



# Tribal Social Services Working Group

Kenneth G. Poocha

Intergovernmental Tribal Liaison—Arizona Department of Child Safety

February 1<sup>st</sup> 2017



# Tribal Social Services Working Group

- ▶ Tribal Liaison
  - ▶ Update: ICWA Specialist
  - ▶ ICWA New Regulations/DCS Policy Update
  - ▶ Tribal Consultation Update
  - ▶ AFCARS ICWA Data Elements-Final Rule
- 



# Tribal Social Services Working Group

- ▶ DCS Tribal Liaison

- ▶ DCS Investigator in Prescott Office for past 3 ½ years
- ▶ Yavapai-Prescott Indian Tribe—Director of Education and Tribal Law Enforcement
- ▶ Private Consultant—Non-Profits and Tribal/Urban Indian communities. Issues such as strategic planning, cultural competency, healthy care, youth programs etc.
- ▶ Executive Director of the Arizona Commission of Indian Affairs
- ▶ Arizona Alliance of Community Health Centers
- ▶ AIDA—Juvenile Justice Systems
- ▶ University of Arizona—BA Sociology and MA in American Indian Studies
- ▶ Flagstaff—Father-Hopi Mother-Santa Ana Pueblo



# Tribal Social Services Working Group

- ▶ DCS ICWA Specialist
  - ▶ “In Process” Currently the position is in its final stages with HR
  - ▶ 30 days? Posted ASAP
  - ▶ Job Description:
    - ▶ Provide technical assistance and consultation to DCS Specialists, tribal representatives and clients regarding the application of ICWA to DCS Cases
    - ▶ Prepare and provide training to internal staff and external stakeholders
    - ▶ QEW
    - ▶ Represent the department at various external meetings and committee's
  - ▶ Requirements: Masters or Bachelors degree in Social work, AIS or other related subject; four years of advanced child welfare experiences; knowledge of ICWA and tribal/Indian culture/systems
  - ▶ Please encourage appropriate people to apply!



# Tribal Social Services Working Group


- ▶ New BIA Regulations

- ▶ New Rules implemented 12/12/16 to:

- ▶ Provide a uniform Federal standard.
    - ▶ Promote nationwide consistency.
    - ▶ Provide clarity that will reduce litigation and produce better outcomes for children.
    - ▶ Effective December 12, 2016
    - ▶ Codifies guidelines that were effective in Feb. 2015.
    - ▶ **Binding federal law** applicable to DCS, the courts and any child placing agencies.
    - ▶ Does not apply to proceedings initiated prior to 12/12 BUT does apply to subsequent proceedings initiated after 12/12 affecting the custody/placement of the same child.



# Five Key Elements

- 
- ▶ 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?
  - ▶ Is your child of any American Indian heritage? Eligible for enrollment? or Enrolled in an American Indian tribe?
  - ▶ No, Yes, Maybe, I don't know.
- ▶ Burden is on DCS
  - ▶ Three Big Opportunities: 1. Duty to Inform 2. Interview Process 3. Dependency Petition



# Tribal Identification

- ▶ NEW BIA REGULATIONS

- ▶ If the Court has a “reason to know” they must confirm that DCS has made diligent efforts to confirm ICWA eligibility.
- ▶ If the Court has a “reason to know” they must treat the child as if he/she is an Indian child unless evidence is presented that the child is not eligible.





# Tribal Identification

- ▶ Sovereign Nations have the authority to make decisions regarding their children
- ▶ Indian children are not just members of a racial classification they are citizens of a sovereign nation
- ▶ This is not based on race, This is based on children who are member of two nations;
- ▶ USA by Birth and Tribal Citizen by blood, heritage, and rules governed by each Tribe
- ▶ Seek legal advice from AG
- ▶ Seek guidance from DCS Tribal Liaison



# 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.
  - ▶ ICWA Compliant Homes—List? Recruitment? Licesend?
  - ▶ Is your contact list current with DCS? With the Federal Register? Notifying DCS and Feds of any changes in a timely manner
    - ▶ DCS will: report that a child has been removed; inform about TDM's or other family meetings being scheduled; and report on the status of filing a dependency petition in state court
  - ▶ Tribal IGA/MOU



# Tribal Notification

- ▶ New BIA Regulations
  - ▶ Dependency petition revised to allege “emergency removal” for known ICWA cases.
  - ▶ No foster care or termination proceeding may be held until at least 10 days after notice to the parents and tribe.
  - ▶ The parents and/or tribe may ask for an additional 20 days.
  - ▶ Requires tribes to be notified by registered/certified mail prior to each of the following proceedings:
    - ▶ Foster care placement, Termination of Parental Rights, Pre-adoptive placement, Adoptive placement
  - ▶ Revising dependency petition to specifically allege "emergency removal" for cases where a child is known to be an Indian child at the time the petition is being filed (so that the temporary custody hearing will be an "emergency removal" hearing under ICWA and will not require "active efforts" or expert witness testimony).



# 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.
- Kassandra Gooden DCS QEW. 602-255-254 Email: [kgooden@azdes.gov](mailto:kgooden@azdes.gov)



# 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.
- ▶ List? Recruitment? Become a foster parent—DCS Website [DCS.AZ.GOV](http://DCS.AZ.GOV)



# Placement Preferences

- ▶ New BIA Regulations limit the Court's discretion for a good cause exception:
  - ▶ Upon parent's request if the parent has reviewed all placement options that do comply with the preferences.
  - ▶ Based upon a child's request if able to understand the decision.
  - ▶ Sibling attachment that can only be maintained through a specific placement.
  - ▶ Extraordinary needs of the child.
  - ▶ Unavailability of placement following a diligent search.
  - ▶ A good cause exception can no longer be made as a result of ordinary bonding that occurred as a result of failure to follow ICWA placement preferences.





# DCS Policies and Procedures

- ▶ DCS Policies and Procedures
  - ▶ DCS Website: [DCS.AZ.GOV](http://DCS.AZ.GOV)
    - ▶ About: DCS Policies and Procedures
      - ▶ Arizona Department of Child Safety: Policy and Procedure Manual
        - ▶ Chapter 6: Chapter 6: Indian Child Welfare focuses on policy and procedures related to working with American Indian children and families



# AFCARS ICWA Data Elements

- ▶ Adoption and Foster Care Analysis and Reporting System
  - ▶ The Social Securities Act requires that Administration for Children and Families (ACF) regulate a national data collection system that provides comprehensive demographic and case specific information on children who are in foster care and adopted.
    - ▶ Demographic characteristics of adopted and foster children and their parents
    - ▶ Status and characteristics of the foster care population
    - ▶ The extent and nature of assistance provided by government programs for foster care and adoption and the characteristics of the children that receive the assistance
    - ▶ The number of foster children identified as sex trafficking victims before entering or while in foster care



# AFCARS ICWA Data Elements



- ▶ Believed that the changes will:
  - ▶ Provide better data on core ICWA requirements such as “active efforts” and placement preferences as well as assess how the child welfare system is working for Indian children
  - ▶ Facilitate access to culturally appropriate services to extend families and other tribal members who can serve as resources and high quality placements for tribal children
  - ▶ Help address and reduce the disproportionality of AI/AN children in foster care
  - ▶ Provide avenues for collaboration between states and tribes that are more meaningful and outcome driven




# AFCARS ICWA Data Elements

- ▶ October 19<sup>th</sup>, 2019 is the effective date for implementing the rules
- ▶ DCS is creating a new case management system called Guardian to be rolled out within the next few years
- ▶ Most likely we will ask for a waiver on the effective date so that the changes can be built in to the new system rather than trying to overhaul and/or change our current case management system
- ▶ Regardless it will still rely on good data in if you want good data going out
- ▶ Updates as available

# Questions?



???





# Contact Information

## **Kenneth G. Poocha**

*Intergovernmental Tribal Liaison*

Phone: 928-759-1916

Cell: 928-227-7077

Email: [kpoocha@azdes.gov](mailto:kpoocha@azdes.gov)

1000 Ainsworth, Suite C-320

Prescott, AZ 86303

