



CALIFORNIA TRIBAL FAMILIES COALITION

Alyce Spotted Bear and Walter Soboleff Commission on Native Children - Pacific Regional Hearing
Child Welfare, Juvenile Justice, and Violence Panel
August 25, 2022

Fundamental barriers to equity & best outcomes for Indian children and families in child welfare

PROBLEMS

- 1) Lack of preferred placement homes for Indian children
- 2) Tribes are often the only party in ICWA cases without publicly funded legal representation
- 3) Indian children continue to be disproportionately represented in child welfare and delinquency systems, but there is poor data to prove it

POTENTIAL SOLUTIONS

- 1) Fund tribal capacity building to increase tribally approved homes
- 2) Publicly fund tribal legal representation
- 3) Strengthen data collection methodology and availability





Unique History & Challenges for Tribes in California

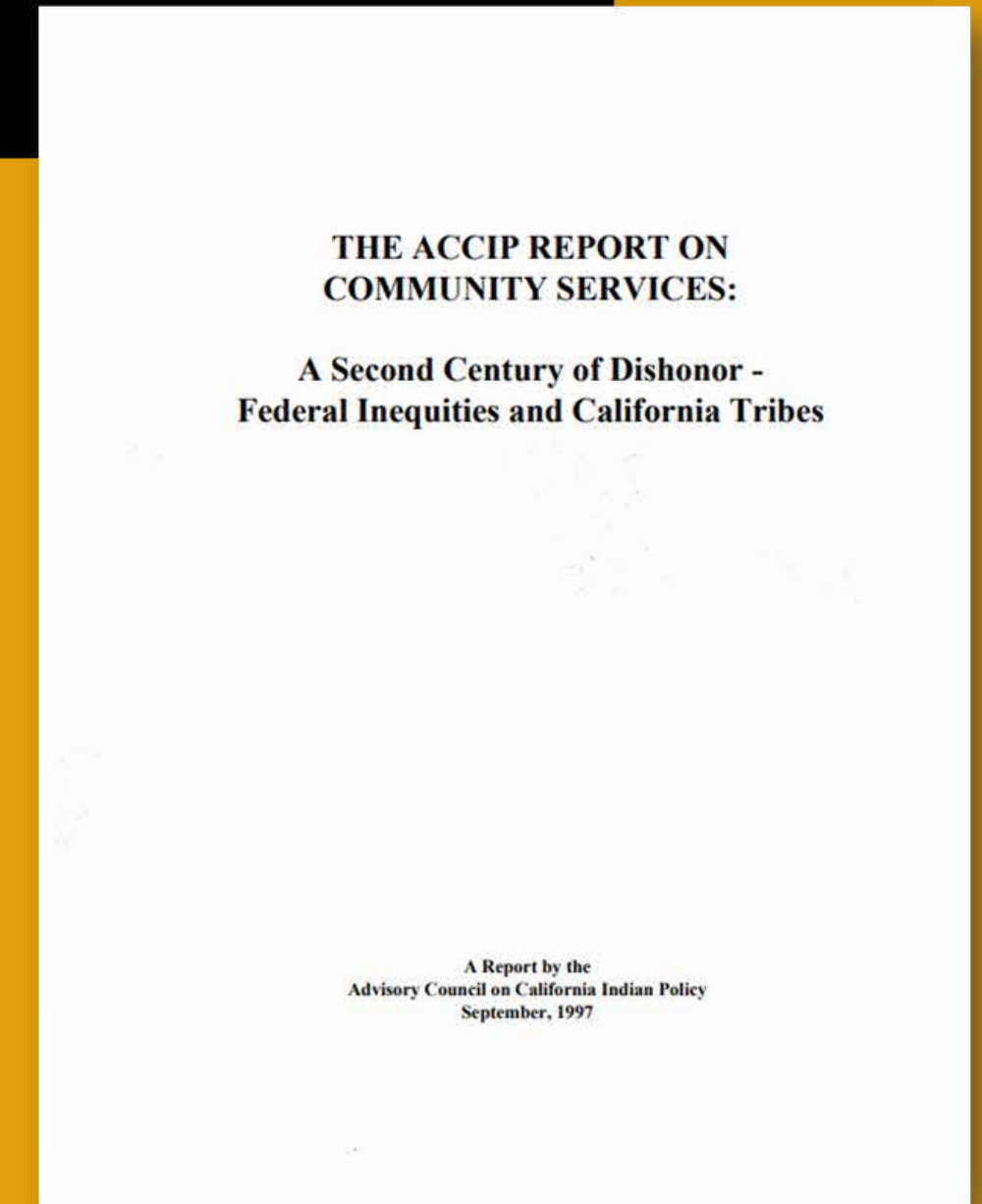
Entry into California foster care per 1000 kids		
	2019	2020
White	2.5	2.1
Native	9.4	8.8
All Groups	3.2	2.6

* Data available through the California Child Welfare Indicators Project. Available at: <https://ccwip.berkeley.edu/>.

1997 Advisory Council on California Indian Policy (ACCIP) Report

Similar to the Commission on Native Children, ACCIP was a Council created by Congress to provide recommendations to Congress and the Departments of the Interior and of Health and Human Services. ACCIP was established in the 1990s and a report was published about the federal inequities impacting tribes in California.

Many of the findings still ring true today. The report can be found at <https://tribalaffairs.ca.gov/resources/>.

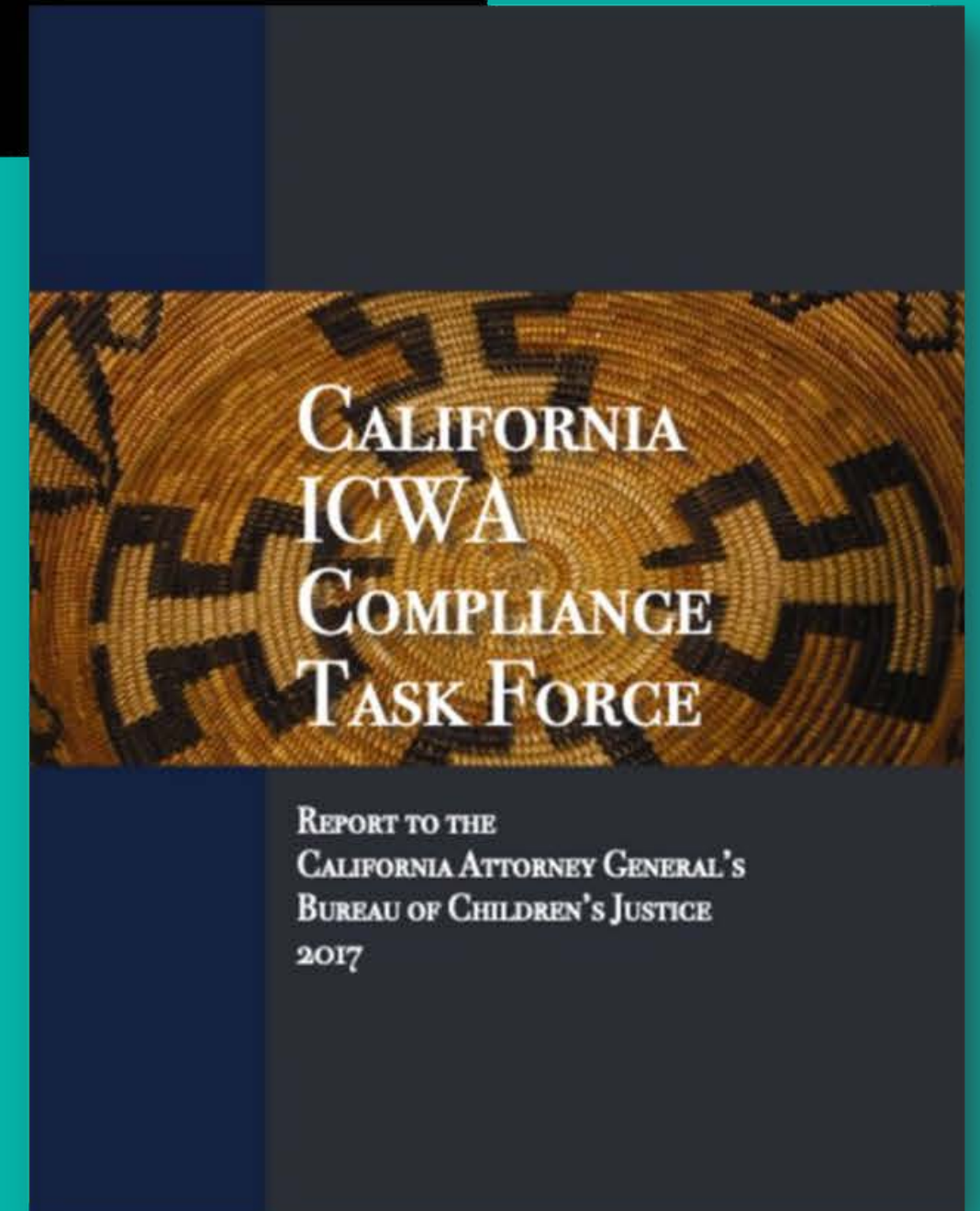


2017 California ICWA Compliance Task Force Report

The mission of the California Tribal Families Coalition is to promote and protect the health, safety and welfare of tribal children and families, which are inherent tribal governmental functions and are at the core of tribal sovereignty and tribal governance.

The Coalition is a successor organization to the California ICWA Compliance Task Force. The California ICWA Compliance Task Force Report can be found at:

www.caltribalfamilies.org



Why does this matter?

Because we know meaningful ICWA compliance in state child welfare + stronger tribal child welfare systems work!



What Outcome Data Tells Us

- In 2018, of all California children in care, Native children had the **lowest rates of permanency after 1 year in care.**
- An average of only 44% (**less than half!**) of Indian children in California's foster care system are placed according to ICWA placement preferences.
- When a tribe is not properly noticed and able to be present at the initial dependency hearing, Indian children and families face worse outcomes. **Families have only a 40% reunification rate compared to 52% when the tribe is present** at the initial hearing.
- When a tribe is present at the initial hearing, time to permanency for the child was shorter by an average of **125 days** (from 549 days to 424 days).



Problem 1

**Lack of preferred
placement homes
for Indian children**



Solution 1

Concept: Fund tribal capacity building to increase tribally approved homes

Legislation

Structure for implementation

Cost/Resources



Problem 2

Tribes are often the only party in ICWA cases without publicly funded legal representation



The History is the Starting Point

ICWA changes the rules in removing tribal children, it is a remedial statute TO FIX PAST WRONGS & PREVENT REPEAT.

ICWA is now the Gold Standard in child welfare policy
PART OF ICWA APPLY TO ALL DEPENDENTS

But there is a flaw in ICWA & policy that stops progress

ICWA DOES NOT PROVIDE FOR TRIBAL REPRESENTATION

In 1978 they didn't think of this problem
BUT NOW WE MUST



Solution 2

Concept: Publicly fund tribal legal representation

Legislation

Structure for implementation

Cost/Resources



Problem

Tribal child welfare outcomes remain as bad today as in 1978. They will not improve without equity in the courtroom.

TRIBES DON'T HAVE COUNSEL IN ICWA CASES

Consequence

When a tribe does not have legal counsel, courts often makes bad decisions, affecting all tribes, tribal children and the state.

BAD CASES AFFECT ALL TRIBES & OTHERS

Solution

With legal counsel in ICWA cases we achieve better outcomes, protect ICWA & strengthen tribal sovereignty

EVERY TRIBE, EVERY CHILD, EVERY CASE

Child Welfare Agency Spending in California in SFY 2018



Child welfare agencies across the United States are charged with protecting and promoting the welfare of children and youth who are at risk of, or have been victims of, maltreatment. In state fiscal year (SFY) 2018, state and local child welfare agencies spent \$33 billion using a combination of federal, state, local, and other funds. State and local child welfare agencies rely on multiple funding streams to administer programs and services. While many funding sources are available to child welfare agencies, each has its own unique purposes, eligibility requirements, and limitations, creating a complex financing structure that is challenging to understand and administer. Each state's unique funding composition determines what services are available to children and families and the way in which child welfare agencies operate. This document presents information on child welfare agency expenditures in California for SFY 2018,¹ collected through Child Trends' national survey of child welfare agency expenditures.

Other available resources

This document is part of an array of child welfare financing resources, available on the [Child Trends](#) website, including a summary of national findings and detailed information on the following funding sources used by child welfare agencies:

- Title IV-E
- Title IV-B
- Temporary Assistance for Needy Families
- Social Services Block Grant
- Medicaid
- Other federal funds
- State and local funds

Overall Expenditures²

	Amount in SFY 2018	% Change from	
		SFY 2016	SFY 2008
Overall	\$4,867,209,623	N/A	N/A
Federal	\$2,763,642,560	6%	16%
State	\$185,526,202	N/A	-88%
Local	\$1,918,040,860	N/A	140%
Offsets and other ³	Unable to provide	N/A	N/A

The proportion of spending from federal, state, and local sources in California has not changed since SFY 2016.



- In 2018, CA spent \$5 billion on child welfare
- Of that, \$2.7 billion came from the federal government
- This is the funding stream that pays child welfare attorneys, BUT tribes are excluded

The Problem: A bit more detail on appeals

California has the highest number of ICWA appeals as a state in the whole country.

EACH APPEAL IS A RISK

2021, nationally, 228 ICWA appeals from state courts to federal courts. 152 were from California, over 2x than the rest of country combined.

BAD CASES AFFECT ALL TRIBES

With legal counsel in the courtroom on ICWA cases, we will lower the risk of appeals

EVERY TRIBE, EVERY CHILD, EVERY CASE

**The Solution:
What we have
already tried and
has not worked**

Hundreds of hours of consultation and training

STILL COMPLIANCE WITH ICWA FAILS

1000's of pages of ICWA Guides, Handbooks, Desk References

STILL TRIBES ARE NOT HEARD

Transfer to tribal courts

PL280, LACK OF RESOURCES, LEGAL IMPOSSIBILITY

Individual tribal intergovernmental agreements (ICWA, 4E) for child welfare

STILL WAITING...

Meaningful ICWA compliance makes a difference for Indian children and families

This new baseline study shows data on what does work. For example, when a tribe is present at the first hearing, a child's days spent in care before returning home decrease by 221 days!

Predictors of Time to Return Home

The sample size of cases where we were able to get a date that the child was returned home was small (n= 24 cases). However, we did explore some correlation analyses with these cases. We found that time to ICWA confirmation was significantly related to time to return home, in that longer time to confirmation was related to longer time until the child was returned home. In addition, the tribe being present at the first hearing was related to longer times to return home. When the tribe was present at the first hearing, the average time to return home was 158 days compared to 379 days when the tribe was not present at the first hearing.

ICWA Baseline Measures
Project Findings Report



ACF POLICY MANUAL EXCERPT:

Question 31.



Are title IV-E administrative costs for the legal representation provided by agency attorneys and for independent legal representation of children and parents in all stages of foster care related legal proceedings available to tribes and public agencies that have an agreement under section 472(a)(2)(B)(ii) of the Act?

Answer

Yes. A title IV-E agency that has an agreement with a tribe or any other public agency under section 472(a)(2)(B)(ii) of the Act may claim title IV-E administrative costs for legal representation provided by tribal or public agency attorneys under the agreement in all stages of foster care related legal proceedings. The title IV-E agency may also claim administrative costs for independent legal representation provided by an attorney for a candidate for title IV-E foster care or a title IV-E eligible child in foster care who is served under the agreement, and the child's parents, to prepare for and participate in all stages of foster care related legal proceedings.

Answer: Can Tribes use federal Title IV-E funds to pay tribal attorneys in child welfare cases?

YES!

There are already policy changes underway to allow tribes to receive federal and state funds for legal counsel. More support is needed.



Problem 3

**Indian children
continue to be
disproportionately
represented in child
welfare and
delinquency systems,
but there is poor data
to prove it**



Solution 3

Concept: Strengthen data collection methodology and availability

Policy changes/Legislation

Structure for implementation

Cost/Resources

IN SUMMARY

Takeaways

Kinship care and ICWA preferred placements result in better outcomes for children. Funding and resources are needed to support tribes to approve their own placement homes and build capacity of tribal child welfare systems - especially in PL 280 states like CA.

When a tribe does not have legal counsel, courts often make bad decisions, affecting all tribes, tribal children and the state. With legal counsel in ICWA cases, we achieve better outcomes, protect ICWA & strengthen tribal sovereignty. Public funding in parity with other ICWA parties should be made available.

Data collection methodologies are faulty for capturing complex identities and data on Native children is rarely accessible. Data collection that accounts for small population sizes and persons of multiple races and citizenship is needed + when governments collect data from tribes or on Native people, it should be shared back with the community.