

# INDIAN CHILD WELFARE ACT

## OUR Children, OUR Hope, OUR Future

June 9, 2009

### **Summary**

The 2008-09 Grand Jury reviewed the operation and enforcement within Mendocino County of the Indian Child Welfare Act (ICWA). The United States Congress (Congress) passed ICWA in 1978 to prevent Tribal Indian children from being removed from their Tribal cultural roots. Mendocino County Tribes realized in the mid 1980s-90s that the best interests of their children were not being addressed in local or state courts due to the lack of understanding of ICWA Law.

Federally recognized Tribes in Mendocino County developed a collaboration between the Mendocino County Department of Social Services (currently under the Health and Human Services Agency) and the California Indian Legal Service (CILS) to improve services to local Tribal Indian families. This collaboration brought about the ICWA Roundtable discussions. The ICWA Roundtable consists of Mendocino County Tribal ICWA staff, Tribal Council representatives, Health & Human Services Agency (H&HS) staff, County Counsel, CASA (Court Appointed Special Advocate) Director and local attorneys.

The ICWA Roundtable meetings led to the development of the Mendocino County ICWA Protocol. The turnover of local Tribal ICWA staff contributes to some communication disconnect between the Tribes and Social Services/Child Protective Services (CPS). The lack of Tribal foster care homes in Mendocino County creates a problem for placement of Indian children. H&HS staff stated that the application of ICWA Law has made them more sensitive to *all* children that go through the system.

### **Methods**

The Grand Jury read the Code of Federal Regulations, CFR 25, Chapter 21. The Grand Jury interviewed Mendocino County H&HS/social service staff, local Mendocino County Tribal people and a Mendocino County court appointed attorney and attended an ICWA Roundtable meeting.

### **Background**

In the early 1850's young Mendocino County Tribal women and children were kidnapped and sold as slaves in highly populated areas. This practice grew into an increased trade from 1852 to approximately 1867. Tribal Elders in the Ukiah

Valley told many stories of how fearful they were about having their children stolen. Tribal children were taught to run as fast as they could and hide.

Congress enacted ICWA in 1978 to address legal and social issues facing Tribal Indian families across America. Congress recognized the special trustee relationship between the United States and Indian Tribes as a federal responsibility to Indian Tribes to protect and preserve their continued existence.

Congress recognized that there is no resource more vital to the continued existence and integrity of Indian Tribal families than their children. A high percentage of Indian Tribal families were having their children removed from family homes by public and private agencies. Many Indian children were placed in non-Indian foster care, adoptive homes and institutions by administrative and judicial state court systems that failed to recognize the essential Tribal cultural relationship of Indian Tribal people.

Congress declared that “it is the Policy of this Nation to protect the best interest of Indian children.” Therefore, by Congressional action, it approved and added into the United States Code of Federal Regulations, Title 25, Indians Chapter 21, (CFR 25, Chapter 21) the Indian Child Welfare Act.<sup>1</sup>

### ***Findings***

1. All agencies in Mendocino County must comply with ICWA when dealing with Tribal Indian children. However, when an incident occurs, a child’s heritage is not always apparent.
2. The definition of “Indian” means any person who a member of an Indian Tribe or an Alaska Native. Under ICWA an Indian child means any unmarried person who is under the age of 18 and either (a) a member of an Indian Tribe or (b) eligible for membership in a government recognized Indian Tribe as the biological child of a member of an Indian Tribe.
3. On Tribal land there is concurrent jurisdiction of Tribal government and the County for child welfare. At times, this can lead to jurisdictional issues surrounding investigations by Child Protective Services involving the welfare of these children.
4. Most local Tribes have not designated emergency ICWA safe-houses where Indian children can be placed for immediate protection.
5. There is a lack of Tribal foster care homes in Mendocino County.
6. At the discretion of the Tribal Council, an ICWA representative may be hired to actively represent the interests of an Indian child.
7. Most local Tribes do not have an official Tribal Court.
8. Tribes determine who will be included on their membership rolls and they do not share their official Tribal membership roll with any outside agencies. This

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<sup>1</sup> A copy of the Indian Child Welfare Act and additional information on Indian Child Welfare is available at [www.nicwa.org](http://www.nicwa.org)

makes it difficult to determine an Indian child's legal status if that child resides off Tribal land.

9. Tribal law enforcement and the Sheriff's Office have an understanding of ICWA but city police departments rely on CPS.
10. Turnover in Tribal ICWA and CPS staff cause communication breakdowns.
11. The ICWA Roundtable was established to address communication issues and support enforcement of the law. It consists of Mendocino County Tribal ICWA staff, Tribal Council representatives, H&HS/Social Services staff, County Counsel, CASA Director and local attorneys.
12. ICWA becomes applicable with the first filing of a court document, but its protections are needed by Indian children before such action is taken.
13. In January 2003, this need to extend ICWA protections led the Roundtable members to draft a written protocol to ensure that Indian children stay within the Indian community and to facilitate access to resources for agencies and Tribes working with high-risk Indian families.
14. The ICWA Protocol is being updated.
15. During Indian child custody proceedings, an independent ICWA expert witness may be called to provide requested information.
16. H&HS staff members have stated that the application of ICWA Law has made them more sensitive to all children that go through the system.

### ***Recommendations***

The 2008-2009 Grand Jury recommends that:

1. The Health & Human Services Agency continue to interact with the ICWA Roundtable. (Findings 1, 3, 9-11, 13-14, 16)
2. All law enforcement officials in Mendocino County acquaint themselves with the ICWA Law. (Findings 1, 3, 9)
3. The Mendocino County Board of Supervisors direct Health and Human Services to instruct Child Protective Services to follow CFR 25, Chapter 21 Indian Child Welfare Act, Section 195, subsection (b). (Findings 1, 3, 9, 11-14, 16)
4. Mendocino County Board of Supervisors interact with Tribal Councils as partners in a government-to-government relationship and direct all County Agencies that interact with Tribal Councils, to do so as partners, recognizing Tribal autonomy. (Findings 1, 3, 9, 11, 13-14)

## ***Discussion***

The definition of “Indian” means any person who is an Alaska Native or a member of an Indian Tribe. An Indian child is eligible for membership in an Indian tribe when that child is the biological child of a member of an Indian Tribe. The Grand Jury believes that a child’s heritage should not be ignored.

It took the advocacy of many Tribal Leaders, social workers and educators to secure legal protections for Indian children under the Indian Child Welfare Act. One of the most important points surrounding ICWA and all parties concerned is the subject of trusting one another. This point was voiced by several of the individuals who were interviewed. The Board of Supervisors and City Councils throughout Mendocino County, along with Tribal Government Leadership, might consider a special ICWA Day event. This event could be a day to come together and cross the bridge of the past into the freedom of new friendship where we find that all children are precious.

## ***Required Responses***

Mendocino County Board of Supervisors (Findings 1, 3, 9-14;  
All Recommendations)

Director Health & Human Services Agency (Findings 1, 3, 9-14, 16;  
Recommendations 1, 3, 4)

Mendocino County Sheriff’s Office (Findings 1, 3, 9, 12; Recommendation 2)

Ukiah Chief of Police (Findings 1, 8, 9; Recommendation 2)

Willits Chief of Police (Findings 1, 8, 9; Recommendation 2)

Fort Bragg Chief of Police (Findings 1, 8, 9; Recommendation 2)

## ***Requested Responses***

Round Valley Indian Reservation (All Findings; All Recommendations)

Hopland Band of Pomo Indians (All Findings; All Recommendation)