including the permanency plan. |
| Next Steps | The court will set next year’s permanency hearing, and often will set a status hearing to take place in the meantime to assess progress. |

What Is Termination and How Do We Prepare?

At **TERMINATION**, we consider permanently severing the legal tie between a child and their parent, as well as their extended family on the maternal and/or paternal side.

Questions for the Tribe to Prepare for Termination:

1. Does the Tribe agree that the child is still in need of aid because of the issues in the Petition? Which grounds (subsections of Alaska Statute 47.10.011) does the Tribe agree/disagree with?
2. Does the Tribe agree that each parent has failed to **remedy** the problems that brought the child into custody in a reasonable amount of time?
3. Does the Tribe believe that there is “evidence beyond a reasonable doubt” that the child has to be **removed** from their home to prevent serious emotional or physical harm?
4. What is the Tribe’s view of the **Qualified Expert Witness** that OCS hired?
5. Does the Tribe believe OCS has provided **active efforts** toward reunification?
6. Regardless of the parent’s current situation, is termination the outcome that is in the **child’s best interests**?
7. If there is a termination of parental rights and adoption, does the Tribe want to create a **Cultural Connection Agreement** with the adoptive family?

A cultural connection agreement sets out expectations regarding contact between the child and biological parents, extended family, and the child’s Tribe. It can also provide helpful guidance for the adoptive family about ways to keep the child connected to their cultural identity, like language learning, summer programs, harvesting activities, etc., if they are not already familiar with those ways of ensuring children have lifelong connections to their culture.

TERMINATION HEARING

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| Timing | The court must start a termination trial within 6 months after the date the Petition to Terminate Parental Rights is filed, unless there is good cause to continue the trial. |
| | Any party can ask to continue for “good cause.” For termination trials, it is not uncommon to continue a trial when a child’s permanent placement plan doesn’t exist or falls apart, and the child does not yet have a potential adoptive home. This avoids the child becoming a legal orphan. |
| | At the end of the trial, the court has 90 days to make a decision about termination. |
| Who proves what | OCS is the only party that has the burden to prove anything. OCS must prove: |
| | 1. There is clear and convincing evidence that the child has been subject to abuse and/or neglect, as described in the Petition for Termination of Parental Rights. |
| | 2. There is clear and convincing evidence that the parent has not remedied their conduct in a reasonable amount of time. |
| | 3. There is clear and convincing evidence that OCS has provided active efforts for reunification but they have been unsuccessful. |
| | 4. There is evidence beyond a reasonable doubt (including testimony from one or more QEWs) that returning home would likely result in serious emotional or physical damage to the child. |
| | 5. It is more likely than not that termination is in the child’s best interests. |
| Paths to a Termination Order | A parent can contest termination at a trial or sign a relinquishment of parental rights. A parent may sign a relinquishment, or they may sign a Consent to Adoption. With a Consent to Adoption, the parent may name the person (or people) they want to adopt their child. |
| Next Steps | If OCS fails to prove part of their case, the judge will issue an order denying termination of parental rights and set the case on for a status or permanency hearing. Then, the parties can decide if they need more time to address an issue, and come back for a second termination trial, or decide on another path. If OCS proves all parts of their case, or the parents relinquish, the court will usually schedule a status hearing within 90 days to check on the progress toward completing an adoption. If there’s no adoptive placement identified at the end of trial, the court will set on a hearing within 30 days for OCS to report on its progress trying to find an adoptive home. |

A few more words about Termination

Under the federal Adoption & Safe Families Act, OCS must file a petition for termination of parental rights if a child has been out of the home for 15 of the past 22 months, unless a compelling reason exists not to, such as:

- A relative is caring for the child.
- The parents are making substantial progress.
- The State has not provided the family the needed services in a timely way.
- The Tribe’s customs and beliefs do not support termination of parental rights.
- Termination would not be in the best interests of the child.
 - *For example, because there has been no adoptive home identified for the child and termination could lead to them turning 18 without a legal parent.*

Termination is one of several ways for a case to end when the parents are not able to get healthy and stable.

Alternatives to proceeding with termination include:

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| Waiting | Giving a parent more time to make progress with services – if that seems likely and if the delay would not harm the child. |
| Guardianship | A relative or a non-relative can become a child’s permanent legal guardian. (May be subsidized) |
| Long-term custody | A relative or non-relative can become a child’s permanent caregiver through a custody order. (No subsidy available but caregiver may be eligible for “adult not included” TANF Temporary Assistance for Needy Families) |
| Permanent placement with a Relative | Placement with a relative without a formal court order for adoption, guardianship, or custody. (No subsidy available but caregiver may be eligible for “adult not included” TANF Temporary Assistance for Needy Families) |
| Another Planned Permanent Living Arrangement | This is the catch-all for kids who age out in foster care, stay in a group home, remain in a treatment facility through age 18, or are planning for emancipation, etc. |

Other Hearings

- **Status & Calendaring Hearings**

- There may be many months between regular hearings, so the court will set status hearings to check on the progress of the case plan and progress toward permanency. These may be 5-30 minute hearings.
- Parties may offer summaries from their perspectives. There is rarely formal questioning of witnesses. This is a time to highlight concerns that are not being resolved through informal meetings.
- The court may also set short hearings to set on other hearings, to make sure that everyone can check their calendars as the time and date are set.

- **Pre-trial conferences**

- Here, the judge asks the parties before a contested hearing if they might stipulate (agree) to the required findings. If parties are not going to agree, then a contested hearing on those topics will be scheduled. The court will ask to see if everyone is ready for trial. This includes OCS sharing updated discovery and preparing a qualified expert witness when needed.

- **Placement review hearings**

- The law gives OCS the authority to decide where to place foster children. If a party asks, the court can review the decision to ensure that OCS has followed the law regarding placement preferences.
- Normally, the court defers to OCS' professional judgment about what placement can best meet a child's needs. In legal terms, the court looks at whether OCS "abused its discretion."
- This is a hard standard to meet, and if one relative is challenging placement with OCS' decision to place with a different relative, a court will rarely second guess OCS.
- However, in an ICWA case, if someone who is a higher preference is challenging OCS' decision to place a child with a lower or out-of-preference placement, the court takes a closer look.
- OCS has the burden of proving to the court that the available higher-preference placement is not suitable and there's "good cause" to deviate from the preferred placement.

- **.087 hearings (“Oh Eight Seven” or institutional placement review hearings)**
 - When a child is placed in a secure residential psychiatric treatment facility (i.e. North Star), the court must review the placement regularly to ensure that children are not unnecessarily kept in an institution. The name “.087 hearing” comes from the applicable Alaska State statute, A.S. 47.10.087, on the placement of children in secure residential psychiatric treatment centers.
 - To justify institutional placement, OCS has to show, through the testimony of a qualified mental health professional that:
 - The child is gravely disabled or is suffering from mental illness and, as a result, is likely to cause serious harm to the child or to another person;
 - There is no reasonably available, appropriate, and less restrictive alternative for the child’s treatment or that less restrictive alternatives have been tried and have failed; and
 - There is reason to believe that the child’s mental condition could be improved by the course of treatment or would deteriorate if untreated.
 - Ideally, the initial hearing for placement in a residential psychiatric treatment center should be held **before** the placement is made.
 - At the outset, the hearing should happen **within 30 days** of placement. Then the placement must be reviewed by the court at least once every 90 days that the child is in a locked facility.
- **Extension of custody hearings**
 - When the disposition order giving legal custody of a child to OCS is about to expire, OCS must file a petition to extend custody at least 30 days in advance.
 - OCS must show that:
 - The child is still a child in need of aid, and
 - Continued custody by OCS is in the child’s best interest.
 - The court will want to know the Tribe’s position on these two issues and the reasons for its position.

Out of Court Meetings that Occur Throughout an ICWA Case

- **Administrative Reviews**

- OCS holds Administrative Review meetings every six months to check on a child's needs and to discuss:
 - the continuing necessity for and appropriateness of the placement;
 - the extent of progress in reducing safety threats and enhancing protective factors through the case plans; and
 - a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship, or other permanency plan.
- The admin review may be done by phone, at the OCS office, or in some regions, in court.
- The admin review can be a good time to get updates, provide your own updates, share the Tribe's position, or raise concerns that the Tribe has.

- **Out-of-Preference-Placement Meetings (OOPP)**

- OCS's Regional ICWA Specialists host regular OOPP meetings for children placed in out-of-preference-placements (non-family, non-AN/AI homes).
- OOPP meetings provide an opportunity to brainstorm ways to find extended family members or Tribal citizens who may be able to open their home to the child.
- They may also help identify relatives who can't provide a home but can provide support and connection to a child.

- **Initial Case Conferences (ICC)**

- The Assistant Attorney General usually hosts these conferences outside of court, between probable cause and adjudication.
- All the legal parties are invited. Case plans should be developed **before** this meeting and OCS should share the plans with the parties.
- If the Tribe has concerns regarding placement, support offered to the placement, active efforts, or services to the parents and the child, these concerns should be brought up at the ICC.
- This is a time to check whether the parents want a contested adjudication hearing or will agree to adjudication.

- **Meeting of the Parties (MOP)**

- Parties can request a meeting anytime when problems may be solved by the parties taking time to talk and share information.
- It is helpful to agree on an agenda before the meeting, so people are clear about what to expect out of the meeting.

- **Active Efforts Meeting**
 - This is not an “official” meeting type in the OCS policy manual, but something you can ask your local ICWA specialist to set up if efforts are lagging.
 - This is an opportunity to troubleshoot issues accessing services, like wait lists or transportation, assess whether services are helping, raise new ideas regarding services, and recognize parents when they are making progress toward getting healthy.
- **Mediation**
 - A court sponsored program where parties agree to discuss issues with the help of a neutral third party.
 - Any party can ask the court to send the case to mediation. Mediation is confidential, although if an agreement is reached, the agreement can be filed with the court. The document to request mediation is here:
<https://public.courts.alaska.gov/web/forms/docs/med-200.pdf>
- **Judicial Settlement Conference**
 - A court sponsored program where settlement negotiations take place in front of a different judge than the judge hearing the case.
 - This process is confidential. Only final agreements will be submitted to the court.
 - The judge may meet with parties individually or in small groups to speak frankly about the case.
 - To prepare, the judge usually asks for a short memo on each party’s position before the settlement conference, which only the judge will see.

What if We Want to Transfer the Case to Tribal Court?

Under ICWA Section 1911, the Tribe, either parent, or the Indian custodian can petition to transfer jurisdiction to the Tribal Court at any time in a CINA case. It is always the Tribe's decision whether to accept transfer, or not.

- What Counts as “Tribal Court”?
 - A “Tribal Court” is the Tribe's court or Tribal Council authorized under Tribal law to make decisions about child protection matters, including placement in foster care.
- How is a Transfer Request Made?
 - The request to transfer can be made orally in court or in writing. Written forms are available on the court system website and www.alaskatribes.org.
 - The forms include a Petition and a “Notice of Rights” which must be served by certified mail, restricted delivery, with return receipt requested to parents and (if applicable) Indian custodians.
- How Does the State Court Judge Decide a Transfer Request?
 - If the Tribal Court does not want to take the case, or if a parent objects for any reason, the judge will not transfer the case.
 - In addition, the court can decline transfer if a party proves there is “good cause” to keep the case in state court.
 - An example of “good cause” may be trying to move a case in the middle of a contested hearing. However, the court may not consider:
 - Negative views of the Tribal justice system, or socioeconomic conditions.
 - Whether the Tribe may change a child's placement.
 - The quality of the child's cultural connections to the Tribe.
 - Whether the case is at an advanced stage, if OCS gave late notice of the case to the parent or the Tribe seeking transfer.
 - After termination of parental rights, a Tribe can still ask for transfer, but the state court can consider any reason in deciding whether to allow the transfer.

- What are the Logistics of a Case Transfer?
 - It's tricky. The state court will want to know in advance if the Tribal Court will take the case, so there needs to be communication with the Tribal Court before a transfer is ordered. Processes may vary by case, but generally look like this:
 - The transfer is effective the date the state court order is signed unless otherwise specified on the order.
 - The state court closes the case and cancels all future hearings.
 - The state court records should be provided to the Tribal Court automatically, although the Tribe may have to file a request (<https://public.courts.alaska.gov/web/forms/docs/tf-311anc.pdf>).
 - Tribes can get copies of state case files for free under Alaska Administrative Bulletin 90.
 - Tribes can also include in their transfer order a provision requiring the State court to provide its file to the Tribal Court.
- Responsibility for the case transfers to the Tribe and OCS ends its involvement. However, if there is a new report of harm in the future, OCS has a legal obligation to investigate (according to their interpretation of Alaska Statute 47.17.030).
- Upon case transfer to Tribal Court, the Tribe assumes full responsibility for the child's care, custody, and financial needs, while the Tribal Court takes charge of providing notice of proceedings and ensuring all parties have an opportunity to be heard.

Practice Tip: When transferring a case to Tribal Court, address both the child's Permanent Fund Dividend (PFD) and ANCSA corporation dividends:

- For PFDs:
 - Request a state court order either at transfer or at permanent placement to release funds held by OCS.
 - Provide the state court order and Tribal Court order to hss.ocspfd@alaska.gov for fund release.
- For ANCSA dividends:
 - Issue a Tribal Court order for the ANCSA corporation to continue holding dividends during Tribal Court custody.
 - Notify the corporation to release dividends when the child is released from Tribal Court custody.

Consider a Tribal Court order to change the custodian of the child's ANCSA stock if permanent placement changes, as this doesn't automatically follow physical custody changes.

Who is Involved in a Child in Need of Aid Case in Alaska State Court?

- **Judge** – This can be a magistrate or a superior court judge, depending on availability.
- **Parents and Parent’s Attorney** – Parents and Indian Custodians have the right to a free lawyer if they can’t afford to hire one. The lawyer is usually from the Public Defender Agency or the Office of Public Advocacy.
- **OCS Case Worker** – Every parent has a primary OCS caseworker. OCS may also assign a secondary worker if a parent lives in a different region than the courthouse. At times, the OCS supervisor and OCS ICWA specialist may be involved too.
- **Assistant Attorney General (AAG)** – The lawyer for OCS. The AAG is responsible for presenting the State’s case in court and coordinating case related meetings.
- **Tribal Representative** – Once the Tribe has intervened in the case, the Tribal Representative shares the Tribe’s position in court. The Tribal Representative also coordinates with the other parties on issues related to the case.
- **Tribal Attorney** – Tribes may be represented by attorneys in court. If the Tribe is represented by a Tribal attorney, the Tribal attorney is responsible for all legal filings and communications to and from the court.
- **Guardian Ad Litem (GAL)** – An independent third party appointed by the court to speak up for what they believe to be in the child’s best interests.
- **Child** – Children can but don’t have to attend court. Sometimes they may have their own attorney representing them in court.
- **Court Appointed Special Advocate (CASA)** – in some cases, a CASA may be appointed. A CASA is a community volunteer who gives extra attention to child’s needs and is supervised by the GAL.

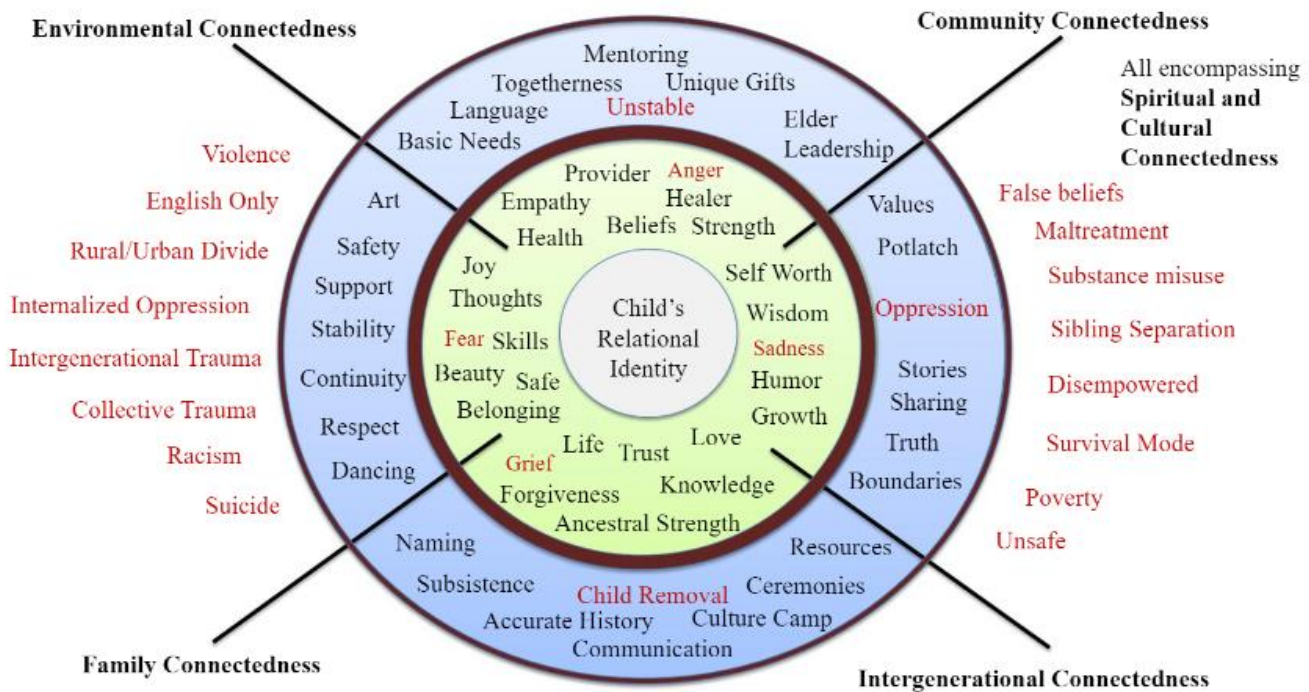
Other people can attend hearings after Probable Cause.^{xii} These individuals are not considered to be legal parties to the case.^{xiii}

For example, grandparents and other family and friends, foster parents, and Tribal representatives from non-intervening Tribes may still attend, though they do not have the same rights as the legal parties.

Working with Families and Children

Cultural Services for Healing and Wellness

When the Tribe attends case plan meetings, you can ensure that parents and children get services that are meaningful and culturally-based, not just a generic list of a substance abuse assessment, parenting, and domestic violence classes. Science and every day experience teaches us that healing for Alaska Native families comes from **understanding trauma and building connectedness**.¹



In this illustration by Dr. Jessica Saniguq Ullrich, we see a healing model based on supporting culture and identity as opposed to judging and fixing parents' decisions called out as bad or harmful.

Dr. Ullrich developed the **Indigenous Connectedness Framework** to explain the interrelatedness of wellbeing. To be well, people need healthy relationships with family, community, the Earth, ancestors, future generations and to culture and spirit. When these relationships are in place, this helps a person know who they are and where they come from, which results in a healthy relationship with oneself and creates wellbeing within a collective.

¹ Indigenous Connectedness as a Framework for Relational Healing Within Alaska Native Child Welfare, Dr. Jessica Saniguq Ullrich (2020), available at: <https://digital.lib.washington.edu/researchworks/handle/1773/45544>; Promoting Child & Collective Wellbeing Through Indigenous Connectedness, Dr. Jessica Saniguq Ullrich (Summer 2023), available at <https://www.thefamilyjusticegroup.org/family-justice-journal>.

It is important to restore relational knowledge and practices to repair relationships that became disconnected after colonization.

OCS can work alongside the Tribe and parents to acknowledge and explore the **historical trauma** the extended family has endured.

At the personal level, we have to understand each family's own specific experience, and the coping behaviors passed down in families, like numbing, isolation, self-hatred, self-harm, and all types of dysregulation.

Then, the parent, Tribe and OCS can look to cultural and traditional activities that have been practiced in Indigenous communities for thousands of years as a source of connectedness, healing, and relational repair.

A parent's path to healing is most likely to succeed when it is tied to **understanding their identity, and their particular place within their family, community, and culture**. All families have more than unhealthy coping behaviors. They also have strengths and resiliency that have helped sustain them for generations.

For example, instead of reading a sobriety workbook alone, a mother might work alongside other women to clean, cut, and smoke fish – an activity that demands hard work and cooperation with others. It captures a person's whole attention, with an intensity that can slow the nervous system.

The end result lets the mother share something of value with her children, elders, and others in the community. The process can incorporate language, the sound of which can be healing in and of itself. Seasonal harvesting also connects parents to generations past.

Finally, it is a chance to experience a community's wealth of natural resources, and is something that helps the community heal as a whole.

Connection-building activities can be used alongside traditional western services, or in place of them. OCS has a **Cultural Resource Guide** that highlights the importance of OCS offering families the option to engage in culturally relevant services:

<https://dfcs.alaska.gov/ocs/Documents/CulturalResourcesGuide.pdf>

OCS can also use **Cultural Support Service Providers** to connect parents to mentors, whether they are elders or other healthy adults. These providers are identified in collaboration between the Tribe, parent, and OCS and are compensated by OCS.

Diligent Relative Search

OCS, either with its own staff or an Alaska Tribal Child Welfare Compact partner, must search for family from the very start of a case. This is true even when a child is still at home, if there is some risk they may be removed later.

The search should include:

- Getting phone numbers, emails, and addresses for extended family.
- Sending out the OCS form letter about potential placement.
- Reaching out in other ways that are likely to lead to a conversation with family.
- Asking family to share their own information about relatives.
- Finding family to provide connection and support for a child, not just placement – for example by going to dance class with them once a week or taking them berry picking.

Preparing Foster Youth for Adulthood

OCS runs an Independent Living Program (ILP) for any youth who is in custody at age 16. The youth should be connected with an ILP worker who is different than the family's primary OCS case worker. The ILP worker will be able to explain about housing benefits, educational benefits, and other programs available to youth as they transition to adulthood.

Contact information is here:

<http://dhss.alaska.gov/ocs/pages/independentliving/contact.aspx>.

After a youth turns 18, OCS can maintain custody until they are 19 unless release of custody is in the youth's best interests. A youth can agree to remain in custody until they are 21 but if they ask to be released after 19, the court and OCS must release custody. A youth can re-enter custody if they contact the OCS caseworker and request to re-enter custody before turning 21.

Helping Foster Youth with Documentation

Tribal Identification Card

Tribes as sovereign nations set their own requirements regarding citizenship. OCS may reach out to the Tribe's main office or Tribal enrollment office to find out what the requirements for enrollment are, if the child is not already enrolled, and help ensure enrollment is complete. OCS can also help the child get a Tribal ID. The ID may help a child get access to health care, Tribal benefits, and be used for travel.

Certificate of Degree of Indian Blood

A CDIB may be a requirement for the child to be enrolled in certain Tribes. Even though CDIBs are not evidence of Tribal citizenship, they can be used to help a youth get access to services that Tribal citizens are eligible for. OCS can request these for a child in custody. The process can be slow and require the AN/AI parents' birth certificates if the BIA does not already have them. The forms are here:

https://www.bia.gov/sites/default/files/dup/assets/public/raca/online_forms/pdf/1076-0153_CDIB%20Form_Expires%2011.30.2024_508.pdf.

Birth Certificates

OCS should have obtained a copy from the state when the child entered custody. This can be important to ensure that a father is on the birth certificate and for the youth accessing services.

Social Security Cards

OCS only obtains physical cards for children over 16 years of age. If a child needs one before that for services, OCS can request one.

Shareholder and Descendant Status

OCS should determine if a child in custody is a shareholder or descendant in an Alaska Native regional or village corporation and communicate with the corporation to ensure that dividends or other distributions to the child from the corporation are held in trust for the youth while they are in state custody.

Supporting Youth with Disabilities

Individual Educational Programs (IEPs)

This is a school program for youth who need extra assistance or services. The Tribe may attend IEP meetings. The parents can attend too if their parental rights have not been terminated.

The IEP meeting can be an important place to advocate for any school services the child needs, and a chance for parents to learn how to meet their child's needs better.

Medicaid Waivers

State Medicaid waivers fund services for people who have lifelong disabilities that require assistance. OCS can work with the family to submit applications for youth who would qualify for and benefit from waiver services while in foster care, and with teens who may need adult disability services after they turn 18.

Social Security Benefits

Children with serious and long-lasting disabilities may qualify for Supplemental Security Income, or "SSI." SSI is an income-based program for people whose disabilities limit their ability to work and ensures they have some basic income.

OCS can help submit SSI applications for disabled foster youth who would qualify but don't have the benefits yet.

Foster youth receiving SSI require a designated payee to manage their funds, which may be OCS or a responsible family member. If transferred to Tribal Court, the Tribe must have a management plan in place.

As teens approach 18, they need assistance applying for adult SSI to ensure continuity of benefits, as this program has different requirements.

Children with parents who get benefits through the Social Security Disability Insurance (SSDI) program should get their own benefits until they turn 18.

OCS should deposit these benefits in a trust account for the child, which can be released once the child leaves custody. This can be a complicated area. If you have specific questions, the Disability Law Center may be able to help: <https://www.dlcak.org/>.

Supporting Youth with Juvenile Delinquency Cases

Occasionally a child in state custody will also have involvement with the Division of Juvenile Justice (DJJ).

Sometimes before charges are filed, the Tribe may become aware of an investigation against a foster youth. You can advocate for a youth to get their own attorney to protect their rights and give them confidential advice.

If there are actual charges filed by DJJ against the youth, DJJ may get custody of the child and make placement decisions in consultation with OCS. **OCS must continue to make active efforts to assist the parents** even though the child cannot be returned to the parents' custody without agreement from DJJ and the Court.

Although the Tribe can attend the DJJ hearings, it is not expected, nor is the Tribe a party to that case. The Tribe can still advocate for placements it feels are in the child's best interests, family contact, and culturally based services. The ICWA worker can also arrange to visit the youth, even if the youth is in DJJ custody.

Tribes can enter into agreements with DJJ that can specify how and when juvenile cases regarding minors can be transferred into the Tribal justice system for sentencing. Through a Memorandum of Understanding, DJJ reviews cases for juveniles who have been charged with minor offenses and can divert cases to the Tribe. When a case is diverted to the Tribe, the Tribe may impose restorative sentences or other appropriate penalties. If the Tribe's sentence is completed, the state case will be closed. If the Tribe's sentence is not completed, DJJ may petition the state court to prosecute in state court.

When a youth is leaving DJJ custody, OCS, the Tribe, and DJJ caseworker can meet to plan the transition of the youth from DJJ custody to OCS custody so that there is a stable transition of services and placement.

Supporting Youth Exposed to Sexual and/or Physical Abuse

In most cases where a child has been exposed to sexual or physical assault, the very first services they receive are usually going to be from either an Emergency Room or, ideally, a Child Advocacy Center (CAC). While this section will primarily focus on cases in which a child has already been removed, we'll briefly touch on how to respond if you happen to be the first adult whom a child trusts to disclose their abuse.

If they disclose to you: If you are the first person a child has told, then your first response should always be to prioritize the immediate safety of the child – physically and emotionally. If they are upset and experiencing a traumatic response, then you will want to respond in a way that is trauma-informed by remaining calm, attentive, and non-judgmental. Do not react in such a way that may make them feel they are in trouble.

It is important to **believe them** and make them feel understood while also reassuring them that what happened is not their fault, and they did the right thing by telling you. However, you will also want to avoid making any promises you can't keep, including not reporting the incident to OCS or law enforcement – which should be your next step as they will make the referral to the CAC. You should not undertake any investigation yourself. Let the other professionals assist the child and take any legal action necessary.

Services for the child: Earlier, we covered some of the services the child may receive when they go to the CAC, but a general thought to keep in mind about CACs is that they facilitate communication between partners to assist in responding to cases of child sexual abuse or assault – and as the child's Tribe, you are one of those partners.

As such, it will be helpful to have some familiarity with services that children and non-offending caregivers may need in the long-term so that you can make recommendations during the case planning process.

Depending on the age and capacity of the child as well as the region they live in, they should be referred to in-person or virtual behavioral health services. This typically starts with a behavioral health assessment, and it can include services like **trauma-informed:**

Cognitive Behavioral Therapy (CBT):

Geared towards developing tools to cope with traumatic experiences.

Dialectical Behavioral Therapy (DBT):

Appropriate for teens who may struggle with suicidal thoughts or relating with others.

An important consideration to keep in mind is that a long-term goal in cases of child sexual abuse or assault is really to help them resume a daily routine and achieve a sense of normalcy. To that end, it is entirely appropriate for you as an ICWA worker to recommend services that are culturally relevant and beneficial for both the child and caregiver.

Traditional talk therapies, subsistence activities, and even storytelling can help the child process what happened with safe adults in their own communities. Moreover, participating in traditional methods of healing can help the child build a positive self-identity that is grounded in their culture, further pushing them towards the sense of normalcy they had before the abuse took place.

Final considerations: While these cases are complex, remember that you will be working with a multidisciplinary team facilitated by the CAC specifically to respond to cases of child sexual abuse and assault. As you work as part of that team, know that recovering from this kind of trauma takes a long time, and you will likely find that you must provide various levels of support to the entire family.

There is also a possibility that a criminal case will be opened to prosecute the alleged perpetrator, and though you will likely not have much interaction with this case, there are still some things you can do to support the child through the process.

In addition to monitoring the services the family will be receiving, it is also possible to monitor the status of the criminal case through Alaska's online court record system:

<https://records.courts.alaska.gov/eaccess/home.page.2>

Law enforcement will also provide the child and non-offending caregiver information on the rights provided to crime victims by the Alaska Constitution, available here:

<https://ovr.akleg.gov/rights.php>

The Office of Victims' Rights (OVR) is another state agency that provides free legal services to victims of crime in Alaska: <https://ovr.akleg.gov/>

Most CACs also have advocates on staff who will assist the family in accessing victim-centered services, obtaining protective orders, and potentially arranging travel.

Other helpful resources for victims of crime include:

- Council on Domestic Violence & Sexual Assault: <https://dps.alaska.gov/CDVSA/Home>

DPS list of statewide victim services program in each region:

<https://dps.alaska.gov/cdvsa/services/victimservices>

Case Management and Best Practices

Documenting & Tracking Active Efforts

Our state supreme court has said that it is not enough for OCS to provide active efforts. OCS must also document them. That way all the legal parties can decide if the efforts make sense for the family, and track how they are working.

In *Bill S. v. Alaska, Dep't of Health & Soc. Servs.*, 436 P.3d 976, 978 (Alaska 2019), the Alaska Supreme Court reversed a lower court's termination of parental rights for two Indian children due to insufficient evidence that the OCS made active efforts to prevent the breakup of the Indian family.

The Court noted OCS failed to adequately document its active efforts, a responsibility distinct from making those efforts. Despite a superior court warning in February 2016 that OCS's efforts barely met the required standard, OCS failed to improve its documentation and provide necessary witness testimony.

Where are efforts documented? The case plan is one place. Another is OCS ORCA notes. You should get those notes in discovery. If the case plan and notes are confusing, you can ask your local OCS ICWA specialist to set up an active efforts meeting and document efforts there.

How does the court track efforts? To ensure the judge is tracking active efforts, make sure they have a copy of the case plan. OCS is supposed to attach a copy of the case plan to its Disposition Report, but sometimes they forget. You can always share a copy with the court before any court hearing.

How often are efforts tracked? They should be looked at over the life of the case, since needs usually change over time. Efforts can be reviewed at any time in a case where there is a concern.

| Reasonable Efforts by OCS | Active Efforts by OCS |
|-------------------------------|---|
| Makes a referral for services | <ul style="list-style-type: none">• Calls the parent to discuss what services would be best• Consults with the Tribe• Attempts to find a culturally appropriate program• Arranges transportation• Works with extended family to support parents and children/encourages family engagement |

How Can Tribal Representatives Address Bias in Child Welfare?

While ICWA tries to fight discrimination and bias, no law can erase systemic racism. Addressing racism takes ongoing advocacy to bridge divides and build understanding.

Key Concepts:

Disproportionality: the difference between the percentage of children in the general population and children in the child welfare system. Historically, Indigenous people and people of color have been overrepresented in child welfare at every stage, from reports of abuse and neglect to removal, to placement in foster homes with strangers. There are also not enough OCS workers, state employees, or state judges who are Indigenous or people of color to provide an understanding of Alaska Native cultures. Addressing disproportionality means giving kids the same opportunities to thrive at home and intervening only when absolutely necessary to prevent serious harm.

Implicit Bias: unconscious attitudes and beliefs that let us quickly analyze people, places, and situations. They can be absorbed through social interactions, media, and images, without us even thinking about them. They can result in oversimplification of groups we're unfamiliar with, and preferences for particular groups, either negative or positive. We all have implicit biases. The more we can talk about them openly, the more likely we are to overcome them.

Internalized racial inferiority: our internalized beliefs based on negative views of our race created by the oppressor. This can lead to self-judgment and shame and may be difficult to address with those who exhibit forms of internalized racial superiority.

Institutional racism: the collection of policies and practices of particular institutions – schools, workplaces, the criminal justice system, and the child welfare system – that routinely produce inequitable outcomes for people of color and advantages for white people. This kind of bias may be invisible to people who see those benefits as “just normal” and not unfair advantages imbedded into the system.

When ICWA was considered in the 1970's, supporters could point to overt racism: state workers removing children from homes because of crowding, no running water, and caregiving by relatives instead of parents. Courts would entertain arguments that children were better off with white Christian families to get a “civilized home life.” Now, even though society disapproves of those arguments, Indigenous families are still overrepresented in the child welfare system due to deeper, imbedded inequities.

Large-scale disproportionality plays out in constant, small ways in the lives of families you serve. Part of your job will be to help others in the system understand the unique perspective of the Tribe and its citizens, and shed light on their own implicit biases. Practical examples include:

- **Translation.** When an auntie says she doesn't think it's right to cut off contact between a child and their mother who has been stuck in a violent relationship, OCS may label her as "not aligned with child safety" and offend the auntie. You can help OCS understand that the auntie is protective and also sees the child's need to stay in contact with their mom when it's safe and healthy.
- **Bonding.** Professionals in the child welfare system sometimes worry when kids move from an OOPP foster parent to be placed with a relative. The foster parent may promise to keep exposing the child to their culture. They will likely not understand as you do the difference between being exposed to culture and being raised in the culture. There are experts on your side – see this National Indian Child Welfare Association publication regarding attachment and bonding <https://www.nicwa.org/wp-content/uploads/2020/10/Contemporary-Attachment-and-Bonding-Research-Final.pdf>.
- **Education.** In court, OCS and GALs may be used to supporting adoption as the best way for children to achieve stability. When a Tribe supports guardianship as a more appropriate plan, you can explain why children can enjoy stability that way just as much as – or more than – through adoption.
- **Awareness.** A court may not have any idea they are being biased when they express approval of a child being able to attend soccer practices in a foster home, while missing out on traditional harvesting in their home community. Sometimes shedding light on how – in context - good intentions miss the mark can help judges make better decisions.
- **Role Reversal.** When weighing a removal decision with an OCS partner, they may see a need to remove a child from a home where there is drug use, even if there's nothing indicating the kids are affected. The OCS partner may think differently about removing a child from a white family where a parent drinks cocktails after work and uses marijuana to sleep. You may express curiosity if they are viewing the same kind of behavior differently in an AN/AI family versus a white family.

Remember Self-Care

“**Self-care**” is more than “me time.” It means setting healthy boundaries. Being the only person in the room noticing and trying to address racism and systemic injustice can be physically, emotionally, and spiritually exhausting. It can burn you out. Self-care can mean finding an ally to help with the heavy lifting. It can be taking a break when you are depleted. It can mean telling a difficult legal party that there are some things you can’t discuss with them without some time to prepare.

If you wake up in the middle of the night a lot, unable to stop thinking about the families you are serving or get a lump in your throat every time you hear news of a parent relapsing, you may be experiencing **secondary trauma**. These are stress reactions to what is happening with the families you work with. It can be just as stressful to your body as if the things were happening to you.

Workers may manage secondary trauma better when leadership recognizes it is a real thing. Supervisors should acknowledge how difficult the work is, without judgment. Staff training should regularly feature self-care strategies, including how to manage difficult emotions. It helps when supervisors “practice what they preach” by avoiding inconsistent messages – like talking about the importance of a work-life balance while still expecting staff to respond to routine emails at night and over weekends. Offering supportive services after critical incidents—in addition to always celebrating “wins” – can help workers feel supported.

If you’d like to explore more, check out these videos:

The Missing Ingredient in Self Care, Portia Jackson-Preston:

<https://www.youtube.com/watch?v=Eupk56SG76M&t=31s>

ABC’s of Self Care: <https://www.youtube.com/watch?v=BXvvezGpXbc>

Monthly ICWA Case Review

BACKGROUND

1. Parents and child in case:
 2. Is the child a Tribal citizen or in the process of becoming a member? If not, what is the barrier? Are there other Tribes involved? Does the child have a CDIB (Certificate of Degree of Indian Blood) from the BIA?
 3. Next court date and purpose (e.g. contested removal, termination, etc.):
 4. Child's placement and what tier of ICWA's placement preferences (1-extended family, 3- OCS licensed Indian foster home, OOPP, etc.):
 5. Current OCS Caseworker and GAL/CASA:
 6. Tracking our ICWA Services & Active Efforts
 7. Have we been able to establish a supportive relationship with the parents?
 8. When was the case plan developed, were we included, does the plan need updating?
 9. What were the original safety concerns? How are the parents doing to resolve those concerns?
 10. Are there services the family needs that they are not getting?
 11. Are parents getting visits? What about siblings? Time with close family members?
 12. Have we reached out to foster parents to say hello and see if there is support we can provide?
 13. Has the child been referred to relevant Tribal services?
 14. Overall, do we think the department is providing active efforts?
 15. What ICWA issues are we advocating for?
- **REMOVAL:**
 - Is the department justified in keeping the child out of the home?
 - Do we think the parents are ready to plan a return home and need advocacy with the state to make that happen?
 - **PLACEMENT:**
 - If the child is not with family, have we referred the case for a Diligent Relative Search?
 - Can we help identify and recruit potential family placements?
 - Does a relative need help with licensing – could they benefit from our help?
 - Does a family member need help advocating for placement?
 - **PERMANENCY GOAL:**
 - Is there a dispute over keeping reunification as the primary goal?
 - If goal is changing, have we explored guardianship in lieu of adoption (e.g. asked OCS to host a permanency planning conference, reached out to the caregiver)?
 - **QUALIFIED EXPERT WITNESS:**
 - Is there a contested hearing coming up where the state needs to hire QEWs to review the case? Have we helped identify a culturally knowledgeable QEW or approve of the expert identified by OCS?

Special Topics

Complaints During an OCS Case

If the Tribe finds the actions or words of a state employee during a CINA case unacceptable, there are avenues to voice concerns.

Filing a formal complaint against OCS:

OCS has a specific process for Tribal concerns, which involves a worker's supervisor, then regional management. The Tribal Concern Flow Chart is found here:

<https://dfcs.alaska.gov/ocs/Documents/icwa/concerns-flowchart.pdf>

OCS also has a general "three level" complaint process, which begins with sending an email with the complaint to: hss.ocsc communications@alaska.gov.

- **LEVEL ONE:** After you complete your complaint, it is reviewed by the Community Relations Manager. If accepted, a supervisor will call to discuss within 10 days, and they must provide you with an answer in writing within 15 days of your meeting. They may also call you or other people involved in the situation. At that point, you may accept the explanation or escalate to a level 2 complaint.
- **LEVEL TWO:** Email an appeal within 10 days of the initial decision. The Regional Manager will schedule a time to talk to you within 10 days of receiving your appeal. The Manager may also speak to others involved in the complaint. Like level one, they will have 15 days from the meeting to provide you with an answer in writing. If still unsatisfied, you can file a second appeal within 10 days.
- **LEVEL THREE:** The Division Operations Manager will schedule a time to talk to you within 10 days and provide a decision within 10 days. This is a final decision by the department – you do have the opportunity to bring that decision to court if you think the department has acted illegally. If you are exploring that option, you may want to reach out to an attorney at an organization such as Alaska Legal Services Corporation or the Alaska Native Justice Center.

Filing a formal complaint against a GAL:

To file a complaint about a GAL, you can email the Office of Public Advocacy with your complaint. Call the Office of Public Advocacy at (907) 269-3500 to ask who the correct person is to submit your complaint to.

The handbook for GAL conduct is here:

https://doa.alaska.gov/opa/pdfs/07_contract_gdlines.pdf.

Filing a formal complaint against an attorney:

If the attorney is employed with the Public Defender Agency or Office of Public Advocacy, contact the supervisor of the local PDA or OPA office.

If a lawyer's conduct is so serious that it may violate their ethical duties, you can file a written complaint with the Alaska Bar Association. Information on that process and the form to do that are here: <https://alaskabar.org/for-the-public/complaints-against-attorneys/>.

Parents dissatisfied with their appointed lawyer can request a representation hearing. At this private hearing, a different judge will hear the parents' complaints and the attorney's response, without other parties present. To initiate this process, parents must explicitly request a "representation hearing," not just express dissatisfaction. The judge will then decide whether to allow self-representation or, rarely, appoint a new attorney.

Filing a complaint against a State Court Judge:

If you think the judge is acting illegally or improperly, not simply that you disagree with their decisions, you can submit a complaint to the Alaska Commission on Judicial Conduct by emailing administrator@acjc.state.ak.us. A complaint filed with the Commission must be signed.

If considering a peremptory challenge, it must be filed within 5 days from the Tribe's intervention.^{xiv} A peremptory challenge is a way for a party to change the Judge assigned to the case and does not require the party to give a reason for requesting the change.

Guardianship and Adoption Options in Tribal Court and State Court

| | | |
|---------------------------|---|--|
| Tribal court guardianship | Often the preferred Tribal option when possible. | Done through Tribal court order. |
| State court guardianship | Annual report required. Subsidy may be available for licensed homes – home study required. The state will cover cost of guardianship lawyer for custodians if subsidized. | Done through connected state court guardianship case (also an ICWA case). |
| Tribal adoption | No annual report required. Subsidy may be available for licensed homes – home study required. The state will cover the cost of adoption lawyer for custodians if subsidized. | Done through Tribal court order <i>or</i> through resolution of Tribal council or other Tribal governing body (aka cultural adoption). |
| State court adoption | The state’s consent is required. Can be “open” i.e. allow some contact with bio family. | Done through connected state court adoption case (also an ICWA case). |

Why is Guardianship Often the Preferred Tribal Option when Possible?

When there is not much progress by parents, Tribes often favor guardianship over adoption to avoid termination and severing biological family ties.

- Values maintaining the child’s connection to their family, community, and culture.
- Avoids termination of parental rights.
- Preserves extended family ties.
 - Adoption severs not only parents’ rights but also the legal relationship between the child and their extended biological family.
 - Preservation of family ties supports lifelong connections of the child to their Tribe and culture.

When Might a Tribe Support Adoption?

- Child has no living parents.
- Older child expresses clear preference for adoption.
- Placement expresses clear preference for adoption after evaluating options.
- Custodians need to set clear boundaries with parents who present a danger to the child, or who are making threats to the child or custodians.

Is Adoption more Permanent than Guardianship?

- State and federal policies have evolved to recognize guardianship as equally permanent as adoption. Research from Casey Family Programs and other organizations supports that policy change <https://www.casey.org/kinship-guardians-overview/> and https://www.casey.org/media/Guardianship-Assistance-Policy-and-Implementation_Research-Brief.pdf.
- The permanency goal of guardianship does not imply a temporary situation until the parents “get better.” The expectation behind a guardianship is that it will last through the child’s 18th birthday.
- A parent may ask the court to review a guardianship. However, to get a review hearing, the parent must *first* prove that there has been a substantial change in circumstances, and that it is in the child’s best interests to end the guardianship. That is EXTREMELY hard to show, and it gets harder the longer the child has been in the guardianship. In practice, guardianships are rarely disturbed.

Advocating for Guardianship When At Least One Parent is Alive

OCS leadership (though not all staff) recognizes that guardianship is usually just as permanent as adoption.

Guardianship may be more natural when a child is placed with family – so “mom” stays “mom” and “grandma” stays “grandma,” regardless of living arrangements.

When parents don’t support adoption, guardianship often results in faster case resolution, because guardianship can happen without the time and expense of a termination trial (and possible appeal, which can take years).

Parents may be more open to agreeing to guardianship versus relinquishing parental rights.

Guardianship may help resolve a case when OCS has struggled to provide active efforts, and the parties know this could be an issue at a termination trial.

In Alaska, guardianship subsidies are usually equal to adoption subsidies. The only extra work may involve a separate application for Medicaid.

Steps for Guardianship:

1. The state court approves guardianship as the permanency plan for the child.
2. OCS orders a guardianship home study.
3. The guardianship can be subsidized if the child has been in a home where the foster parents have been licensed for at least 6 months.
 - a. The subsidy is similar to the monthly foster care stipend.
 - b. Relative guardians not eligible for a subsidy can still qualify for a smaller benefit through TANF – adult not included assistance.
4. Once the home study comes back positive (or any issues are corrected), OCS will provide a list of lawyers who can help the guardian with the petition.
 - a. If the guardianship will be subsidized, the subsidy includes lawyer fees.
5. Adults who want to be guardians file a guardianship petition in either state or Tribal court and provide a copy of the petition to the parties in the CINA case.
6. The state court or Tribal court will set a guardianship hearing.
7. The parents can agree to the guardianship order, or there can be a contested hearing.
 - a. In a contested state court guardianship, the lawyer representing the proposed guardian and OCS will usually work together to put on a case, including getting a QEW.
 - b. In a contested Tribal court guardianship, there is no QEW requirement unless the Tribe's codes require one, since ICWA is a federal law for state courts to follow.
8. The guardians will need to negotiate their subsidy BEFORE the court issues a final guardianship order.
9. Once the state or Tribal court issues a guardianship order, the CINA case will close.

Steps for Adoption:

1. The state court approves adoption as the permanency plan for the child.
2. After the parents have relinquished their rights, or have had their rights terminated, OCS orders an adoption home study.
3. The adoption can be subsidized if the child has been in a home where the foster parents have been licensed at least 6 months.
 - a. The subsidy is similar to the monthly foster care stipend.
 - b. Relatives not eligible for a subsidy can still qualify for a smaller benefit through TANF – adult not included assistance.
4. Once the home study comes back positive (or any issues are corrected), OCS will provide a list of lawyers who can help the adoptive parents with the petition. If the adoption will be subsidized, the subsidy will include the lawyer’s fees.
5. Adults who want to be the adoptive parents file an adoption petition in either state or Tribal court, and provide a copy of the petition to the parties in the CINA case.
 - a. Or if the parents agree to the adoption, the Tribal council can sign a resolution approving a “cultural adoption.”
 - i. The Cultural Adoption packet can be obtained at:
<https://dhss.alaska.gov/dph/VitalStats/Pages/adopt.aspx>.
 - ii. The Tribal Council meets to consider a cultural adoption resolution and then decides on whether to sign the resolution.
 - iii. The Tribe submits the packet to Health Analytics & Vital Records to get a new birth certificate.
6. The state court or Tribal court will set an adoption hearing, or the council will schedule a meeting to consider the cultural adoption resolution.
7. The adoptive parents will need to negotiate their subsidy BEFORE a final adoption order.

Once the state or Tribal court issues an adoption order (or the council signs a cultural adoption resolution), the CINA case will close.

ICWA Bookmarks for your Computer

- ICWA Statutory Language: <https://www.law.cornell.edu/uscode/text/25/chapter-21>
- BIA Regulations: <https://www.federalregister.gov/documents/2016/06/14/2016-13686/indian-child-welfare-act-proceedings>
 - PDF version: <https://www.govinfo.gov/content/pkg/FR-2016-06-14/pdf/2016-13686.pdf>
- BIA Guidelines for Implementing ICWA: <https://www.bia.gov/sites/default/files/dup/assets/bia/ois/pdf/idc2-056831.pdf>
- Native American Rights Fund ICWA Guide: www.narf.org/nill/documents/icwa/index.html
- Alaska Court Rules for Child in Need of Aid Cases: <https://courts.alaska.gov/rules/docs/cina.pdf>
- Alaska Supreme Court decisions regarding ICWA: <https://govt.westlaw.com/akcases/index>
- Alaska OCS Policy Manual 8/15/23: http://dpaweb.hss.state.ak.us/training/OCS/cps/index.htm#t=CPS_Policy_Manual.htm
- Alaska OCS Combined Policy and Procedure Manual 7/1/22: <https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=135698>
- National Indian Child Welfare Association: <https://www.nicwa.org/families-service-providers/>
- Alaska Native Justice Center: www.anjc.org
- Alaska Legal Services Corporation: www.alaskaTribes.org
 - www.alsc-law.org
 - Intake: 1-888-478-2572
- Native American Rights: <https://www.narf.org/help/>
- Professor Kate Fort highlights significant ICWA decisions on the Turtle Talk blog at <https://turtletalk.blog/category/author-kate-e-fort/>
- Facing Foster Care in Alaska - foster youth led organization: <http://www.ffcalaska.org/>
- Alaska Center for Resource Families - assistance for foster families (including relatives): <https://www.acrf.org/>
- Alaska Child Welfare Academy: <https://www.uaa.alaska.edu/academics/college-of-health/departments/school-of-social-work/child-welfare-academy/resources/by-topic.cshtml>
- Court Improvement Project:
 - ICWA E-Learning Course: <https://courts.alaska.gov/cip/icwa-course.htm>
 - CINA Laws E-Learning Course: <https://courts.alaska.gov/cip/cina-course.htm>
- Alaska Legal Services Community Justice Worker Course registration including ICWA: https://docs.google.com/forms/d/e/1FAIpQLSecRamuS1-OC7QJrmXU49d57G-aQT_cLZs_1yugN0MiolvBdg/viewform

ENDNOTES

ⁱ *Terry S. v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.*, 168 P.3d 489 (Alaska 2007) (under ICWA “the appointment of a guardian constitutes a ‘foster care placement’”).

ⁱⁱ *Rice v. McDonald*, 390 P.3d 1133 (Alaska 2017) (ICWA applies to aunt vs. dad custody case); *J.W. v. R.J.*, 951 P.2d 1206 (Alaska 1998) (ICWA applies to step-parent vs parent custody case).

ⁱⁱⁱ ICWA Section 1903(1) (“child custody proceeding” shall not include an award of custody to one of the parents.)

^{iv} ICWA Section 1903(1) (“child custody proceeding” shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime).

^v See Courtney Lewis' article: <https://digitalcommons.law.seattleu.edu/ailj/vol9/iss1/5/>

^{vi} Alaska Statute 47.10.112 - Proxy for a formal petition for adoption or legal guardianship.

^{vii} Alaska Statute 47.10.080(p) (OCS must provide “reasonable visitation” unless there is clear and convincing evidence that visits are not in the child’s best interests, such as when a parent has sexually assaulted a child or their sibling); 47.10.080(t) (if it is in the child’s best interests and not harmful to the foster family, OCS “shall require foster parents to provide regular opportunities for visitation with the child by the parents of the child and encourage foster parents to serve as mentors for facilitating family reunification.”).

^{viii} Alaska Child in Need of Aid Rule of Procedure 19.1(a) – Review upon Application re Visitation.

^{ix} OCS Policy & Procedure Manual Section 6.1.1 – Confidentiality, State Requirements, A.5 Disclosure of Information to Tribes

^x ICWA Section 1922 and Alaska Statute 47.10.142 – Emergency Custody and Temporary Placement Hearing.

^{xi} Alaska Statute 47.10.020 – Investigation and Petition.

^{xii} Alaska Statute 47.10.070 Hearings.

^{xiii} *Alaska DHSS v. Zander B.*, 474 P.3d 1153 (Alaska 2020) (foster parents are not parties to CINA cases, unless courts grant a foster parent’s Motion to Intervene, and that should only be done in rare cases).

^{xiv} <https://public.courts.alaska.gov/web/forms/docs/tf-935.pdf>.