



Indian Child Welfare Act Practice Issues for Child Advocates

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Historical Trauma

- The definition of historical trauma is the cumulative emotional and psychological wounding over the life span and across generations that comes from massive group trauma such as GENOCIDE, which has been cited by: Maria Yellow Horse Brave Heart Eduarado, www.speroforum.com/site/article: August, 2005.
- The impact of history on Alaska Native people has been passed down from generation to generation.

Commissioner of Indian Affairs Statement to Congress.....1885

They must be withdrawn, in tender years, entirely from the camp and taught to eat, to sleep, to dress, to play, to work, to think after the manner of the white man.

It is admitted by most people that the adult savage is not susceptible to the influence of civilization and we must therefore turn to his children, that they might be taught to abandon the pathway of barbarism and walk with a sure step along the pleasant highway of Christian civilization.

Historical Trauma

- “What happened to us is very bitter” – Rita Blumenstein, Yupi’k, Traditional Healer/Elder
- “We were prevented from speaking our language & punished for practicing our culture” – Cheryl Evan, Tlingit/Haida Elder
- “We were taken away from our culture. They beat it out of us in boarding school. We have lost so much, some of us don’t even know what we have lost.” - Alfred Stevens, Koyukon Elder
- “The impact of historical trauma is so great that it isn’t even spoken about.” Inupiat Tribal Leader

United Nations Convention on Genocide (UNCG)

The definitional article included in the 1948 convention stipulates:

Article II

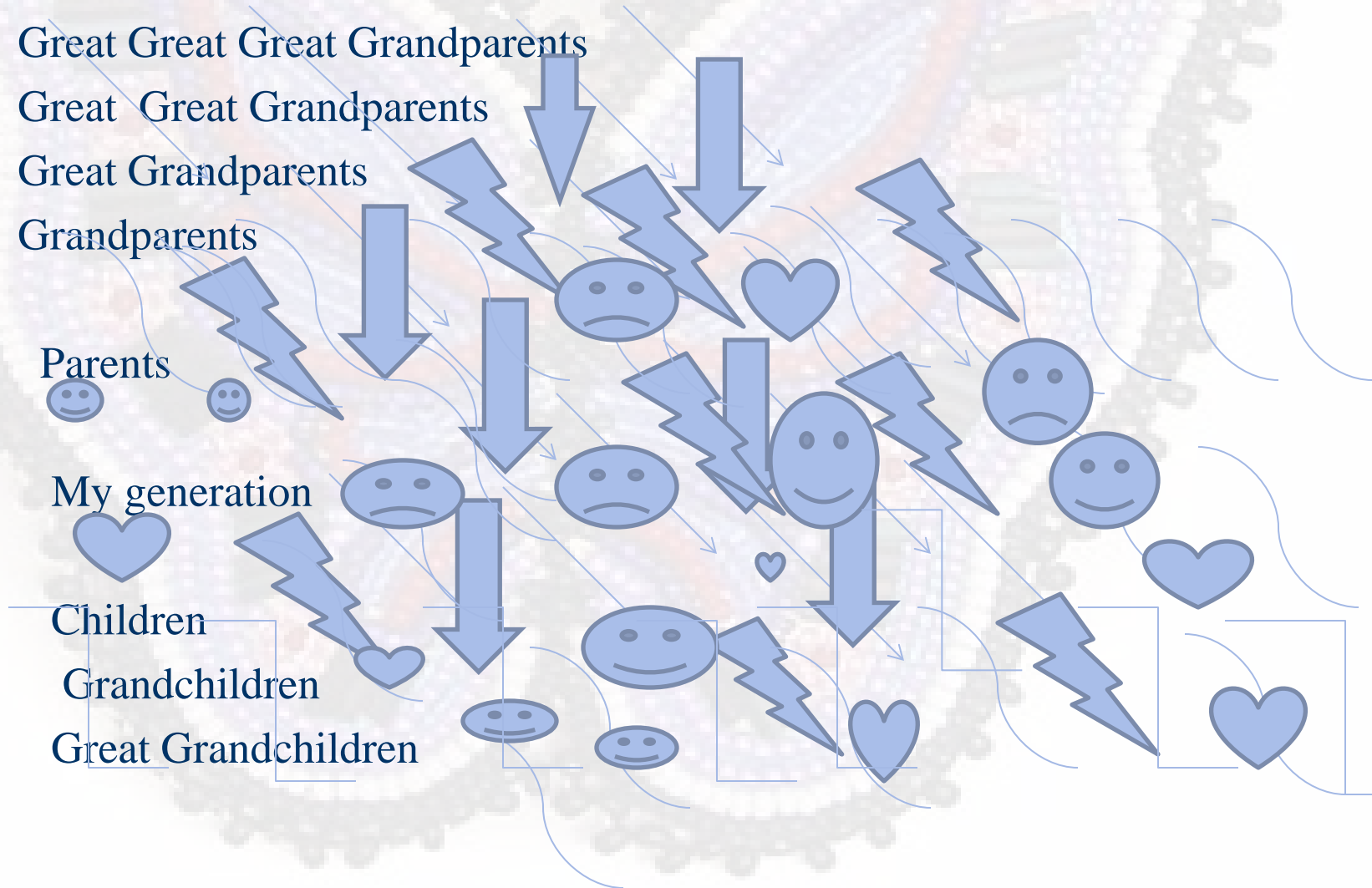
In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

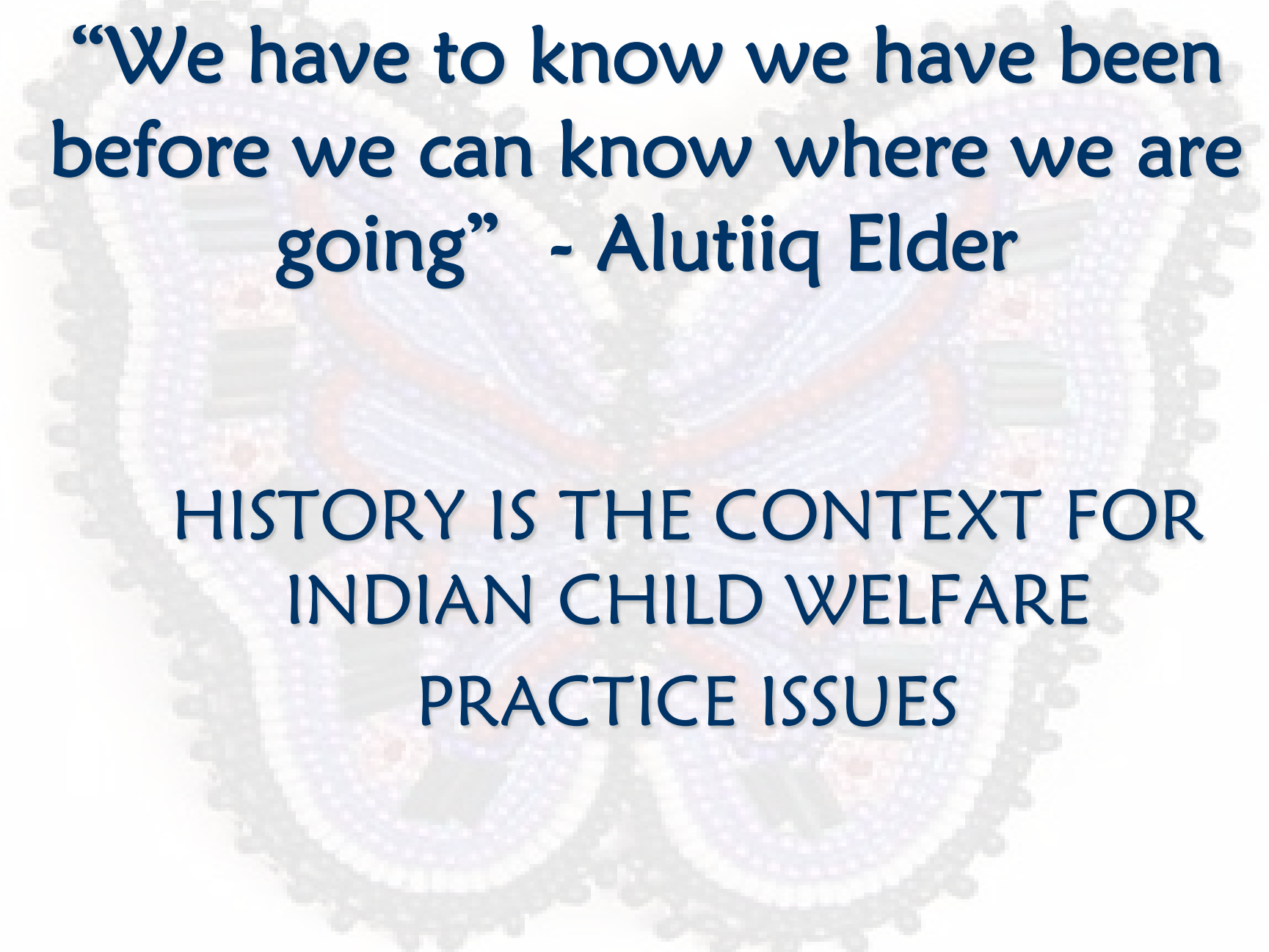
- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

[Source: S D Stein. "Genocide." In E. Cashmore (ed.). Dictionary of Race and Ethnic Relations. Fourth Edition. London: Routledge, 1996]

How is trauma passed from generation to generation? Through behaviors, environment, and feelings; and on a spiritual and cellular level. Do you recognize the chaos? - Danialle Rose, 2007.

- 1820 Great Great Great Grandparents
- 1850 Great Great Grandparents
- 1870 Great Grandparents
- 1900 Grandparents
- 1934 Parents
- 1950 My generation
- 1980 Children
- 2000 Grandchildren
- 2030 Great Grandchildren





**“We have to know we have been
before we can know where we are
going” - Alutiiq Elder**

**HISTORY IS THE CONTEXT FOR
INDIAN CHILD WELFARE
PRACTICE ISSUES**

Historical Context for ICWA

European invasion of homelands of Native people after centuries of indigenous community existence

- ❖ European view of Native people as uncivilized, savage
- ❖ European perception that Native children were unsupervised & untaught

European beliefs about children:

- ❖ Children are to be seen/not heard
- ❖ Spare the rod & you'll spoil the child
- ❖ Poor children sent to workhouses (contributed to the idea of children as property)

Historical Context for ICWA for ICWA

Alaska Native Peoples:

- Emphasis on family, group, village – tribal cultural identity
- Emphasis on spirituality
- Learning through stories of the past
- Emphasis on sharing rather than acquiring possessions
- Role models, hands-on learning

Historical Context for ICWA for ICWA

- Native children regarded as gifts from Creator
- Extended family responsibility/role in child raising & guidance
- Kinship included “chosen” families as well as birth family
- Different standards for maturity/immaturity

Historical Context for ICWA for ICWA

• Native Values:

Knowledge of family tree

Domestic skills

Hunter success

Respect

Humility

Honoring Elders

TIMELINE

- Native American

Colonial Years

1492 – 1776

Removal Period

1776 - 1830

- Child Welfare

Institutionalized care:
orphanages, asylums –
1700's

Reacting to
institutionalized care -
Foster care movement
Mid 1800's

TIMELINE

- Native American

Reservations &
Treaties

1831 – 1880

Allotment Era

1880 – 1930

- Child Welfare

Until late 1880's
children were
transferred from
family to family via
property deeds

TIMELINE

■ Native American

1880 – 1930:

INSTITUTIONALIZED CHILD ABUSE

- ❖ Boarding Schools
- ❖ Reservations
- ❖ Missionaries
- ❖ Families Separated

■ Child Welfare

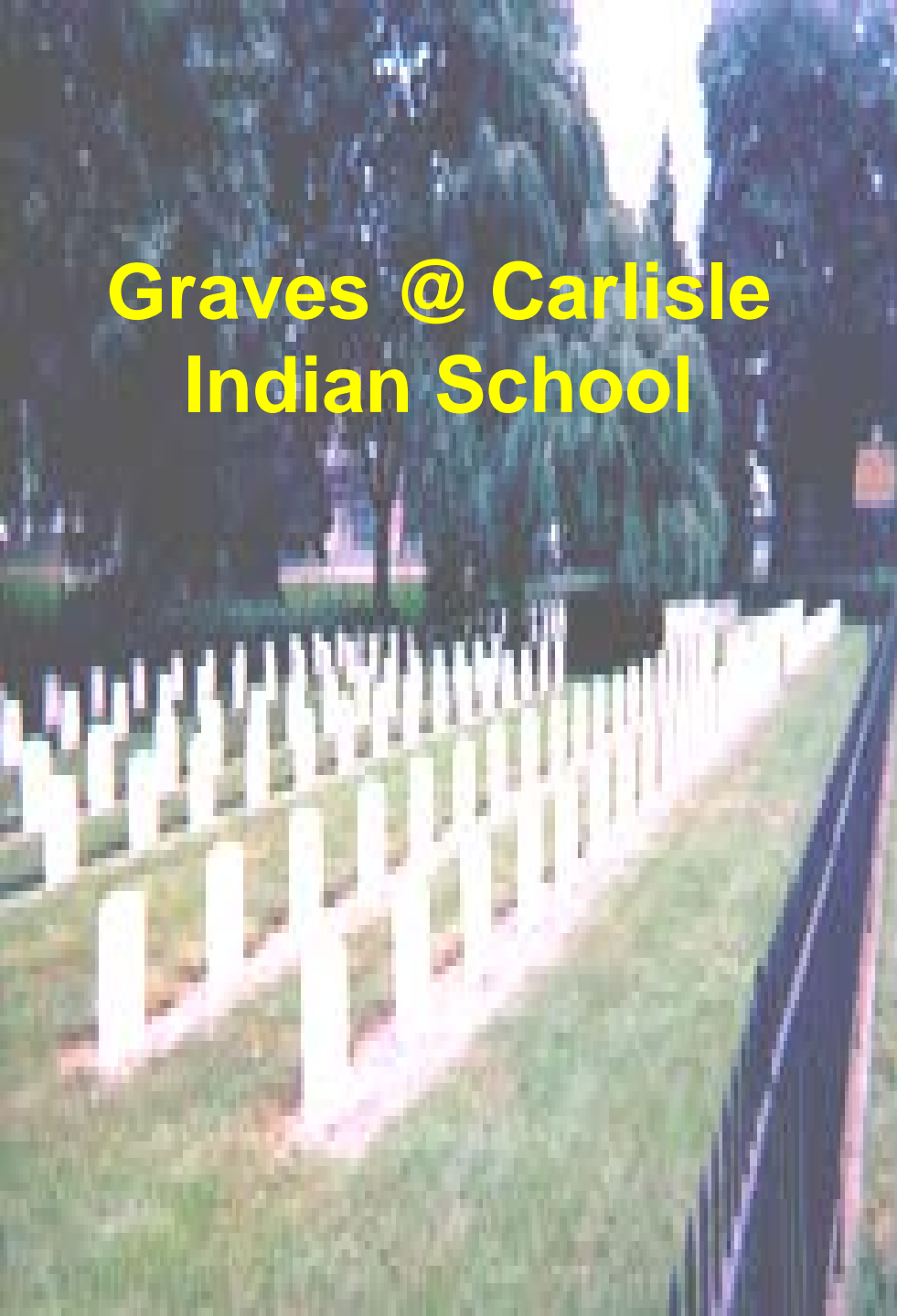
American families
“rescued” Indian
children following
massacres and forced
relocations

*Reading suggestions:

Fifty Miles From Tomorrow

Children of the Dragonfly, Lost
Bird of Wounded Knee

Graves @ Carlisle Indian School



TIMELINE

■ Native American

Indian Reorganization
Act Era 1930 – 1950

- ⚡ BIA domination
- ⚡ Boarding Schools continue
- ⚡ Tribal constitutions
- ⚡ Court of Indian offenses

■ Child Welfare

Prior to 1930's
transracial adoptions
were rare; stricter
adoption laws led to
“black market”
adoptions by 1929

TIMELINE

- Native American
Termination Era
1950 – 1970
 - ▶ Economic termination
 - ▶ Relocation to cities
 - ▶ Private adoptions
 - ▶ Coercion to give up children
- Child Welfare
Child Abuse
Protection Act
1974 passed

TIMELINE

■ Native American

- ◆ Self – Determination Era 1970 to present
- ◆ Sterilization of Indian Women 1960's – 70's
- ◆ By 1960's Tribes lose more than 50% of children
- ◆ Indian Child Welfare Act drafts & hearings – 1972 – 1976; passed in 1978
- ◆ Indian Religious Freedom Act passed 1979

TIMELINE

- September 2000: *During their 175th anniversary celebration, the Bureau of Indian Affairs apology for their destructive policies and practices.*
- April 2001: *During a NICWA conference , the Child Welfare League of America issued a public apology for their role in the massive removal of Native children from their families and communities.*

ALASKA FACTS

- 1786 – 1ST Native school opened in Kodiak; 40 Native children sent to Siberia by Russians
- 1805 – a report to Empress Catherine II indicated that school for Natives and Creoles (Native/non-Native) was unsatisfactory with only 20 students
- 1835 – 1840 smallpox epidemic in southeast Alaska (400 die in Sitka)

ALASKA FACTS

1867 – Alaska sold to the United States

Alaska remained a territory until 1959

1880 Census

- 24,516 Natives and 145 non-Natives on the mainland
- 8,900 Natives and 1,900 on southeastern islands
- 1900 “The Great Death” – smallpox, measles, chicken pox – 60% of Natives died

ALASKA FACTS

1900 Census

63,592 people: 29,536 Natives and 29,365 non-Natives

- 1918 Influenza epidemic in northwest villages
- 1921- orphanages established to care for children left homeless by the epidemic
- Alaska Native children sent to boarding schools in lower 48

EXPLORER'S NOTES:

- Indigenous inhabitants of the arctic and sub-arctic regions describes as “vigorous, hospitable and intelligent” (1840)
- Early traders, naturalists and missionaries express respect and admiration for the skills and intelligence of Alaska Native people “thriving” in the hostile environment

Boarding School Impacts on Alaska Natives

Broke up families, often permanently
Mental health consequences

- 49% developed social and emotional problems in 1st year, 25% were serious (1977, Kleinfeld & Bloom)
- High levels of emotional disturbance found in 2nd year students.

Research on impact of these losses:

- Personality disorders among Alaska Native children directly related to boarding school cultural discontinuity, attacks on Native identity, impersonality and sterility of boarding schools as well as the poor quality and lack of qualified staff. (Neligh, 1990)

“*The psychological repercussions of the sociocultural oppression of Alaska Native peoples*” Sullivan and Brems, Genetic, Social and General Psychology, Nov. 1997

Why is it important to talk about historical trauma?

- “Intergenerational transfer of historical trauma can happen on two levels – personal and community...”
- “Related affects might carry forward for as long as that loss remains unreplaced....”

T. Evans-Campbell, Historical Trauma in American Indian/Alaska Native Communities



ICWA Practice Issues

CONGRESSIONAL FINDINGS:

- Congress has plenary power over Indians
- Congress has assumed responsibility for the protection and preservation of Indian tribes and their resources
- There is no resource more vital to the continued existence and integrity of Indian tribes than their children

PURPOSE OF THE INDIAN CHILD WELFARE ACT

To set minimum standards for States when child abuse, neglect and adoption cases involve Native children – State courts, State child protection agency and adoption agencies are required to follow ICWA;

To authorize Tribal courts to handle child abuse, neglect and adoptions involving Tribal members

IDENTIFYING AN INDIAN CHILD WELFARE ACT CASE

STATE COURT
CASE

CHILD
CUSTODY
PROCEEDING §1903 (1)

INDIAN CHILD
§1903 (4)



ICWA ONLY APPLIES TO

STATE COURT CASE (not Tribal court)

WHEN IT INVOLVES:

- ✓ A Child custody proceeding: foster care placement or termination of parental rights or pre-adoptive placement or adoptive placement (any placement where the child cannot be returned on demand)

§1903 (1) **AND**

- ✓ The child is an Indian Child as defined by ICWA §1903 (4)

ICWA DOES NOT APPLY TO

- Juvenile placements made as a result of an offense that would be considered a crime if it was committed by an adult;
- Divorce or custody between parents, when one parent will be awarded custody. **§1903 (1)**

BIA Guidelines Clarification

- ICWA does not apply if there is a divorce proceeding where a parent (bio or Indian adoptive parent) will get custody of the child. A. (e)
- ICWA does not apply to voluntary placements which do not prevent the parent or Indian custodian from regaining the child “upon demand” – which means the parent can just ask for the child back without any other conditions such as paying expenses. Guidelines A. (f)

Definitions §1903

- ***Indian Child:*** member of a Tribe or eligible for membership and biological child of a member of a Tribe
 - *Only the Tribe of which the child's biological parent is a member or eligible for membership can decide if the child is a member of the Tribe*
- ***Indian Tribe:*** Federally recognized Tribe on list provided by Secretary of Interior
- ***Indian Child's Tribe:*** Tribe in which child is member of/eligible for membership OR Tribe with which child has most significant contacts (if eligible for membership in more than one)

DEFINITIONS § 1903 continued

Tribal and/or Custom Law

- ◆ Extended Family Member (2)
- ◆ Indian Custodian (6)
- ◆ Parent (9)
- ◆ Tribal Court (12)

Indian Custodian is....

- Person who has legal custody of Indian child under tribal law or custom or under state law – **whichever is more favorable to the rights of parents** – **OR** to whom temporary physical care, custody and control has been transferred by the parent of such child.

(2015 BIA Guidelines clarification)

NEW: clearly defined ***"ACTIVE EFFORTS"***

BIA Guidelines: "active efforts are intended... to maintain and reunite Indian child with...family or Tribal community....."

BIA Guidelines A.2 provides 15 examples of "active efforts"

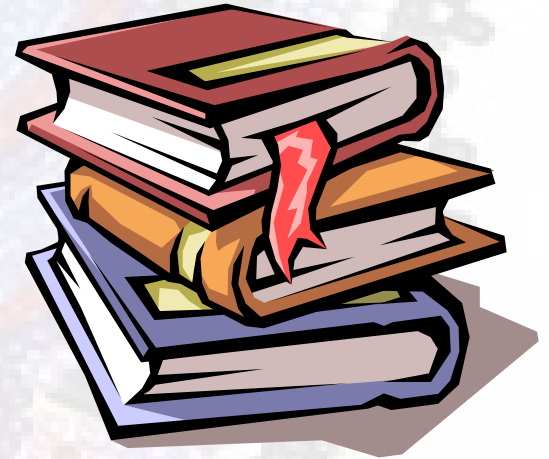
(10) "...provide family interaction in the most natural setting that can ensure the Indian child's safety"

Adoption & Safe Families Act (ASFA) relationship to ICWA

- “Active Efforts” under ICWA requires state to do more than ASFA requirements
- ASFA exceptions to reunification efforts do not apply to ICWA proceedings

ICWA v. State Law

- Emergency Custody
- Parties
- Removal Standards
- Reunification efforts
- Placement Preferences
- Stipulations/voluntary relinquishments
- TPR Findings



EMERGENCY CUSTODY



✓ Emergency custody

If not returned to parent, Petition filed in 24 hours

✓ Temporary Custody Hearing (Probable Cause) within 48 hours



PARTIES



- Child
- Parents
- Legal guardians
- Social worker
- GAL/CASA
- Tribe
- Indian custodian

Removal Standards

State Law

- ▶ Continued placement in home contrary to welfare of child



ICWA

- ▶ Removal necessary to prevent imminent physical damage/harm
- ▶ Child likely to suffer serious emotional or physical damage
 - ◆ clear and convincing evidence
 - ◆ expert witness

BURDEN OF PROOF AT TEMPORARY CUSTODY HEARING (within 48 hours)

- If child is not returned, State must prove
 - (1) it is more likely than not still necessary to keep the child in custody to prevent imminent harm or damage to child; or
 - (2) clear and convincing evidence, including qualified expert testimony, that child would likely suffer serious physical or emotional damage if left with parent

- **Finding must be made:** active efforts have been made to prevent breakup of family and have been unsuccessful

FOSTER CARE PLACEMENT

- 1. With a member of the child's extended family**
- 2. In a foster home licensed, approved or specified by child's tribe**
- 3. In an Indian foster home licensed by non-Indian licensing authority**
- 4. In an institution for children approve by tribe or operated by Indian organization that can meet child's needs.**

ADOPTIVE PLACEMENT

1. **With a member of the child's extended family**
2. **With other members of the child's Tribe**
3. **With another Indian family.**



CHANGING PLACEMENT ORDER 25 U.S.C. §1915(b)

For Foster Or Adoptive Placement

- **if the tribe has intervened**
- **must be done by resolution**
- **must be the least restrictive setting that would allow the needs of the child to be met**

ADJUDICATION/DISPOSITION

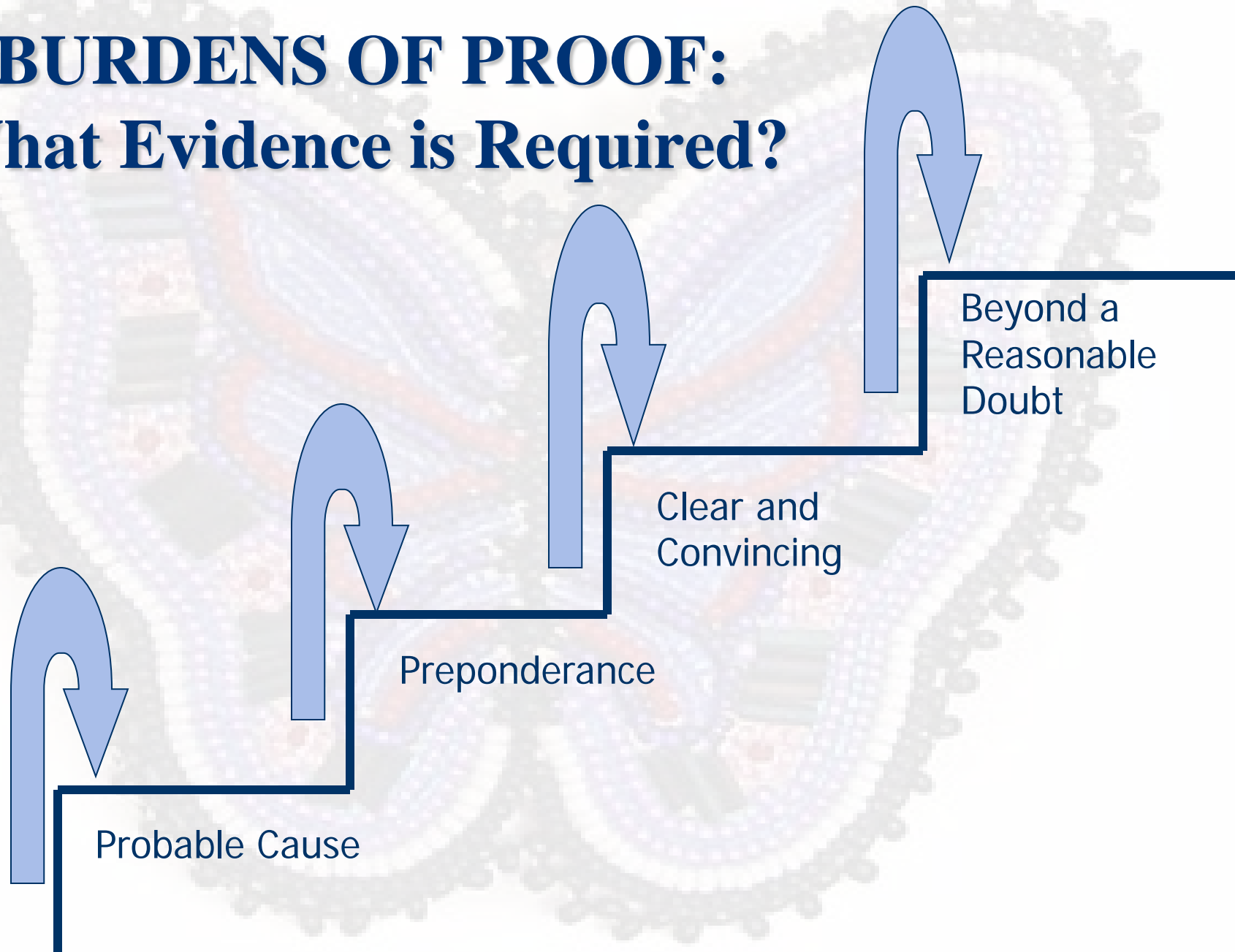
- *Same standards for continued custody as applied at Temporary Custody Hearing*
 - State must prove
 - (1) is it more likely than not still necessary to keep the child in custody to prevent imminent harm or damage to child; or
 - (2) clear and convincing evidence, including qualified expert testimony, that child would likely suffer serious physical or emotional damage if left with parent
- **Court should inquire about “active efforts to reunify the family” and placement**

TERMINATING PARENTAL RIGHTS

- State must present evidence to prove beyond a reasonable doubt that child is likely to suffer serious physical or emotional damage if left with parent
- State must also show by a **preponderance** of evidence that “active efforts” have been provided to reunify the family and correct parent behaviors AND that those efforts have failed (see Temporary Custody)
- State must show by a **preponderance** of evidence that the plan is in the best interest of the child

BURDENS OF PROOF:

What Evidence is Required?



Tribal Involvement

- Some Tribes do not have a designated ICWA worker
- Tribal Council may assume representative role or designate function to regional non-profit
- Other community members and/or the child's relatives may put pressure on ICWA worker or other Tribal representatives
- Parent may not want Tribe to participate – possibly due to misunderstanding of Tribe role or past experiences with Tribal government or community member/s

SOME (but not all) KEY POINTS FOR TRIBAL INPUT

- Confirming Tribal member child status when first contacted
- Advising OCS of extended family & relative placements available when first contacted
- Providing support and services to parents before removal



MORE KEY POINTS FOR TRIBAL INVOLVEMENT

- Intervening as a legal party
- Developing culturally specific case plan
- Identify long term placement if reunification fails
- Assisting with visitation – include relatives, others
- Providing Native food & other cultural resources to child in foster care

