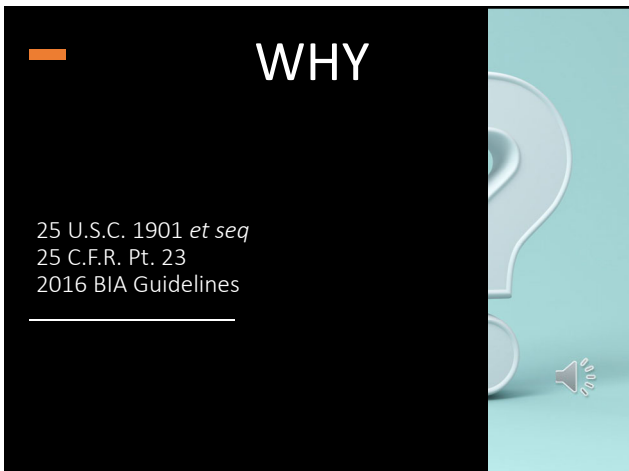




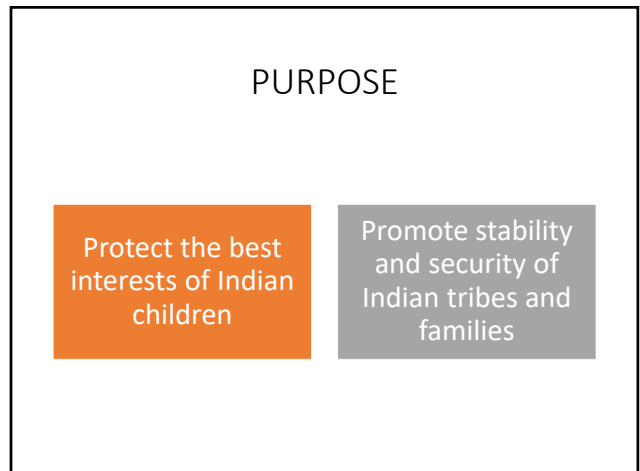
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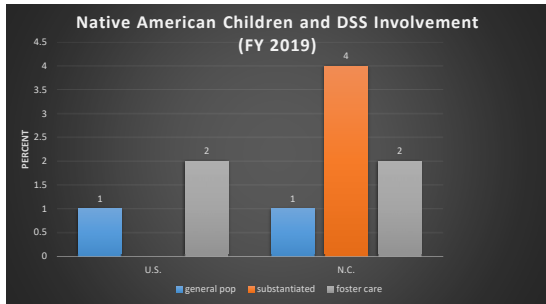
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4

Disproportionality Continues

In re E.J.B., 375 N.C. 95 (2020)



5

NC Supreme Court

“All participants should become familiar with the Indian Child Welfare Act of 1978, codified at 25 U.S.C. ch. 21, and the corresponding regulations, ... to ensure compliance with the ICWA and to assert objections on the record if compliance in a proceeding has not occurred.”

In re M.L.B., 377 N.C. 335, n.4 (2021)

“The state courts bear the burden of ensuring compliance with ICWA.”

In re E.J.B., 375 N.C. 95, 101 (2020).

“The ICWA imposes a duty on the trial court to inquire of participants as set forth in 25 C.F.R. § 23.107(a) in all child-custody cases...”

In re A.L., 862 S.E.2d 163, 168, 2021-NCSC-92, ¶ 27

6

Applies to “Child Custody Proceedings”

Foster Care Placement

Preadoptive Placement

Termination of Parental Rights

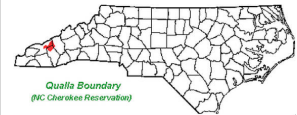
Adoptive Placement

7

574 Federally Recognized Tribes for ICWA



Cherokee, Eastern Band




8

Mandatory Inquiry by Court

- At commencement of a child-custody proceeding
- Of each participant
- Do you know or have reason to the know the child is an Indian child
- Responses on the record
- Instruct parties to inform court if subsequently receives info that provides reason to know

Quick Reference Sheet for State Court Personnel

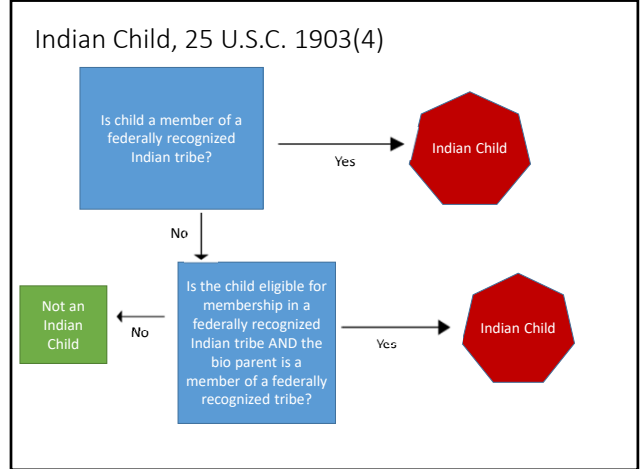


U.S. Department of the Interior, Bureau of Indian Affairs
Final Rule: Indian Child Custody Proceedings
25 CFR 23

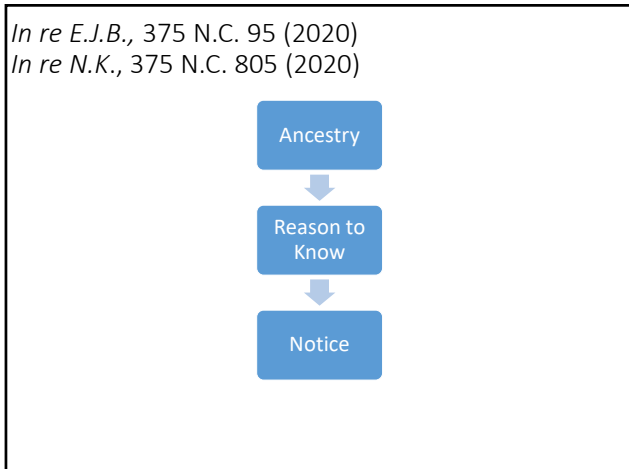
25 C.F.R. 23.107

<https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/ois/pdf/idc2-041404.pdf>

9



10



11

ICWA Inquiry

Biological Parent	Child	Indian Child Status
	Child is Member	KNOW
Parent is a member	Child is eligible for membership	KNOW
Parent is a member	Child is not eligible for membership	NOT
Parent has ancestry with federally recognized tribe	Unknown if child is eligible for membership	REASON TO KNOW
Parent has ancestry with federally recognized tribe	Child is not eligible for membership	NOT
Parent has ancestry with federally recognized tribe	Child is eligible (if child becomes a member)	REASON TO KNOW (Know)

12

Burden: 25 CFR 23.107

Court Inquiry of
Participants

↔

Petitioner/Movant
Due Diligence

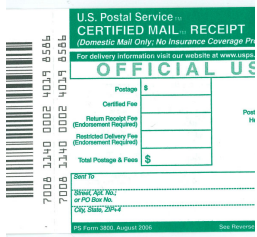
In re A.L., 2021-NCSC92

- Lumbee
- No inquiry on record
- Remanded

13

Notice

- Registered/Certified Mail, Return Receipt
- Parents
- Indian custodians
- Tribe
- Copy to Regional Director
- Specific Contents
 - Include right to intervene



14

<https://www.bia.gov/bia/ois/dhs/icwa/icwa-notice>

ICWA Notice

Overview

Human Services

Indian Child Welfare Act

Adoption Decree

ICWA Notice

Child & Adult Protection

Financial Assistance

Housing Improvement Program

An ICWA Notice is a notice issued when an **involuntary** child custody proceeding involves an Indian child.

An "Indian child" is defined as any unmarried person under the age of 18 who is either:

1. A member of a **Federally** recognized Indian Tribe; or,
2. The biological child of a **member of a** federally recognized Indian Tribe, and is **eligible for membership** in a federally recognized Indian Tribe.

AN ICWA NOTICE IS


Required

- For **involuntary** foster-care placements; and,
- For termination-of-parental-rights proceedings.

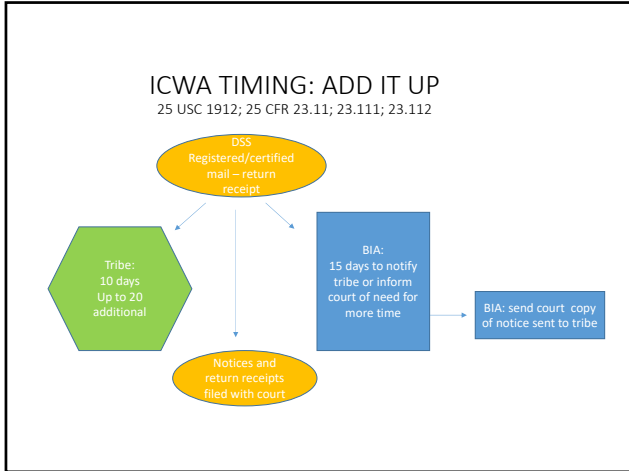
15

Fails to respond to "multiple written requests"

In re E.J.B.



16



17

Can be Cured
In re E.J.B.; In re D.J., 2021-NCSC-105)

TPR

Post-TPR

Other

18

Subject Matter Jurisdiction
25 U.S.C. 1911, 1919

Tribal Court

- Child domiciled or resides on reservation
- Child is ward of tribal court

State Court

- Agreement b/t Tribe and State re: jurisdiction
- Must be admitted in evidence

19

On the Civil Side

The Indian Child Welfare Act (ICWA)* is a complex federal law that applies to abuse, neglect, or dependency (A/N/D), termination of parental rights (TPR), and adoption proceedings. One of the purposes of ICWA is to provide special protections to federally recognized Indian tribes and the tribes' children and families. See 25 U.S.C. 1901-1902.

Subject matter jurisdiction between tribal courts and state courts is governed by ICWA when an "Indian child" is the subject of the A/N/D, TPR, or adoption proceeding. When any of the criteria of 25 U.S.C. 1911(a) are met, the tribal court has exclusive subject matter jurisdiction. When that criteria do not exist, ICWA allows for concurrent jurisdiction between state and tribal courts. See 25 U.S.C. 1911(b), (c). The N.C. Court of Appeals (COA) recently published two opinions addressing subject matter jurisdiction under ICWA. In one case, the COA held that the N.C. court had jurisdiction in an adoption proceeding that involved two Indian children. In the other case, the COA remanded for further proceedings in the trial

20

Transfer to Tribal Court

- Upon request (orally or in writing)
- At any stage



21

Other Requirements

Placement Preferences

Active Efforts

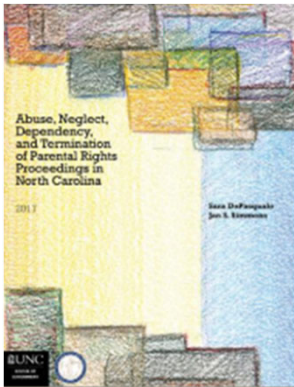
Qualified Expert Witness re:
serious emotional or physical damage to child

TPR: Beyond a Reasonable Doubt of serious emotional or physical damage to child

22

Chapter 13
Relevant Federal Laws

Chapter 13.2 + Ctrl F



23