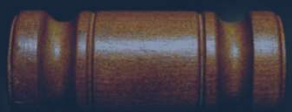
Strengthening Tribal Collaboration to Meet the Active Efforts Requirements of ICWA

An Introduction to Appendix 13, a new guide from the Department of Children and Families



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Continuing Education

Circuit Court Judicial Officers - .5 credits

- CCIP will send the attendance list to Office of Judicial Education
- Must attend entire webinar for credit

Attorneys - 1.5 credits

- Applying for CLE and GAL minor credits
- Search under "Live Webcast" for location

Social Workers - 1.5 hours

- Attendee will enter the webinar as an external training in PDS Online to earn Continuing Education Hours

Disclaimer

Please note this information is not meant to be construed as legal advice.

Any guidance provided should not override a judge's decision or authority.

Questions are welcome; however, please do not include any confidential case information in the chat.

Thank you!

Learning Objectives

- Become familiar with the purpose of Appendix 13.
- Understand why collaboration with tribal nations is essential in child welfare practice.
- Recognize how Appendix 13 supports meeting active efforts requirements under ICWA and WICWA.
- Identify practical strategies for collaborating with tribal child welfare professionals throughout a case.
- Understand the continuing responsibility of local CPS agencies for ICWA and WICWA compliance.

Indian Child Welfare Act

Indian Child Welfare Act (ICWA)	Wisconsin Indian Child Welfare Act (WICWA)	ICWA Regulations
Federal law	Codified into state statutes	Legally-binding guidance
Enacted in 1978	Enacted in 2009	Effective December 12, 2016

Why Tribal Collaboration Matters

- Effective collaboration helps:
  - Ensure the safety and well-being of Indian children.
  - Fulfill responsibilities under ICWA and WICWA.
  - Connect families with culturally appropriate services and supports.
  - Strengthen trust with children, families, and tribal nations.
  - Improve outcomes through shared expertise.

Building Strong Partnerships

- Strong partnerships are built on:
  - Mutual respect.
  - Open and timely communication.
  - Shared decision making.
  - Regular information sharing.
  - Culturally sensitive language and practices.
  - Recognition of tribal child welfare professionals as valued partners.

Understanding Tribal Collaboration

- Collaboration with tribal nations includes unique considerations:
  - Tribal sovereignty.
  - Government-to-government relationships.
  - ICWA and WICWA requirements.
  - Cultural traditions and practices.
  - Historical relationships with state and federal governments.

Putting Collaboration into Practice

- Effective collaboration includes:
  - Prompt notification of tribal child welfare agencies.
  - Timely communication throughout the case.
  - Ongoing collaboration to support ICWA and WICWA requirements.
  - Consultation with agency leadership and legal counsel when needed.
  - Use of (W)ICWA court forms when court involvement occurs.

Determining a Child's Indian Status

- Local CPS professionals are responsible for:
  - Asking every family about Native American heritage.
  - Inquiring with parents, extended relatives, and other contacts.
  - Seeking confirmation of tribal membership or eligibility.
  - Treating a child as an Indian child when there is "reason to know" until eligibility is confirmed.

Confirmation Is Not a One-Time Event

- Continue confirming tribal membership:
  - At each new access report.
  - During assessments.
  - At case transfer.
  - When filing new court actions.
  - When household composition changes.
  - When new paternity or family information becomes available.

Best Practices for Confirming Membership

- To support timely confirmation:
  - Provide complete biological family information.
    - Parents.
    - Grandparents.
    - Great-grandparents (when available).
  - Use tribal contact resources (BIA tribal nation location tool).
  - Continue outreach if a tribe does not immediately respond.
  - If multiple tribes are identified, contact each appropriate tribal nation.

Confirming Membership Supports Active Efforts

The court may not order an Indian child to be removed from the home or involuntarily terminate parental rights unless:

- The court/jury finds that active efforts have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian child's family and that those efforts have proved unsuccessful.
- Requires an ongoing, vigorous, and concerted level of case work.

See Wis. Stat. § 48.028(4)(g).

Active Efforts

WICWA

- 9 **required** activities.
- Agency/petitioner must document reason why any are not conducted.

2016 ICWA Regulations

- 11 **suggested** activities.
- Must be tailored to the facts and circumstances of the case.

1. Tribal Expert Involvement (Wis. Stat. § 48.028(4)(g)1.a.)

- Request tribal representatives with knowledge of:
  - Social and cultural standards.
  - Child-rearing practices.
- Role:
  - Evaluate the family's circumstances.
  - Assist in developing the case plan.

2. Comprehensive Family Assessment (Wis. Stat. § 48.028(4)(g)1.am.)

- Complete a full assessment of the family.
- Must include:
  - Health.
  - Safety.
  - Welfare in the home.

3. Early & Ongoing Tribal Engagement (Wis. Stat. § 48.028(4)(g)1.b.)

- Identify and notify the tribe early.
- Invite participation in all aspects of the case.
- Actively seek tribal input throughout the proceeding.

4. Extended Family Involvement (Wis. Stat. § 48.028(4)(g)1.c.)

- Identify and notify extended family members.
- Include those identified by:
  - Tribe.
  - Parents.
- Purpose:
  - Provide support.
  - Maintain cultural connections.
  - Identify placement options.

5. Family Interaction & Visitation (Wis. Stat. § 48.028(4)(g)1.d.)

- Arrange natural, unsupervised family interaction when safe.
- Support must include:
  - Transportation.
  - Assistance to enable participation.

6. Family Preservation Strategies (Wis. Stat. §48.028(4)(g)1.e.)

- Offer and use all available preservation strategies.
- Consult tribe to:
  - Identify strategies.
  - Ensure cultural appropriateness.

7. Access to Community Resources (Wis. Stat. § 48.028(4)(g)1.f.)

- Identify resources:
  - Housing.
  - Financial Assistance.
  - Treatment and support services.
- Active assistance:
  - Provide information.
  - Help the family access services.

8. Monitoring Progress (Wis. Stat. § 48.028(4)(g)1.g.)

- Monitor:
  - Participation.
  - Progress in services.
- Adjust services as needed.

9. Alternative Solutions (Wis. Stat. § 48.028(4)(g)1.h.)

- Consider alternatives when:
  - Services do not exist.
  - Services are unavailable.

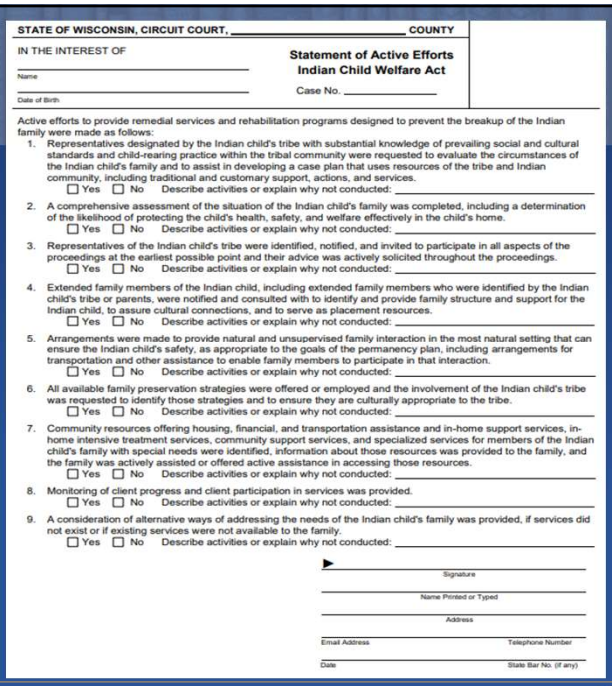
Legal Responsibility Cannot Be Delegated

- Local CPS agencies are responsible for:
  - Complying with all ICWA and WICWA requirements.
  - Making active efforts throughout the life of the case.
  - Promptly notifying tribal child welfare agencies (Memo 2023-12).
  - Continuing compliance regardless of a tribe's level of participation.
- ICWA and WICWA requirements cannot be waived.

Statement of Active Efforts (IW-1609)

Required for out-of-home placements in:

- CHIPS cases
- TPR cases
- JIPS cases
- Guardianship Cases (s. 48.9795)



STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

IN THE INTEREST OF

_____
Name

_____
Date of Birth

Statement of Active Efforts
Indian Child Welfare Act

Case No. _____

Active efforts to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family were made as follows:

1. Representatives designated by the Indian child's tribe with substantial knowledge of prevailing social and cultural standards and child-rearing practice within the tribal community were requested to evaluate the circumstances of the Indian child's family and to assist in developing a case plan that uses resources of the tribe and Indian community, including traditional and customary support, actions, and services.
   ☐ Yes ☐ No Describe activities or explain why not conducted: _____
2. A comprehensive assessment of the situation of the Indian child's family was completed, including a determination of the likelihood of protecting the child's health, safety, and welfare effectively in the child's home.
   ☐ Yes ☐ No Describe activities or explain why not conducted: _____
3. Representatives of the Indian child's tribe were identified, notified, and invited to participate in all aspects of the proceedings at the earliest possible point and their advice was actively solicited throughout the proceedings.
   ☐ Yes ☐ No Describe activities or explain why not conducted: _____
4. Extended family members of the Indian child, including extended family members who were identified by the Indian child's tribe or parents, were notified and consulted with to identify and provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources.
   ☐ Yes ☐ No Describe activities or explain why not conducted: _____
5. Arrangements were made to provide natural and unsupervised family interaction in the most natural setting that can ensure the Indian child's safety, as appropriate to the goals of the permanency plan, including arrangements for transportation and other assistance to enable family members to participate in that interaction.
   ☐ Yes ☐ No Describe activities or explain why not conducted: _____
6. All available family preservation strategies were offered or employed and the involvement of the Indian child's tribe was requested to identify those strategies and to ensure they are culturally appropriate to the tribe.
   ☐ Yes ☐ No Describe activities or explain why not conducted: _____
7. Community resources offering housing, financial, and transportation assistance and in-home support services, in-home intensive treatment services, community support services, and specialized services for members of the Indian child's family with special needs were identified, information about those resources was provided to the family, and the family was actively assisted or offered active assistance in accessing those resources.
   ☐ Yes ☐ No Describe activities or explain why not conducted: _____
8. Monitoring of client progress and client participation in services was provided.
   ☐ Yes ☐ No Describe activities or explain why not conducted: _____
9. A consideration of alternative ways of addressing the needs of the Indian child's family was provided, if services did not exist or if existing services were not available to the family.
   ☐ Yes ☐ No Describe activities or explain why not conducted: _____

▶ _____
Signature

_____
Name Printed or Typed

_____
Address

_____
Email Address Telephone Number

_____
Date State Bar No. (if any)

WICWA Circuit Court Forms

WICWA circuit court forms should be used:
www.wicourts.gov/forms1/circuit/formcategory.jsp?Category=21

- Forms contain the legally required information, advisements, and findings.
- WICWA court forms are required for all WICWA applicable cases – CHIPS, JIPS, Guardianship, TPR, and Adoption.

Cultural Responsibility Begins with Humility

- Effective collaboration requires:
  - Cultural capacity and sensitivity.
  - Respectful communication.
  - Avoiding stereotypes and microaggressions.
  - Using culturally appropriate language.
  - A willingness to learn.

One Size Does Not Fit All

- Remember:
  - Every federally recognized tribal nation is unique.
  - Practices may differ from one tribe to another.
  - Clarify terminology.
  - Ask questions rather than make assumptions.
  - Respect each tribe's identity and child welfare practices.

Building Cultural Capacity

- CPS professionals can strengthen their practice by:
  - Learning about the child's tribal nation.
  - Participating in cultural responsibility training.
  - Learning about the impact of historical trauma.
  - Incorporating tribal customs into case planning, when appropriate.
  - Remaining open to feedback and continued learning.

Words Matter

- Use language that reflects respect.
- Examples:
  - "Tribal nations who share borders with Wisconsin."
    - Avoid language that implies ownership.
- Support culturally responsive practices for all children and families, including LGBTQ+ and Two-Spirit youth.

Maintaining Connections to Culture

- Maintaining connections to an Indian child's tribal nation helps preserve:
  - Identity and belonging.
  - Traditional knowledge and language.
  - Cultural customs and spiritual practices.
  - Community support and resilience.
  - Lifelong connections to tribal heritage.

Supporting Cultural Connections

- When appropriate, support opportunities for children to:
  - Participate in tribal cultural activities and community events.
  - Access culturally relevant books, music, and media.
  - Stay connected through tribal websites, newsletters, and other resources.
  - Connect with spiritual advisors, when requested by the family.
  - Engage tribal child welfare professionals and family members to identify meaningful cultural opportunities.

Supervisor Support: Building Consistent Practices

- CPS Supervisors help ensure (W)ICWA-compliant practices by:
  - Coaching staff on ICWA and WICWA, including active efforts.
  - Supporting meaningful collaboration with tribal nations.
  - Reinforcing culturally responsive practices.
  - Encouraging ongoing learning and use of available resources.
  - Discussing (W)ICWA practices during supervision and consultation.

Leadership's Role in Strengthening Tribal Partnerships

- Agency leaders strengthen collaboration by:
  - Modeling respectful government-to-government partnerships.
  - Creating opportunities for relationship building with tribal nations.
  - Supporting ongoing communication and shared decision making.
  - Promoting collaboration as a standard of practice.
  - Supporting staff in meeting (W)ICWA and active effort responsibilities.

Creating Systems that Support Collaboration

- Leadership can support practice through:
  - Information sharing.
  - Communication planning.
  - Resource allocation.

Early and Consistent Communication

- Meaningful collaboration begins early and continues throughout the case.
- Best practices include:
  - Notify the tribal child welfare agency as soon as an Indian child is identified.
  - Include tribal representatives in initial safety decisions whenever possible.
  - Develop a communication plan early.
  - Maintain regular communication throughout the case.

Develop a Communication Plan

- Discuss early:
  - Preferred methods of communication.
  - Frequency of updates.
  - Level of tribal involvement.
  - Participation in interviews and family visits.
  - Opportunities for shared decision making.
- When needed:
  - Utilize virtual meetings or phone participation.
  - Adapt communication as circumstances change.

Maintain Ongoing Collaboration

- Continue to:
  - Invite tribal participation throughout the case.
  - Share significant developments and decisions.
  - Provide drafts of court documents before filing.
  - Remain open to tribal feedback.
  - Adjust plans when appropriate.
  - *Update Statement of Active Efforts for required Circuit Court hearings (IW-1609)*

Working Together from the Beginning

- When working with an Indian child:
  - Invite the tribal child welfare agency to participate before the initial face-to-face contact, whenever possible.
  - Conduct joint visits when feasible.
  - Develop a plan for ongoing collaboration.
  - Share information throughout the assessment.
  - Include tribal perspectives in assessment and case planning.

Shared Decision Making throughout the Assessment

- Collaborate throughout the assessment by:
  - Sharing information in a timely and secure manner.
  - Consulting on:
    - Safety decisions.
    - Maltreatment findings.
    - Case disposition.
    - Service recommendations.
  - Balancing assessment timelines with opportunities for tribal collaboration.

Collaborative Safety Decision Making

- When safety concerns arise:
  - Continue engaging the tribal child welfare professional.
  - Include the tribe in planning whenever possible.
  - Seek tribal knowledge of family supports and resources.
  - Continue active efforts while addressing child safety.

Protective Plans and Safety Plans

- When developing protective or safety plans:
  - Invite tribal input as early as possible.
  - Identify culturally appropriate supports.
  - Share plans with the tribal child welfare agency.
  - Continue consultation when plans are reviewed or updated.
  - Notify the tribe when plans end.

Placement Decisions

- When placement becomes necessary:
  - Notify and consult with the tribe.
  - Consult extended family identified by the tribe or parents.
  - Follow ICWA and WICWA placement preferences.
  - Continue active efforts while child is in placement.
  - Support ongoing family interaction consistent with court order and permanency plan.

When Direct Tribal Participation Is Not Possible

- If the tribal child welfare agency is unable to participate fully:
  - Continue following the communication plan.
  - Share important case developments and decisions.
  - Continue inviting tribal participation.
  - Remain flexible if the tribe's level of involvement changes.

Coordinating Services Across Systems

- Work together to:
  - Identify culturally relevant tribal and community services.
  - Help families access available resources.
  - Remove barriers to participation.
  - Respect family choice when multiple services are available.
  - Coordinate services to avoid duplication.

Collaborating with Out-of-State Tribal Nations

- The same collaborative principles apply regardless of where a tribal nation is located.
- Keep in mind:
  - ICWA and WICWA apply to all Indian children.
  - Each tribal nation has its own child welfare practices and procedures.
  - Communication approaches may differ from tribe to tribe.
  - Begin planning early for qualified expert witness (QEW) needs when court involvement is anticipated.

Documenting Collaboration and Active Efforts

- Document collaboration throughout the life of the case, including:
  - Contacts and attempted contacts with the tribal child welfare agency.
  - Efforts to confirm tribal membership or eligibility.
  - Communication plans and significant discussions.
  - Cultural information that informed case planning.
  - Tribal resources and services explored or utilized.
  - Safety planning and placement collaboration.
  - Active efforts to prevent the breakup of the Indian family.

Key Takeaways

- Collaboration – engage tribal child welfare professionals early and throughout the case.
- Respect – honor tribal sovereignty, culture, and each tribe's unique practices.
- Active efforts – work alongside tribes and families to support safety and prevent the breakup of the Indian family.
- Responsibility – local CPS agencies remain responsible for ICWA and WICWA compliance.
- Documentation – clearly document collaboration and active efforts throughout the life of the case.

Questions?

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- Appendix 13: Local CPS Agencies' Responsibility to Engage Tribal Nations

Thank You

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