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Learning Objectives

- Participants will improve their knowledge of the history and elements of the Indian Child Welfare Act (ICWA) of 1978 and how the law is applied by state child protective agencies.

- Participants will be able to show a basic understanding of the Arizona Department of Child Safety processes and the application of ICWA and related policies and procedures.

- Participants will be able to show a basic understanding of the components and responsibilities of a mandatory reporter.

- Participants will be able to define the legal definitions of abuse and neglect as defined by Arizona Statute.
Questions:

Question 1: How many tribes are there in AZ? In the US?
562 Federally Recognized Tribes Approx 229 in Alaska. 21 Federally Recognized tribes in AZ. 5.2 Million or about 2 percent of the population and in AZ 345,000 or 5.4 percent

Question 2: What makes tribes...different?

Question 3: What do you know about ICWA? Why was it passed?

Question 4: What Indian/Tribal resources are available to you in the work that you do?
Historical Perspective

• Federal Indian Policy:
  • Doctrine of Discovery: 1492-1600’s
  • Treaty Making Era: 1600-1871
  • Indian Removal Era: 1830-1850
  • Marshall Trilogy:
    • Johnson v. McIntosh—Private Citizens could not purchase lands from Indians. Established DOD
    • Cherokee Nation v. Georgia—Defined Domestic Dependent Nations Like a Ward to a Guardian.
    • Worcester v. Georgia—Defined relationship between tribes and state and Federal government
Historical Perspective

- Reservation Era: 1850-1880’s
- Allotment & Assimilation: 1887-1930’s
- Indian Reorganization Era: 1930’s-1945
- Termination and Relocation Era: 1945-1961
- Indian Self Determination: 1970-Present
Historical Perspective
Historical Perspective

- Dawes Act 1887
- Meriam Report 1928
- Indian Reorganization Act 1934
Historical Perspective

- Termination and Relocation Era: 1945-1961
- 1960’s-Present: American Indian Self Determination Policy
  - Civil Rights Era
  - AIM
  - President’s Johnson and Nixon as champions
- Indian Self Determination and Education Assistance Act aka PL 93-638
- Indian Child Welfare Act
Historical Perspective

Kill the Indian—Save the Man
---Capt. Richard Pratt
Founder Carlisle Indian School
The Indian Child Welfare Act (ICWA) of 1978

A federal law that:

- Governs the removal and due process rights of American Indian children.
- Establishes standards for the placement of Indian children in foster/adoptive homes.
- Enables Tribes and families to be involved in child welfare cases.
DCS Mission & Vision

Our **vision** is to see the children of Arizona thrive.

We believe children thrive in family environments free from abuse and neglect.

Our **mission** is to successfully engage children and families to ensure safety, strengthen families, and achieve permanency.
Federal Expectations

- Child Safety
- Permanency
- Well-being
Arizona Department of Child Safety

• In CY 2018 DCS took 46,901 reports.

• Out of those reports, 71.2% were for neglect, 24.75% were for physical abuse, 3.55% were Sexual abuse, .5% were for emotional abuse.

• As of December 2018 DCS has nearly 13,782 children in Out of Home Care, down from 17,390 in FY 2017.

• As of the beginning of April there were approximately 950 American Indian/Alaska Natives in Out of Home Care down from a high of over 1600 in 2017
DCS and ICWA

• How does it all begin?
  Report is called into the hotline or we receive a court ordered investigation
  → Investigation begins
    Is the child safe? Yes → Close case and Recommend Services
    → No Is the child in imminent danger or at risk? Yes
    → Temporary Custody
    → Placement → Family? Foster? Group Home?
      → Plan → Reunification → Services → Close case
      → Not possible → Plan→ Permanency
          Adoption
          Guardianship
          Independent Living
          Age out

Close Case
When Does ICWA Apply?

When there is a child custody proceeding involving an Indian child.

- Foster Care Placements
- Guardianships
- Termination of Parental Rights
- Pre-Adoptive Placement
- Adoptive Placements
- Voluntary Placements
Five Key Elements for State Child Protective Agencies

- Tribal Identification
- Tribal Notification
- Qualified Expert Witness
- Active Efforts
- Placement Preferences
Tribal Identification

• Make diligent efforts to identify children who are subject to ICWA within **FIVE** days of a case opening for investigation.
  • Child a member of a recognized tribe? **OR**
  • Child eligible for membership in a recognized tribe? **AND**
  • Parent of the biological child is a member of a recognized tribe?
Tribal Notification + + = ICWA
Tribal Notification

Within 48 hours of a child being taken into custody, DCS shall contact the child’s tribe to:

• Notify them that the child is in DCS custody.
• Explore available services of the tribe that may address the safety needs of the child.
• Assist the parent to retain custody of the child.
Qualified Expert Witness

- Provide expert testimony to the Court on the social and cultural aspects of Indian life.
- Diminish the risk of cultural bias.
- Accomplish a foster care placement of an Indian child.
- Determine the “Active Efforts” of the state agency to prevent the break up of the Indian Family.
- Testify to the above only. Other Expert Witnesses are still allowed/necessary to testify about other related issues.
Active Efforts

Active efforts vs. Reasonable Efforts

• **Reasonable Efforts** is providing referrals and access to the services needed by a parent to make necessary behavioral changes.

• **Active Efforts** requires engagement of the family and taking them through the steps necessary to make behavioral changes.
Active Efforts

Examples of Active Efforts:

• Ensure siblings are placed together.
• Actively assist a parent to access services.
• Invite tribal representatives to participate in planning/services.
• Diligent search for extended family members.
• Offer and provide culturally appropriate family preservation services.
• Family interaction takes place in a natural setting.
Placement Preferences

• With a member of the child’s extended family.
• With a foster home licensed, approved or specified by the child’s tribe.
• With an Indian foster home licensed or approved by a non-Indian licensing authority.
• With an institution for children approved by an Indian tribe which is suitable to meet the child’s needs.
The Statute states:

“any person who reasonably believes that a minor is or has been the victim of physical injury, abuse. . . or neglect... inflicted on the minor by other than accidental means shall immediately report or cause reports to be made . . . To a peace officer or to child protective services.”
Any person, Reasonable Belief, Is or has been

- Any medical professional, mental health professional, social worker/advocate, school personnel, peace officer, parent/step-parent/guardian or any person who has the responsibility for the care or treatment of the minor.

- A child discloses to you information indicating abuse or neglect; A child has unexplained or inconsistent injuries; A third person gives you reason to believe abuse or neglect has occurred.

- Currently being abused; Has been abused in the past

  Regarding sexual abuse
  15 and under - there is no statute of limitations
  Over 15 there is a statute of limitations of 7 years
Statutory Authority
A.R.S. § 8-445

“The Department shall operate and maintain a centralized intake hotline to protect children by receiving at all times communications concerning suspected abuse and neglect.”
Hotline Facts

- Centralized in November 1994
- Statewide; open 24/7, 365 days a year
- The Hotline averages about 153,000 phone calls per year
- Approximately 36% of calls result in a DCS report
- Over 70% of communications are actionable by our Department
- The Online Reporting Service receives about 330 communications per month
  - 35% result in DCS reports
- When school is in session, the Hotline averages around 550 calls per day (Monday-Friday)
- On weekends, the Hotline averages around 230 calls per day
Definitions of Abuse and Neglect

A.R.S. § 8-201

➢ Abuse
  ➢ “Infliction of or allowing of physical injury, impairment of bodily function or disfigurement”
  ➢ Examples: Skin bruising, fractures, burns, malnutrition, failure to thrive, injury to internal organs, etc.
  ➢ Sexual abuse (sexual assault, molestation, exploitation, etc)
  ➢ Emotional abuse (Name calling, berating, targeting, etc)

➢ Neglect
  ➢ “Inability or unwillingness of a parent, guardian, or custodian to provide a child with [basic needs] if that inability or unwillingness causes an unreasonable risk of harm...to the child”
  ➢ Examples: Domestic violence, substance abuse, mental health concerns, environmental concerns, substance exposed newborns, supervision concerns, etc.
Report Definition

To meet the criteria for a report of child maltreatment, the following must be alleged:

- The suspected conduct would constitute abuse or neglect
- The alleged victim is under eighteen years of age
- The suspected victim of the conduct is a resident of or present in Arizona
- The person suspected of committing the abuse or neglect is the parent, guardian, or custodian of the victim or an adult member of the victim’s household
- The location or identity of the child/family can be reasonably ascertained
Duty to Report
A.R.S. § 13-3620(A)

When and what should a person report?
Reasonably believes:
• A child is a victim
• Suspected abuse/neglect is current or historical
• Non-accidental physical injury, abuse and/or neglect

Who should a person report to?
• Law Enforcement
• Department of Child Safety
Reasonable Belief

- A child discloses to you information indicating abuse or neglect.
- A child has unexplained (non-accidental) injuries or an explanation that is inconsistent with the injuries.
- Someone provides reliable information about a child that has been abused or neglected.
Not Within DCS Authority, 
Administrative Rules R21-3-202

- Educational neglect delinquency for children 8+
- Absent parents who made appropriate arrangements for child’s care
- Child receiving medical treatment from an accredited Christian Science practitioner, or other religious or spiritual healer (unless child’s health is endangered or child is in imminent harm)
- Minor hygiene problems or lifestyle of the parent
- Custody or visitation issues
ABUSE OF A CHILD CAN BE?

EMOTIONAL ABUSE

PHYSICAL ABUSE

SEXUAL ABUSE

NEGLECT
If a child discloses neglect or abuse to you...

- **DO NOT** conduct a child interview!!
- **DO NOT** notify parents
DCS and IHS

• Partnership
  • What are the needs/challenges?
  • How can DCS work better with IHS?
  • How can DCS work with you?
• Suspect child abuse? Mandatory Reporter—888-SOS CHILD or 888-767-2445
For further ICWA Information

National ICWA Assoc.:  www.nicwa.org
BIA:  www.bia.gov/bia/ois/dhs/icwa
NARF:  www.narf.org/nill/documents/icwa/
ITCA:  itcaonline.com
DCS:  extranet.azdcs.gov/DCSPolicy
      (Program Policy--Chapter 6)
Resources

Phoenix Indian Center: phxindcenter.com
Native Health: www.nativehealthphoenix.org
Native Connections: www.nativeconnections.org
Three Precious Miracles: www.threepreciousmiracles.com
NACA: www.nacainc.org
Tucson Indian Center: www.ticenter.org
IHS: www.ihs.gov
Thank You!

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