

Family Healing to Wellness Courts and “Active Efforts”

Lauren van Schilfgaarde

Carrie Garrow

Tribal Law and Policy Institute



- 60–80 percent of child abuse and neglect cases involve parental substance use
- AI/ANs reported a SUD at nearly twice the rate (16%) as any other group (8.5%)
- AI/AN children are more likely to be victims of neglect than other races, but are less likely to be victims of physical abuse.



Impact of SUD on Children

Risk factor for maltreatment and child welfare involvement

Associated with longer out-of-home placements

Higher rates of child re-victimization

Higher rates of termination of parental rights

More likely to reenter foster care after reunification

Poor parenting

Substance use is associated with trauma

Youth more at risk to experience substance use disorders

Indian Child Welfare Act

- Applies to all *state* child welfare proceedings concerning an Indian child
- “Gold standard” for child welfare policy



Why “Active Efforts”?

- The mandate to provide “active efforts” is intentional. Earlier versions of ICWA required merely making services “available”.
- Intent to
 - force state systems to consider the differing cultural and social norms in Indian communities.
 - Assist **Indian** parents who lacked the means to adequately navigate the legal system,
 - Only 10 percent of **Indian children** and their parents were represented by counsel at involuntary placement **proceedings**.

“Active Efforts” - Statute

25 U.S.C. § 1912(d):

When a child welfare case stays in state court, the state must ensure

- “**active efforts** have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.”

Case Law on "Active Efforts"

Attempts to circumvent:

- "Existing Indian Family" exemption
- A parent's "unwillingness" to change or participate
- Interchangeable with "reasonable efforts"
- Imputing prior efforts

Insufficient:

- "Referring"
- Burdening parent with locating and holding service providers accountable

- *Active efforts* means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her custodian
 - through the steps of case plan, and
 - with accessing or developing the resources necessary to satisfy the case plan.

Active efforts should be provided in a manner

- consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe
- in partnership with the Indian child, family, and Tribe, and
- tailored to the facts and circumstances of the case.

Active efforts may include:

- 1) Comprehensive assessment
- 2) Identifying and actively assisting in obtaining appropriate services
- 3) Inviting Tribe to participate in providing support and services
- 4) Searching for extended family members
- 5) Using culturally appropriate family preservation strategies
- 6) Supporting regular visitation
- 7) Identifying community resources
- 8) Monitoring progress and participation in services
- 9) Considering alternative ways to address the needs of parents
- 10) Providing post-reunification services and monitoring



What Role Do (Should)
Tribes Have?

Tribal Healing to Wellness Courts

The term:

- incorporates two indigenous concepts - Healing and Wellness
- promotes wellness as an on-going journey





*Family Treatment Court
Best Practice Standards*



Center for Children and Family Futures
Strengthening Partnerships. Improving Family Outcomes.



NADCP
National Association of
Drug Court Professionals

Individualized
Case Plan

Adjoins dependency and
treatment case plans

Incorporates cultural activities
and worldview

Multi-
Disciplinary
Team

Collectivizes accountability
for service access through
support and **supervision**

Brings in family members
and service providers as key
roles

Meets Weekly

Normalizes (frequent)
information-sharing between
agencies

Transfers burden from parents
to service-providers

Replaces the court hammer
with incentives and sanctions

Engaging Tribe

- (2) Identifying appropriate services and helping the parents to overcome barriers, *including actively assisting* the parents in obtaining such services.

- (3) Inviting representatives of the Tribe to participate in providing support and services to the family.

- (4) Conducting a diligent search for the child's extended family members to provide family structure and support.

Regulations

25 C.F.R. § 23.2

Multi-Disciplinary Team

- Tribal Court and Law Enforcement
- Social Services
- Treatment and Behavioral Health
- Ancillary providers
 - Housing
 - Mental Health
 - TANF
 - Cultural Department
 - Transportation
 - Vocational



Milestones

Integration of Wellness Court
phases and social service
reunification plan

Formal integration of cultural
component

1. Engagement
2. Unsupervised Visit
3. Overnight Visit
4. Weekend Visit
5. Child Return Home
6. Graduation



Reunification Timetables

- Not all Tribal Social Services operate under the ASFA Timelines
 - Must file termination of parental rights when a child has been in foster care for 15 of the last 22 months
 - Must have permanency hearing no later than 12 months after the child has entered foster care
- Title IV-E – Yes
- Title IV-B – No



Prevention Strategies

- (5) Offering and employing all available and culturally appropriate family prevention strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;
- (7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;

Regulations

25 C.F.R. § 23.2

Culturally Responsive Services

Integrated cultural components

- Cultural advisors
- Healing ceremonies/sweats
- Community service with/for community/spiritual leaders
- Language classes
- Cultural classes
- Arts and crafts
- Family genealogy

Traditional parenting skills

- Positive Indian Parenting
- Strengthening Families
- Traditional knowledge bearers

- (7) Identifying community resources including
 - Housing
 - Financial
 - Transportation
 - Mental Health
 - Substance Abuse
 - Peer Support Services
- and actively assisting the parents and family in utilizing and accessing those resources.

Treatment

- Intensive out-patient
- Curriculum-based therapies
- Individual and group therapies
- Residential/In-patient
- Medication-assisted treatment



Family-Centered Services

- Structure services that recognize addiction is a **family disease** and that recovery and well-being occurs **in the context of families**

Other *Key* Components



Supervision



Incentives and
Sanctions



The Role and
Impact of the
Judge

The Tribal Law and Policy Institute

wellness@tlpi.org

WellnessCourts.org

www.Home.TLPI.org

