



Measuring Compliance with the Indian Child Welfare Act: An Assessment Toolkit



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Using this
 Toolkit

Introduction

Where to
 Start?

Data Collection
 Approaches

Case File Review
 Court Observation
 Surveys
 Focus Groups

Things to
 Consider

How to Use
 the Data

Putting this
 All Together

Resources

The National Council of Juvenile and Family Court Judges® (NCJFCJ), headquartered on the University of Nevada campus in Reno since 1969, provides cutting-edge training, wide-ranging technical assistance, and research to help the nation’s courts, judges, and staff in their important work. Since its founding in 1937 by a group of judges dedicated to improving the effectiveness of the nation’s juvenile courts, the NCJFCJ has pursued a mission to improve courts and systems practice and raise awareness of the core issues that touch the lives of many of our nation’s children and families.

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Acknowledgements:

This document was supported by Grant Number 2010-DD-BX-K026 and Cooperative Agreement No. 2012-MU-MU-K001 from the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. The U.S. Department of Justice was not involved in the study design; collection, analysis, and interpretation of data; or in the writing of the manuscript. Points of view or opinions are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice or the National Council of Juvenile and Family Courts Judges.

Suggested Citation:

Summers, A. & Wood, S. (2014). *Measuring Compliance with the Indian Child Welfare Act: An Assessment Toolkit*. Reno, NV: National Council of Juvenile and Family Court Judges.



ICWA
COMPLIANCE
TOOLKIT

Using this Toolkit

The Indian Child Welfare Act (ICWA) was passed in 1978 in an effort to improve the court's handling of child abuse and neglect cases involving Native American youth and to ensure that meaningful tribal connections are maintained. Even though the law has been in effect for more than 35 years, state courts still struggle with understanding and effectively applying ICWA requirements. *Measuring Compliance with the Indian Child Welfare Act: An Assessment Toolkit* is meant to help those interested in assessing their state court's performance related to compliance with ICWA.

The *Toolkit* is not meant to be an exhaustive resource list, but merely a starting point to think about how to measure performance. To that end, there are several sections that may be of interest.

Where To Start introduces the idea of using research questions as a starting point in research. This section identifies several common research questions and how to think about data collection.

Data Collection Approaches compares and contrasts four different methods of data collection, including the strengths and weaknesses of each approach. In each section, there is an example instrument that has been developed or sample survey questions that can be used. These sample tools can be used to begin data collection efforts, or to begin conversations with those interested in performance. The tools can also easily be modified to meet the unique needs of the site.

Things to Consider in Choosing the "Right" Approach identifies some important research considerations to think about when selecting the right approach for your site. This section tries to explain some important research considerations in user friendly terms.

How to Use the Data discusses strategies for reporting the data and how to use the data after it is collected.

Putting This All Together provides some concrete examples of prior successful ICWA compliance research projects. This includes sample findings from two prior research reports.

The *Toolkit* is just an introduction, it is important to understand that you may need additional resources to help with performance measurement. There are resources available, as discussed in **Resources to Put This Into Practice**, that can be used to maximize efforts. There is a lot of interest in understanding how the states are performing related to ICWA and many people who can help you with your needs.

Using this Toolkit

Introduction

Where to Start?

Data Collection Approaches

Case File Review
Court Observation
Surveys
Focus Groups

Things to Consider

How to Use the Data

Putting this All Together

Resources



Introduction

The Indian Child Welfare Act (ICWA) was enacted in 1978, in response to the alarming number of Native American children who had been removed from their families and placed in non-Indian homes, isolated from their tribe, their history, and their culture. ICWA sets federal requirements for state or private agencies related to the removal and placement of Native American children who are members of or eligible for membership in a federally recognized tribe. These requirements are stricter than standard requirements for removal, with the intent to “protect the best interest of Indian children and to promote the stability and security of Indian tribes and families” (25 U.S.C. § 1902). ICWA also sets specific guidelines related to placement of the child, when removed, with identified preferences giving priority to relatives and tribal homes, to help maintain the invaluable connection to Indian culture.¹

While the intent of ICWA was to end abusive practices and improve outcomes for Native American families, Native American children still disproportionately enter into foster care. The most recent estimates indicate that, nationally, Native American children are overrepresented in the foster care system at a rate of 2.1. That means that the proportion of Native American children in foster care is more than twice as high as the proportion in the general population. While many states have little to no disproportionality, others have in care rates more than 10 times the general population rate (i.e., Minnesota). The map below illustrates the current rates of Native American disproportionality in the U.S. Green indicates a disproportionality index of 1.3 to 2.0, yellow indicates 2.1 to 3.0, orange indicates 3.1 to 4.0, and red equals 4.0 or higher.²

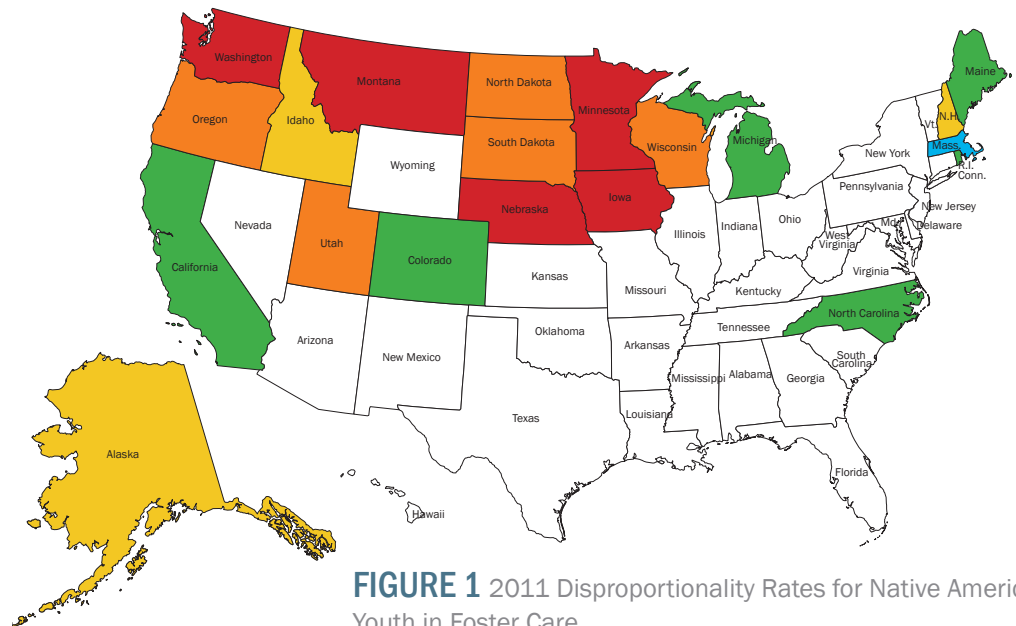


FIGURE 1 2011 Disproportionality Rates for Native American Youth in Foster Care

¹ The entirety of the ICWA is attached in Appendix A, for reference.
² For more information about disproportionality, see Disproportionality Rates for Children of Color in Foster Care, available here: <http://www.ncjfcj.org/sites/default/files/Disproportionality%20Rates%20for%20Children%20of%20Color%20in%20Foster%20Care%202013.pdf>

- Using this Toolkit
- Introduction
- Where to Start?
- Data Collection Approaches
 - Case File Review
 - Court Observation Surveys
 - Focus Groups
- Things to Consider
- How to Use the Data
- Putting this All Together
- Resources



ICWA
COMPLIANCE
TOOLKIT

Using this
Toolkit

Introduction

Where to
Start?Data Collection
ApproachesCase File Review
Court Observation
Surveys
Focus GroupsThings to
ConsiderHow to Use
the DataPutting this
All Together

Resources

Figure 1 illustrates the dramatic variance of Native American disproportionality in the United States. While more than half of the states show no disproportionality, others have rates that are 6 to 10 times higher than the general population. When interpreting this map, it is important to understand that the states with no disproportionality still may have Native American children in foster care, it just may not be disproportionate to their rate in the general population.

Although ICWA was passed more than 30 years ago, it is unclear how well state courts have implemented the statutory requirements into practice. In part, this is likely due to misunderstandings of the law, including when and how to apply it. State courts may not think that they have Indian children (particularly if they have no federally recognized tribes), so do not ask the family about ICWA, which makes it impossible to apply the law as intended. Even in states with large Native populations, there is still confusion regarding how and when to apply the law, including providing notice to the tribes and making active efforts. This is further complicated by the fact that state courts rarely have mechanisms in place to assess their compliance with ICWA. In order to understand how states are performing related to ICWA and whether this may have some impact on the Native American disproportionality rates and poor outcomes for Native American families involved in the foster care system, it is important to first understand how well the state courts are complying with ICWA.

The National Council of Juvenile and Family Court Judges (NCJFCJ), along with several national partners, are committed to helping state courts achieve full ICWA compliance. The NCJFCJ passed a **resolution** in support of full implementation of ICWA and developed resources to help state courts in achieving this goal. These resources include *Improving Compliance with the Indian Child Welfare Act: A Guide for Juvenile and Family Courts*, a Technical Assistance Bulletin that provides recommendations and tools to help judges to comply with ICWA and the recent publication of *Indian Child Welfare Act Facts & Fiction*, a helpful document that clarifies some of the common misconceptions related to ICWA.³ *Measuring Compliance with the Indian Child Welfare Act: An Assessment Toolkit* (herein after *Toolkit*), contributes to this goal by providing concrete tools and recommendations for the state courts to assess their current compliance with ICWA.

³ More information about ICWA resources can be found here: <http://www.ncjfcj.org/resource-library/publications/tribal-issues>.



ICWA
COMPLIANCE
TOOLKIT

Where to Start? CHOOSING A METHODOLOGY

Measuring compliance with ICWA is like any other performance measurement task in that there is no one correct way. There are various approaches to data collection (e.g., case file review, court observation, surveys, focus groups, etc.). To identify the best data collection approach, it is important to consider what your research questions are. That is, what questions are the data trying to answer? Research questions can be any (measurable) thing that you wish to know. Often these questions begin very broad or general, such as:

- Are the courts handling ICWA cases differently from non-ICWA cases?
- Are the courts complying with the requirements of ICWA?
- What are the courts' challenges in fully complying with ICWA?

The broader questions often lead to more specific questions, such as:

- At what point is the tribe being notified?
- Is notification to the tribe timely (within the timeframes specified by ICWA)?
- Is there evidence of testimony from a qualified expert witness? At what point in the case does this occur? Are the qualifications of the expert clearly indicated?
- Are the courts always making a finding that removal was necessary to prevent imminent physical damage or harm to the child when the child is removed from the home?
- How often do the tribes intervene in ICWA cases?
- How often are ICWA cases transferred to the tribe?
- If a case is denied transfer, what are the reasons?
- At what point (and how often) are courts making active efforts findings?
- Does child placement follow the placement preferences outlined in ICWA? If not, why not?

Once the research questions are identified, the next step is to decide how the questions will be answered. This entails making decisions regarding which data need to be collected to best answer the research question. Keep in mind that the same research question can be answered in several different ways and that each answer may involve the collection of different pieces of information. Using the “Are the courts handling ICWA cases differently from non-ICWA cases?” example research question, researchers would need to decide what “handling ICWA cases differently from non-ICWA cases” means. Does this mean offering different services to families involved in ICWA cases compared to families involved in non-ICWA cases? If so, then data would need to be collected on the services being offered to families. The difference between cases might also be defined in terms of outcomes, such as “do reunification rates differ between ICWA and non-ICWA cases?” If so, then data would need to be collected on final case outcomes. Does this

Using this
Toolkit

Introduction

Where to
Start?

Data Collection
Approaches

Case File Review
Court Observation
Surveys
Focus Groups

Things to
Consider

How to Use
the Data

Putting this
All Together

Resources



- Using this Toolkit
- Introduction
- Where to Start?
- Data Collection Approaches
 - Case File Review
 - Court Observation Surveys
 - Focus Groups
- Things to Consider
- How to Use the Data
- Putting this All Together
- Resources

mean offering different services to families and differences in reunification? If so, then data needs to be collected on services and final case outcomes. There may be no right or wrong answer for how to define a topic, but a definition is needed to help focus the data collection process. Moreover, a definition helps to contextualize the findings and their implications. The chart below provides an example of a research question and the subsequent questions and answers necessary to create quantifiable measures.

Using the example to the right, this process would result in including three variables on the data collection instrument: ICWA status (whether it is an ICWA case), date notice was provided, and date of the hearing. No other variables are required to answer this research question. If there are additional research questions, the same type of question and answer process should be used to identify the variables needed. Other variables can be added to the instrument (e.g., general demographics), but to increase efficiency, it is recommended that data collection instruments are expansive enough to answer the research questions, while concise enough to not collect “unnecessary” data. Simple instruments are often the most efficient.

RESEARCH QUESTION:

Are courts providing timely notice to the tribes in ICWA cases?

QUESTION

How do you identify timely?

ANSWER

Percent of cases that provide notice at least 10 days prior to hearing with return receipt documented.

QUESTION

How will you know if notice was timely?

ANSWER

ICWA status
Date notice provided
Date of hearing

Data Collection Approaches

Once the research questions are identified, it is important to determine the best method of data collection. Data can be collected in multiple ways, depending on the needs and resources available. Some common data collection approaches for ICWA performance measurement include case file review, court observation, surveys, and focus groups. Each approach has its own strengths and weaknesses, which are outlined in this section, with example tools when available.

CASE FILE REVIEW

Case file review involves obtaining files (physical or digital) from the state court. If the court has separate legal files (commonly contains hearing information) and social files (commonly contains, among other things, reports from Child Protective Services workers and information about services being offered to the family), it is recommended that both should be obtained. Having both files increases the amount of data and allows more research questions to be answered. However, only the files that contain the information of interest are necessary.

Data might be available in case files that could answer questions related to legal findings (e.g., active efforts, serious emotional damage or harm), placement type, case outcomes, timeliness of case processing, intervention of the tribes (when did they motion to intervene, was it granted or denied), transfer of the case to the tribe (when did this occur, if transfer was denied, what were the reasons), and notice (was it provided, to whom, when).

Case file review has several strengths and weaknesses:

Strengths

Amount of Data – Case file review can produce large amounts of data. With courts keeping physical, digital, or both types of court records, extensive amounts of data are available to researchers.

Objectivity – For the most part, case file review is objective. Much of the data that is being collected (e.g., dates of hearings, placement of the child at hearings, and case closure date) is straightforward and does not require coder interpretation, making it more likely that data is reliable.

Quantitative & Qualitative Data – Depending on the case file review instrument, data from case file review can produce mostly quantitative findings, allowing a better opportunity to provide the site with hard numbers to assess their current performance. This includes the frequency of a behavior (e.g., percent of hearings with an active effort finding) and timeliness (e.g., time from

CASE FILE REVIEW

Pros:

- Large amounts of information (case-level)
- Fairly objective
- Quantitative & qualitative data

Cons:

- Cannot capture everything that occurs in court
- Can be resource intensive (time and money)

Using this
Toolkit

Introduction

Where to
Start?

Data Collection
Approaches

Case File Review

Court Observation
Surveys

Focus Groups

Things to
Consider

How to Use
the Data

Putting this
All Together

Resources



ICWA
COMPLIANCE
TOOLKIT

Using this
Toolkit

Introduction

Where to
Start?

Data Collection
Approaches

Case File Review

Court Observation
Surveys

Focus Groups

Things to
Consider

How to Use
the Data

Putting this
All Together

Resources

notice to hearing). This data can be used as a baseline of current performance and used as a starting point for comparison to assess changes. Case file reviews also allow for the capture of qualitative data to provide additional context to the numbers. The quantitative portion may collect how often cases are denied transfer to the tribe, but qualitative questions may explain *why* transfer was denied.

Weaknesses

Courtroom Behaviors – Case file review does not allow researchers to see what is occurring in the courtroom. For example, it cannot be recorded whether the judge was engaging the parents or whether the parents were given an opportunity to speak on their behalf. For some research questions, this will not matter. However, for other research questions (e.g., discussion of ICWA applicability or placement preferences), the ability to view and/or hear what is going on in the courtroom is imperative.

Resource Intensive – Case file review requires time commitment. Case files can be lengthy and take some time for coders to become acclimated to the location of data. After becoming comfortable with the process and location of data, however, large datasets can be amassed over several days. For example, on a recent site visit with two experienced coders and two novice coders, data were collected on 120 cases across a 5-day (40-hour) period. As such, case file review has the potential to be costly. If there is staff within the courthouse that is conducting the research or there is a University partnership that includes student researchers, this may be less of an issue, but often the rigor and experience related to case file review require hiring an outside person.



Example Case File Review Tool

Figures 2 and 3 illustrate a standardized case file review instrument. This tool (slightly modified from its original version to enhance usability) was used to assess ICWA compliance statewide. Interrater agreement⁴ for the instrument (between 4 coders) was calculated at 78% (range of 61% to 94%).

FIGURE 2 Standardized Case File Review Tool (page 1)

ICWA Case File Review Form

Case No. Coder Site

Child Tribe(s) Reliability? Y N Sibling group? Y N

Jurisdiction
 Does the petition identify whether the child is domiciled or residing on the reservation? Y N
 Does the court exercise jurisdiction over an Indian child domiciled or residing on the reservation? Y N UD

Additional Time Request
 Does a party (i.e., parent, tribe) request additional time to prepare for proceeding? Y N
 If yes, does the court grant them up to 20 additional days to prepare? Y N

Transfer
 Mo. Day Yr.
 Did the tribe move to transfer the case? Y N If yes, when?
 Were they granted the transfer? Y N Mo. Day Yr.
 Date of transfer? N UD

Intervention
 Does the tribe move to intervene? Y N
 Does the court Grant or Deny motion? G D UD **Shelter Care** **Adjudication** **Dispo with Adj?** Y N
 Mo. Day Yr. Mo. Day Yr. Mo. Day Yr. Mo. Day Yr.

Date of motion to intervene

ICWA applicability P Y N P Y N P Y N
 Active efforts Y N Y N Y N
 Imminent physical damage or harm Y N Y N Y N
 Testimony of qualified expert witness Y N Y N Y N
 Clear and convincing evidence Y N Y N Y N
 Emotional or physical damage Y N Y N Y N
 Finding re: following placement preferences Y N UD Y N UD Y N UD
 Good cause **not** to follow placement preferences Y N Y N Y N
 Notice of next hearing Y N Y N Y N

Mother Present Y N Y N Y N
 Father Present Y N Y N Y N
 Tribal Representative Present Y N Y N Y N

Date of notice to tribes: Mo. Day Yr.

Child Removed? Y N UD

Date Removed
 MONTH DAY YEAR
 J 1
 F 2
 M 3 0 0 0 0
 A 4 1 1 1 1
 M 5 2 2 2 2
 J 6 3 3 3 3
 J 7 4 4 4 4
 A 8 5 5 5 5
 S 9 6 6 6 6
 O 10 7 7 7 7
 N 11 8 8 8 8
 D 12 9 9 9 9

Child Placement
 UD
 Group Home/Tx Fac
 Foster Care - UD
 FC-Non-Indian Hom
 FC-Indian Home
 Relative
 Parent
 Removal 1 2 3 4 5 6 7 8
 Shelter Care 1 2 3 4 5 6 7 8
 Adjudication 1 2 3 4 5 6 7 8
 Disposition 1 2 3 4 5 6 7 8
 1st Review 1 2 3 4 5 6 7 8
 Permanency 1 2 3 4 5 6 7 8

Petition
 Filed Date
 Does the petition identify the ICWA applicability of the child? Y N
 Does the petition identify the tribe(s) of the child? Y N
 Notice of petition filing (tribe)? Y N
 Notice date:

⁴ Interrater agreement is a measure of reliability (or consistency of coding), indicated by a percentage of time the coders agreed on items. The standard for rater agreement is 80% or higher. More robust measures of interrater reliability can also be calculated statistically to provide a better assessment of how reliable a tool is.

- Using this Toolkit
- Introduction
- Where to Start?
- Data Collection Approaches
- Case File Review
- Court Observation Surveys
- Focus Groups
- Things to Consider
- How to Use the Data
- Putting this All Together
- Resources



FIGURE 3 Standardized Case File Review Tool (page 2)

- Using this Toolkit
- Introduction
- Where to Start?
- Data Collection Approaches
- Case File Review
- Court Observation Surveys
- Focus Groups
- Things to Consider
- How to Use the Data
- Putting this All Together
- Resources

	1st Review			1st Permanency			TPR ^{1A}			
	Mo.	Day	Yr.	Mo.	Day	Yr.	Mo.	Day	Yr.	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
ICWA applicability	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Active efforts	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Imminent physical damage or harm	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Testimony of qualified expert witness	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Clear and convincing evidence	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Emotional or physical damage	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Finding that following placement preferences	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Good cause not to follow placement preferences	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Notice of next hearing	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Mother Present	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Father Present	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Tribal Representative Present	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Mo.	Day	Yr.	Mo.	Day	Yr.	Mo.	Day	Yr.	
Date of notice to tribes:	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
							Does the court dismiss the TPR petition? <input type="text"/>			
							TPR case dismissal date: <input type="text"/>			
Termination of Parental Rights Hearing										
	Mother					Father				
Date Petition Filed:	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Date of Termination Order:	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Relinquished? <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Beyond reasonable doubt re: emo. or phys. damage? <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Does beyond reasonable doubt apply? <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Notice of TPR filing to tribe? <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Date of notice to tribes of TPR petition filing:	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Case Closed? <input type="text"/>					Notes				
	Case Outcome					<div style="border: 1px solid black; height: 150px; width: 100%;"></div>				
	① Reunified <input type="text"/> Mother <input type="text"/> Father <input type="text"/>									
	② Guardianship <input type="text"/> Relative? <input type="text"/>									
	③ TPR/Adoption <input type="text"/>									
	④ Age Out <input type="text"/>									
	⑤ Petition dismissed <input type="text"/>									
	⑥ Transfer to tribe <input type="text"/>									
	⑦ Other: <input type="text"/>									
	Mo.	Day	Yr.							
Case closure date:	<input type="text"/>	<input type="text"/>	<input type="text"/>							



ICWA
COMPLIANCE
TOOLKIT

Using this
Toolkit

Introduction

Where to
Start?Data Collection
Approaches

Case File Review

Court Observation

Surveys

Focus Groups

Things to
ConsiderHow to Use
the DataPutting this
All Together

Resources

COURT OBSERVATION

Court observation entails viewing a court hearing and recording responses on a standardized instrument. This is commonly done in one of two ways: physically attending court or viewing video (or audio) recorded hearings. Court observation allows for understanding of everything that occurs at the hearing (even things that do not make it into the legal file) but may miss things done “off the record.”

Court observation can answer many of the same data questions that case file review can. For example, court observation can be used to answer questions related to legal findings made on the record, findings related to notice of parties, and placement of the child. Court observation may also be able to answer questions about tribal intervention and transfers to the tribe. In addition to these data, court observation is also useful in exploring what is discussed in the hearing and how judges exercise oversight in ICWA cases, which is particularly useful in collecting data on whether the court followed the placement preferences and if not, why not. This may also be useful in answering questions of how often a tribal representative appears at court and how the tribe is being engaged in discussions to help the family.

Like case file review, court observation has strengths and weaknesses:

Strengths

Courtroom Behaviors – Unlike case file review, court observation allows for the recording of courtroom behaviors. This may include whether the judge engaged the parents (e.g., talked directly to them or asked them questions), whether ICWA applicability was discussed, how the tribe was engaged in case planning, and the level/amount of discussion on hearing topics (e.g., placement preferences).

Quantitative & Qualitative Data – Depending on the court observation instrument, data from court observations can include quantitative and qualitative data, allowing a better opportunity to provide the site with hard numbers to assess their current performance as well as some contextual information to help clarify the numbers. Quantitative data might include frequency of events (e.g., using a yes/no did this occur, one can calculate the frequency of findings, discussion, etc). Qualitative information might include open-ended questions to provide additional context, such as why a transfer to the tribe did not occur. This data can be used as a baseline of current performance and used as a starting point for comparison to assess changes.

COURT OBSERVATION

Pros:

- Can assess courtroom behaviors
- Quantitative and qualitative data

Cons:

- Limited amount of information (hearing-level)
- Time-consuming
- Difficult to record information “on-the-fly”
- Subjective
- Can be expensive



ICWA
COMPLIANCE
TOOLKIT

Using this
Toolkit

Introduction

Where to
Start?Data Collection
Approaches

Case File Review

Court Observation

Surveys

Focus Groups

Things to
ConsiderHow to Use
the DataPutting this
All Together

Resources

Weaknesses

Amount of Data – Court observation provides a limited amount of data. Unlike case file review that can obtain information across the life of the case, court observation can only provide information that is presented at a given hearing. Data can be collected across the life of the case using court observation, but this would require viewing of every hearing. Further, some data (such as legal findings) may be made on the record (on paper) but not verbally on the record, which could result in finding that the court did not comply, skewing results of the assessment.

Time Commitment – Court observation is time consuming. Unlike case file review, court observation requires viewing hearings (live or recorded). One hearing on a case may last 30-45 minutes. Cases typically have at least 4-5 hearings, with some having more than 10, making coding all hearings impractical.

Ability to Code Data – It can be difficult to collect information “on-the-fly” using court observation. Unlike case file review that can be conducted at the coder’s pace, court observation occurs in real-time. In some instances, the hearings are recorded and can be paused to allow the coder time to capture all of the relevant information. However, live hearings do not allow the coder to go back and capture the information. This may result in information being missed or incorrectly coded.

Subjectivity – Court observation can be more subjective than case file review. For example, a question might ask if there “was discussion of how the tribe has been involved in case planning?” Persons unfamiliar with the court process may not know if this was discussed if the court does not use the words “case planning.” Providing a code book with examples could help with this.



Example Court Observation Tool

Figure 4 illustrates a standardized court observation instrument. The tool was designed to be a user friendly one-page instrument that judges, stakeholders, or any person who observes court can use to determine what happened in court that day. This tool has been used in four jurisdictions (including pilot testing/use by judges from the bench) and has an average interrater agreement of 94% (range of 81% to 100%). The Minneapolis American Indian Center through their QUICWA project has also created and substantively tested a more in-depth court observation tool.

FIGURE 4 Standardized Court Observation Tool

ICWA Performance Measurement Court Observation Tool					
Court Case File Number	Type of Hearing	Coder	Tribe(s) of Child		Date
Judicial Officer	County/Jurisdiction	State	Num of children	# child selected:	M O D Y R
Parties Present at Hearing <input checked="" type="checkbox"/> Mother <input checked="" type="checkbox"/> Mother's Atty <input checked="" type="checkbox"/> Child <input checked="" type="checkbox"/> Relatives <input checked="" type="checkbox"/> Interpreter <input checked="" type="checkbox"/> Foster Parent <input checked="" type="checkbox"/> Father <input checked="" type="checkbox"/> Father's Atty <input checked="" type="checkbox"/> Social worker <input checked="" type="checkbox"/> Child's Atty <input checked="" type="checkbox"/> Tribal Representative <input checked="" type="checkbox"/> CASA <input checked="" type="checkbox"/> Treatment Prov <input checked="" type="checkbox"/> State's Atty <input checked="" type="checkbox"/> Atty for Tribe <input checked="" type="checkbox"/> GAL <input checked="" type="checkbox"/> Other:					
Was an attorney appointed at this hearing for: the mother? <input checked="" type="checkbox"/> <input type="checkbox"/> the father? <input checked="" type="checkbox"/> <input type="checkbox"/> the child? <input checked="" type="checkbox"/> <input type="checkbox"/>					
ICWA Applicability					
1. Application of ICWA					Yes No
1a. Did the judge inquire about the applicability of ICWA?					
Who was asked? _____					<input checked="" type="checkbox"/> <input type="checkbox"/>
1b. Has the child's tribe(s) been identified? <input checked="" type="checkbox"/> <input type="checkbox"/>					
1c. Is the child a member, or eligible for membership of a federally recognized tribe? <input checked="" type="checkbox"/> <input type="checkbox"/>					
1d. Did the judge make a finding orally on the record that ICWA does/does not apply? <input checked="" type="checkbox"/> <input type="checkbox"/>					
1e. Does ICWA apply in this case? (even if no finding) <input checked="" type="checkbox"/> <input type="checkbox"/>					
ICWA Jurisdiction					
2. Jurisdiction					Yes No
2a. Did the judge make a finding <i>on the record</i> that the tribe(s) received formal notice of petition filing? <input checked="" type="checkbox"/> <input type="checkbox"/>					
2b. Is the child a ward of a tribal court? <input checked="" type="checkbox"/> <input type="checkbox"/>					
2c. Is the child domiciled or living on the reservation? <input checked="" type="checkbox"/> <input type="checkbox"/>					
2d. Does the state court have jurisdiction? <input checked="" type="checkbox"/> <input type="checkbox"/>					
***If this is not the initial hearing, is there indication that this is an ICWA case? <input checked="" type="checkbox"/> <input type="checkbox"/>					
ICWA Compliance					
3. Findings on the Record & Placement					Yes No
3a. Did the judge make a finding that the tribe(s) received notice of this hearing? <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>					
3b. Did the judge make a finding that the mother received notice of this hearing? <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>					
3c. Did the judge make a finding that the father received notice of this hearing? <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>					
3d. Did the judge make a finding that the Indian custodian received notice of this hearing? <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>					
3e. Did the judge order the child in to (or to remain in) out of home placement? <input checked="" type="checkbox"/> <input type="checkbox"/>					
3f. Did the judge make a finding that emergency removal was necessary to prevent imminent physical damage or harm to the child? <input checked="" type="checkbox"/> <input type="checkbox"/>					
3g. Was there qualified expert witness testimony presented at this hearing? <input checked="" type="checkbox"/> <input type="checkbox"/>					
3h. Did the judge make a finding that there was clear and convincing evidence that the child was likely to suffer serious emotional or physical damage if continued in the custody of the parent? <input checked="" type="checkbox"/> <input type="checkbox"/>					
3i. Did the judge make a finding of active efforts <input checked="" type="checkbox"/> <input type="checkbox"/> to prevent removal? <input checked="" type="checkbox"/> <input type="checkbox"/> to return the child home? <input checked="" type="checkbox"/> <input type="checkbox"/>					
3j. Was there discussion of why child was not placed with relatives? <input checked="" type="checkbox"/> <input type="checkbox"/>					
3k. Did the judge make a finding of good cause not to follow the placement preferences? If yes, why? _____ <input checked="" type="checkbox"/> <input type="checkbox"/>					
Tribal Intervention					
4. Tribal Intervention					Yes No
4a. Did the tribe petition or move to intervene in the case? <input checked="" type="checkbox"/> <input type="checkbox"/>					
4b. Did the judge grant the tribe's petition or motion to intervene in the case? <input checked="" type="checkbox"/> <input type="checkbox"/>					
4c. Did the tribe have a recommendation to present to the court? <input checked="" type="checkbox"/> <input type="checkbox"/>					
4d. Did the judge allow the tribe to present its recommendation to the court? <input checked="" type="checkbox"/> <input type="checkbox"/>					
4e. Did the judge adopt all <input checked="" type="checkbox"/> adopt some <input checked="" type="checkbox"/> or not adopt <input checked="" type="checkbox"/> the tribe's recommendation? <input checked="" type="checkbox"/> <input type="checkbox"/>					
Transfer to Tribal Court					
5. Transfer to Tribal Court					Yes No
5a. Did a party request a transfer of the case to tribal court at this hearing? <input checked="" type="checkbox"/> <input type="checkbox"/>					
5b. Did the judge make a decision about the transfer to tribal court? <input checked="" type="checkbox"/> <input type="checkbox"/> Grant <input checked="" type="checkbox"/> <input type="checkbox"/> Deny <input checked="" type="checkbox"/> <input type="checkbox"/>					
5c. Did the judge make a finding of good cause to deny the request to transfer the case? If yes, why? _____ <input checked="" type="checkbox"/> <input type="checkbox"/>					
Engagement of Tribe					
6. Engagement of Tribe					Yes No
6a. Was there discussion of how the tribe has been involved in case planning? <input checked="" type="checkbox"/> <input type="checkbox"/>					
6b. Was there discussion of culturally appropriate services for the family? <input checked="" type="checkbox"/> <input type="checkbox"/>					
6c. Was there discussion of how the tribe has been involved in locating relatives? <input checked="" type="checkbox"/> <input type="checkbox"/>					
Child Placement Order: <input checked="" type="checkbox"/> New order <input checked="" type="checkbox"/> Continuation Is this an adoptive home? <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>					
<input checked="" type="checkbox"/> Home/Parent <input checked="" type="checkbox"/> Indian Home <input checked="" type="checkbox"/> Treatment Facility					
<input checked="" type="checkbox"/> Relative <input checked="" type="checkbox"/> Non-Indian Home <input checked="" type="checkbox"/> Unable to Determine					
<input checked="" type="checkbox"/> Tribal Home <input checked="" type="checkbox"/> Group Home					

- Using this Toolkit
- Introduction
- Where to Start?
- Data Collection Approaches
- Case File Review
- Court Observation
- Surveys
- Focus Groups
- Things to Consider
- How to Use the Data
- Putting this All Together
- Resources



ICWA
COMPLIANCE
TOOLKIT

Using this
Toolkit

Introduction

Where to
Start?Data Collection
ApproachesCase File Review
Court Observation

Surveys

Focus Groups

Things to
ConsiderHow to Use
the DataPutting this
All Together

Resources

SURVEYS

Surveys involve creating and distributing questions to individuals. The phrasing of these questions is critical to ensure that responses are appropriate and sufficiently answer the research questions of interest. Surveys are commonly done in one of two formats: electronic (online data collection tool) or paper. Surveys are typically more subjective than case file review or court observation, as they rely on persons to recall information and respond honestly to the question at hand.

Surveys can be used to answer questions related to perception of how often events are occurring (e.g., active efforts findings, placement with relatives, and notice provided to the tribe). More importantly, surveys can be used to add context to the information gathered from other methods. For example, surveys may be best used to identify problems/weaknesses in the case progression that make it difficult to comply with ICWA. They may also be used to answer questions about why compliance is not occurring, such as “what are some typical reasons that children may not be placed according to placement preferences,” or “what are the delays in providing timely notice to the tribes.” Administering surveys can have strengths and weaknesses.

Strengths

Time Commitment – Surveys usually do not require a large time commitment on the part of the researcher. After developing the survey, little time is required to distribute the survey. Administering a paper version of a survey is more time consuming than an electronic version because the former requires someone handing out the individual surveys (e.g., mailing, hand delivering, putting in work mailboxes, etc.), while the latter often requires only sending an internet link to all intended participants and potentially follow-up reminders.

Ease of Data Collection – Surveys provide researchers the ability to collect large amounts of data easily. This is especially true when using an electronic survey. Online survey sites, such as SurveyMonkey, can be used to generate surveys and survey links that automatically analyze the data for you.

Qualitative Data – Survey data are mostly qualitative, but can be used to provide additional context. Surveys allow an opportunity for follow-up on questions that may not be easily answered in case file review or court observation. Surveys allow an opportunity for the persons involved in the case to provide their input and may be invaluable in identifying strengths and weaknesses of the court.

SURVEYS

Pros:

- Usually a small time commitment
- Can provide large amounts of data easily
- Qualitative data

Cons:

- Subjective - primarily limited to individual perceptions
- Social desirability or satisficing behaviors



- Using this Toolkit
- Introduction
- Where to Start?
- Data Collection Approaches
 - Case File Review
 - Court Observation
 - Surveys
 - Focus Groups
- Things to Consider
- How to Use the Data
- Putting this All Together
- Resources

Weaknesses

Subjectivity – Much of the data that is collected via surveys will be individuals’ perceptions. For example, participants may be asked their level of agreement to the statement, “My court has complied with all of the requirements of ICWA.” A large number of respondents may “strongly agree” with this statement, but these are perceptions only. A survey does not allow quantifiable proof that the court has complied.

Responses Bias – Surveys have the potential to provide erroneous or inaccurate data due to social desirability. Social desirability involves participants responding in a way that portrays a positive impression to others. This may occur when truthful answers may make the respondent or the courts “look bad.” Survey participants may try to answer in a more positive way than is realistic.

Example Survey Questions

With the identified strengths and weaknesses, it is important to consider how a survey might be used. It may be that surveys are most efficient as either prior to (to identify perceptions of strengths and weaknesses) or follow-up (to add additional context) from other methods. For example, a survey with these questions might be given to identify areas for future research:

Think about ICWA cases in your jurisdiction and indicate your agreement on the following scale:	
1= Strongly Agree, 2=Agree, 3=Neutral, 4=Disagree, 5=Strongly Disagree	
Placement preferences are always followed	1 2 3 4 5
Active efforts findings are made on the record at every hearing	1 2 3 4 5
The tribe is actively involved in case planning	1 2 3 4 5
Professional stakeholders have a good understanding of ICWA	1 2 3 4 5

Or, following other data collection that has identified quantitative findings, surveys may be used to help provide context. For example, survey questions may include:

1. Recent research indicates that notification to tribes is not always timely. In your experience, what are some of the delays to achieving timely notice to the tribe(s)?
2. Native children in your jurisdiction are rarely placed with a relative or in a tribally licensed foster home. What are some reasons that these placements are not occurring?



ICWA
COMPLIANCE
TOOLKIT

Using this
Toolkit

Introduction

Where to
Start?Data Collection
ApproachesCase File Review
Court Observation
Surveys

Focus Groups

Things to
ConsiderHow to Use
the DataPutting this
All Together

Resources

FOCUS GROUPS

Focus groups entail recruiting individuals for a small group discussion (approximately 5-10 individuals). These individuals may be from diverse or similar disciplines, geographic locations, employment agencies, or job positions. The primary goal of a focus group is to obtain a richer, fuller understanding of the topic. In ICWA research, focus groups could include child protection workers, attorneys, tribal representatives, judicial officers, parents, foster parents, youth, or other stakeholders involved in the case.

Focus groups allow for more in-depth and contextual information. Like surveys, they can help answer questions related to how cases currently progress, what are the strengths and weaknesses of the court in relation to ICWA compliance, and why are certain practices occurring.

Strengths

Depth of Discussion – Focus groups allow for extensive discussion on a topic. In addition to asking prepared questions, a focus group moderator can ask additional follow-up questions of participant depending on what issues emerge in the discussion—something that cannot be done in surveys. Focus groups also allow participants the ability to expand on their thoughts. On surveys, there may be open-ended questions that allow participants to write as much as they want; however, some participants may be more reluctant to write a lot, than they would be to talk.

Participant Interaction – Focus groups allow participants to interact with one another. The response of one participant may enhance another participant’s response, contradict another participant’s response, or elicit a reaction from other participants. This allows for a more robust understanding of the issue at hand.

Qualitative Data – Focus group data is entirely qualitative, but is helpful in understanding perceptions, themes, and context. Focus groups can allow participants to talk among themselves, to brainstorm challenges or solutions, and may help generate ideas or directions for future research.

Weaknesses

Subjectivity – Focus groups may not provide quantifiable data that can be used to answer the research questions. For example, asking stakeholders in a focus group if the court is having difficulty complying with the requirements of ICWA does not provide an exact number of cases that have not been in compliance.

FOCUS GROUPS

Pros:

- Extensive discussion on a topic
- Participant interactions
- Qualitative data

Cons:

- Subjective - limited to individual perceptions
- Participants know they are being watched and may respond differently
- Resource intensive



ICWA
COMPLIANCE
TOOLKIT

Using this
Toolkit

Introduction

Where to
Start?Data Collection
ApproachesCase File Review
Court Observation
Surveys

Focus Groups

Things to
ConsiderHow to Use
the DataPutting this
All Together

Resources

Response Bias via Observation Effects –The responses from focus groups should be viewed with the knowledge that some participants may or may not respond differently because they know that they are being watched. It may not necessarily be an issue, but researchers should be cognizant that participant responses may be tailored toward what the participant thinks the researchers want to hear.

Expertise – Focus groups can be complex. To do a focus group properly, a trained moderator should be hired to ensure the flow and direction of the focus group is of high quality. Anyone can ask questions of participants, but a trained moderator will know how/when to ask follow-up questions, how to manage participants, and how to elicit the most appropriate responses.

Example Focus Group Questions

Focus groups typically begin with a set of standard “starting” questions with the potential for follow-up as issues are identified in the group. Sample focus group questions might include:

- Can you tell me what your jurisdiction does well in complying with the ICWA?
- Can you tell me what challenges your jurisdiction (your agency) has in complying with ICWA?
- What are the barriers to achieving timely notification to the tribes?
- How often are tribal representatives present at hearings? How are they engaged in the process?
- What are some of the reasons that the court might deny transfer to the tribe?
- Are tribally licensed foster homes available for Native children?
- Are there culturally appropriate services available to Native families in your jurisdiction?

Things to Consider in Choosing the “Right” Approach

As the *Toolkit* has illustrated, each data collection approach offers its own set of strengths and weaknesses. Consideration should be given to each prior to data collection. If feasible and appropriate to the research questions, several approaches should be combined. For example, case file review could be combined with surveys to obtain quantifiable data (via case file review) and to contextualize the results (via surveys). Combining approaches allows for a richer, more comprehensive understanding of the topic of interest. There are several things to consider in determining which method is right for your needs.

Research Question(s). As indicated earlier, the research question(s) of interest are critical in determining what type of data collection tool you need to provide the answers you seek. It helps to start with a list of these questions and the data elements needed before selecting one or more methods that best fit your needs.

Resources. Identification of resources available can also help inform the data collection procedure. Surveys, particularly online surveys, are the least labor intensive and costly, but may require some expertise in developing the survey questions or analyzing/summarizing results. There must be a balance between what you can do and what you want to know. Although surveys are the most affordable, they may not give you the information you desire.

Type of Data. The type of data you need depends on the research question(s). To begin conversations or start identifying potential challenges or strengths, qualitative data is sufficient (surveys or focus groups). If you would like to identify concrete numbers, such as timeliness, frequency of events occurring, or average (typical) case information, quantitative data is needed (case file review or court observation). If you need additional context to supplement your quantitative findings, surveys or focus groups are appropriate. Often, a combined approach is most helpful.

Sample Size. The resources available and type of data needed will help to determine what an “adequate” sample size should be. Surveys and focus groups require smaller sample sizes to be useful as the data is primarily qualitative in nature. Case file reviews and court observations, if used to collect quantitative data, should have a sample size that is sufficient to be representative of the jurisdiction (or state) of interest. There are many ways to determine sample size, but a good rule of thumb is that you want at least 10 percent of your cases (randomly selected). With smaller samples such as ICWA cases in small jurisdictions, getting as many cases as you can will make your data more meaningful. It is important to note that you should not be dissuaded if your sample size is small. There are options that can help improve your numbers (e.g., looking at data over time) and any data is a good start.

Confidentiality. It is important to consider what types of information you are collecting. Surveys are typically anonymous and therefore do not have issues of confidentiality. Focus groups, on the other hand are in person, and the identities of the participating persons may be known. It is important for facilitators or note takers to *not* record the

Using this
Toolkit

Introduction

Where to
Start?Data Collection
ApproachesCase File Review
Court Observation
Surveys
Focus GroupsThings to
ConsiderHow to Use
the DataPutting this
All Together

Resources



ICWA
COMPLIANCE
TOOLKIT

Using this
Toolkit

Introduction

Where to
Start?

Data Collection
Approaches

Case File Review
Court Observation
Surveys
Focus Groups

Things to
Consider

How to Use
the Data

Putting this
All Together

Resources

names of the persons and to report the information shared in an aggregate manner. It is also important to assure parties that this is the case, or they may be unwilling to share information. Case file review and court observation of cases require a high degree of confidentiality as they include identifiable information about children and families involved in the dependency court system. It is imperative that researchers understand the nature of this data and the importance of not collecting or reporting information that could tie a case back to an actual person. Names, social security numbers, and/or addresses should not be collected and all data should be reported in aggregate. As an additional precaution, it would be ideal if the person(s) collecting the data had human subjects protection training, obtained approval from an Institutional review board, or (at a minimum) signed a confidentiality agreement.

Stress. First time reviewers of case files or observers of court may find it an overwhelming and stressful process. The information being presented (either in court or in the file) is about a child abuse and neglect case. There is likely to be very sensitive and sometimes very graphic information discussed. It is important to consider this when determining what type of data collection method is going to be used and who is going to be collecting the data. Coders, especially those who are not familiar with the process, may need to be briefed on what they may find in cases, and provided with opportunities to debrief and de-stress. Some of this can be alleviated by working with professionals who have experience doing this kind of work. Using students (which is efficient in many ways) may require some additional briefing. Focus groups have a lower level of stress, particularly if the questions are kept general. However, there are instances where sensitive and stressful information may emerge. Surveys, on the other hand, are anonymous and have low levels of related stress.

Familiarity with Case Process/ICWA. Depending on what type of data collection is identified, it may be important for staff that are conducting the research to be familiar with case processing and/or ICWA. In particular, court observation is easier if the observer has an understanding of dependency case processing and legal jargon that might come up at the hearing. While this is not necessary, it could be beneficial in understanding and properly coding the instrument. Case file review requires a similar understand of case processing, including hearing types, which may make it easier to identify where information is located in the files. Surveys and focus groups do not require this level of familiarity with case processing, but, in order to be most efficient, require a familiarity with ICWA. Focus group participants, for example, may go off on tangents, and a facilitator familiar with ICWA will have a better chance of identifying topics that will be useful/helpful to discuss at length as well as those that are not helpful.



TABLE 1 Summary of Things to Consider in Choosing Data Collection Approach

	CASE FILE REVIEW	COURT OBSERVATION	SURVEYS	FOCUS GROUPS
RESEARCH QUESTIONS (EXAMPLES)	Specific <ul style="list-style-type: none"> • Frequencies (across specific hearing types & the case) • Timeliness • Case outcomes • Placement decisions • Findings of fact 	Specific <ul style="list-style-type: none"> • Frequencies (across specific hearing types) • Involvement of parties • What occurs in hearings • Findings of fact • Reasons for findings 	General <ul style="list-style-type: none"> • Impressions of performance • Identification of strengths and challenges related to ICWA 	General <ul style="list-style-type: none"> • Impressions of performance • Identification of strengths and challenges related to ICWA • Explanations of why or at what point challenges exist
RESOURCE REQUIREMENTS	High	High	Low	Low
TYPE OF DATA	Quantitative Qualitative	Quantitative Qualitative	Qualitative	Qualitative
SAMPLE SIZE	Larger	Larger	Smaller	Smaller
CONFIDENTIALITY	High need	High need	No/Low	Medium need
STRESS	High	High	Low	Low to medium
FAMILIARITY	Some familiarity with dependency cases	Familiarity with the court process/jargon	Familiarity with ICWA	Familiarity with ICWA

Additional Considerations for Court Observation or Case File Review

Both case file review and court observation methodologies often require some specific considerations that other methodologies do not, and therefore may require additional expertise or resources. The main issue is that court observation and case file review require a sufficient sample size in order to be generalizable. That is, there needs to be an adequate number of cases for data to yield findings that apply to the jurisdiction (or the state). Otherwise, the results might just be based on chance alone. It should be noted, however, that jurisdictions with small caseloads could still use these methodologies, it just may be important to code as many cases as feasible. To gain a sufficient sample size, it may be important to bring in multiple coders, which increases the complexity of the study and requires some additional steps.

Training. Training on the tool is critical to ensure that all coders are using the tool in the same way. The training can be as extensive as one chooses, but it is important that

- Using this Toolkit
- Introduction
- Where to Start?
- Data Collection Approaches
 - Case File Review
 - Court Observation
 - Surveys
 - Focus Groups
- Things to Consider
- How to Use the Data
- Putting this All Together
- Resources



- Using this Toolkit
- Introduction
- Where to Start?
- Data Collection Approaches
 - Case File Review
 - Court Observation
 - Surveys
 - Focus Groups
- Things to Consider
- How to Use the Data
- Putting this All Together
- Resources

all coders understand the instrument, are clear on what is to be coded, and have their questions answered prior to data collection. The most efficient way to do this would be to discuss the instrument with all coders and answer any questions, then practice code (either observing a hearing or coding a case file), then debrief with all of the coders. This allows for real world application of the tool and will help other questions/concerns to emerge, so that they can be answered before data collection begins. Training would be most efficient if it also included a code book (a list of all the items on the code sheet with helpful instructions on how they should be coded).

Interrater Reliability. In addition to training, including multiple coders also requires that coded cases be checked for reliability. Reliability refers to consistency in the way in which the data is being collected. To check for reliability, two or more coders should record information from the same case. The recorded information is then examined across coders to ensure consistency. This means examining each element on the data collection instrument for reliability. Inconsistencies should be discussed between coders and there should be an agreement between them on how to code the elements going forward. It should be noted, however, that reliability does not always ensure validity. It simply means that two coders are “seeing the same thing.” In most cases, reliable measures will also be accurate; however, reliability is not a substitute for sound instrument development and proper training.

Reliability - degree to which tool produces consistent results

Validity - degree to which tool captures what it intends to measure

How to Use the Data

Once the data has been collected, consideration must be given to how the data can be used, including the best way to report the findings. Data can be used in multiple ways. In terms of performance measurement, data is often used to provide baseline information. This can be used as a starting point when trying to make changes and see if the changes have any effect after an intervention (change in practice). Baseline information can also be used as a conversation starter, so that courts, states, or Court Improvement Programs can examine what current practice looks like, and identify areas of success or areas in need of improvement. Qualitative data can be particularly helpful in providing context to information or identifying areas that need further exploration. Data are most helpful when provided to the courts, with an avenue for discussion of what the findings mean, and how they can be used to make improvements in the system.

When determining how to report the data, it is important to consider the audience of the report (who will read it), the purpose (how will they use it) and the goals of the research (what questions need to be answered). One of the simplest, most understandable ways to report data is to provide descriptive information, or descriptives. Descriptives provide basic information about the data, such as the average values of a given variable (i.e., mean), the middle value of a given variable (i.e., median), and the frequency of responses to a given variable. A common way to report descriptives is to use graphs or tables. The figures below provide examples of ways to display the findings.

For example, in reporting data from court observation, basic descriptives might include how often certain parties were present in the hearings in ICWA cases. The table below (taken from an ICWA compliance report) illustrates this information.

Frequency of Parties Present		
	N	%
Mother	57	63
Father	43	48
Mother Attorney	57	63
Father Attorney	47	52
Tribal Representative	60	67

In addition to determining *how* the data will be reported, it is also important to determine *what* data will be reported. First, data related to the research questions should be reported. Other potential data that may be reported involves information that provides an overview of the sample (e.g., sample size). This provides context to the findings. For example, in the table above, both the actual number (N) and the percentage (%) are provided to better contextualize the information. Basic case information may not tie directly to a research question, but would provide additional information to the report, as well as context to the percentages. For example, 20 percent of 10 hearings can be viewed and interpreted differently from 20 percent of 100 hearings.

Research questions should frame the presentation of the findings. For example, if a

Using this
Toolkit

Introduction

Where to
Start?Data Collection
ApproachesCase File Review
Court Observation
Surveys
Focus GroupsThings to
ConsiderHow to Use
the DataPutting this
All Together

Resources



- Using this Toolkit
- Introduction
- Where to Start?
- Data Collection Approaches
 - Case File Review
 - Court Observation Surveys
 - Focus Groups
- Things to Consider
- How to Use the Data
- Putting this All Together
- Resources

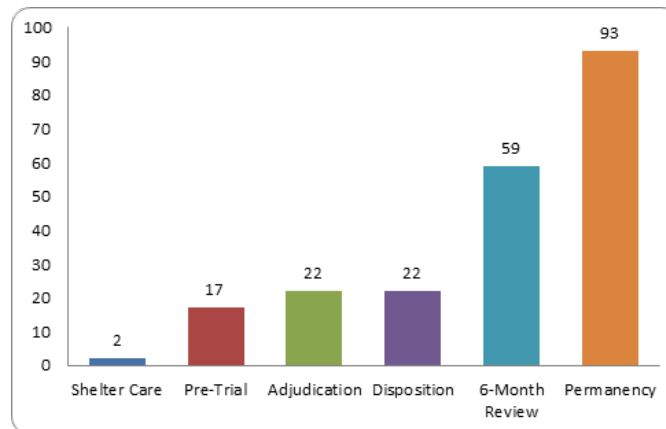
site is interested in timely notice to the tribes in ICWA cases, there are multiple ways to examine this question. Consider the two examples below.

Research Question: What percentage of time does the tribe receive notice at least 10 days prior to the scheduled hearing?

- Of the hearings following the Shelter Care hearing that had documented notice, 83 percent provided notice at least 10 days prior to the next hearing.

Research Question: How many days (on average) prior to the hearing, does the tribe get notice? Does this differ by hearing type?

FIGURE 5 Average Number of Days Prior to Hearing that Tribe Received Notice



Both of these questions address timely notification, but have the potential to have very different results. Both results can be useful in their own ways. For example, the first question illustrates compliance rates. The second questions helps to identify the hearings where notice might be shorter or longer and can help identify points in the process where improvements can be made.



Putting this All Together Case Examples

The following examples illustrate different projects that have looked at ICWA compliance in two jurisdictions. Sites have been de-identified to maintain confidentiality. The first site used a court observation tool, while the second chose to do case file review. The relative strengths and weaknesses related to the data questions are identified as part of the example, along with some sample findings.

COURT OBSERVATION: SITE EXAMPLE

In order to help test a court observation instrument, we solicited participation of a site with a moderate population of Native American families, to better ensure a sufficient sample of ICWA cases. We outreached to the site and identified potential coders. In this case, we talked both with University partners and persons involved with the court who were already present at every hearing. Logistically, because of resource constraints, the data collected represented a convenience sample of only one jurisdiction, making generalizability difficult. We identified persons to code and conducted onsite training of the tool (including practice coding). Coders collected data on 90 hearings (all ICWA cases) and returned the data to us for entry and analyses. Data were reported both in an overall (how often something occurred in any hearing) and by hearing type to determine where there were differences in the case.

	#	%
The judge made a finding that the tribe(s) received notice of the hearing	18	20
The judge ordered the child into (or to remain in) an out of home placement	74	82
There was qualified expert witness testimony presented at this hearing	15	17
The judge made a finding of clear evidence that the child was likely to suffer emotional or physical damage if continued in the custody of the parent	11	12
The judge made an active efforts finding	48	53
The judge made a finding of active efforts to prevent removal	13	14
The judge made a finding of active efforts to return the child home	36	40
The child was placed within the placement preferences outlined by ICWA, as evidenced by discussion or a finding on the record	46	51
The judge made a good cause finding not to follow the placement preferences	22	24
There was discussion of how the tribe has been involved in case planning	22	24
There was discussion of culturally appropriate services for the family	4	4

	Initial (n=6)	Adj. (n=40)	Review (n=29)	Perm. (n=15)
The judge ordered the child into (or to remain in) an out of home placement	33	85	86	87
There was qualified expert witness testimony presented at this hearing	0	38	0	0
The judge made a finding of clear and convincing evidence that the child was likely to suffer emotional or physical damage if continued in the custody of the parent	0	25	0	7
The judge made an active efforts finding	0	55	62	53
There was discussion of how the tribe has been involved in case planning	0	20	41	13
There was discussion of culturally appropriate services for the family	0	3	7	7

Using this Toolkit

Introduction

Where to Start?

Data Collection Approaches

Case File Review

Court Observation

Surveys

Focus Groups

Things to Consider

How to Use the Data

Putting this All Together

Resources



ICWA
COMPLIANCE
TOOLKIT

Using this
Toolkit

Introduction

Where to
Start?

Data Collection
Approaches

Case File Review
Court Observation
Surveys
Focus Groups

Things to
Consider

How to Use
the Data

Putting this
All Together

Resources

The data from the court observation study are limited in two regards. First, it was only one hearing across the life of the case. So, some of the findings may have been made at earlier hearings, and may not be required at every hearing. Further, the information collected was only on what was directly observable in the hearing. Some of the findings may be written on the record, but are not made verbally on the record. The information did provide a context for future discussions and further research in the area and illustrated some strengths and weaknesses of practice.

CASE FILE REVIEW: SITE EXAMPLE

For this particular study, researchers were contracted by the site to do a statewide assessment of practice. The site was able to identify a sample of recently closed ICWA cases from each of its jurisdictions and bring a hard copy of the court file to one location for review. This logistical consideration was critical in contributing the overall efficiency of the project, as it allowed for coding of more files without the travel costs associated with traveling to multiple sites. Four team members who were knowledgeable about ICWA did the coding (two had prior case file review experience). There was discussion of the tool (prior to the site visit). Although full cases were not available for a practice coding, the site was able to send some redacted court orders and reports to help the team familiarize themselves with the information that might be provided. On site, the team spent much of the first day familiarizing themselves with the files, discussing the code sheet, and agreeing how to reliably capture the data. A percentage of cases were coded for interrater reliability.

The site had many research questions. Examples of some of these questions and findings are reported below. Examples of questions that could not be answered are also discussed.

Does the court order foster care placements only after finding by clear and convincing evidence that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child?

When the child was removed from the home and placed in foster care, 55 percent of shelter hearings included a finding of either imminent physical damage or harm or serious emotional or physical damage.

Does the court terminate parental rights only after finding by evidence beyond a reasonable doubt that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child?

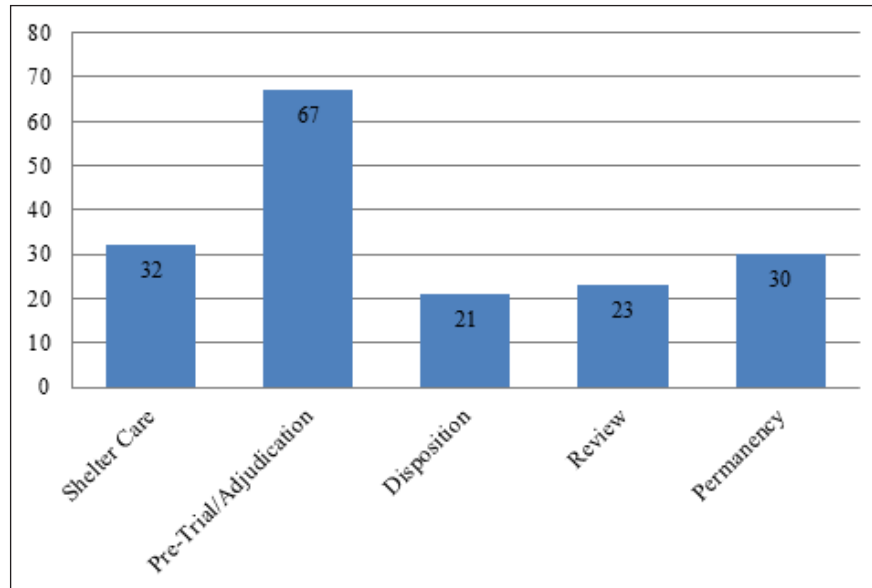
When the case resulted in termination of parental rights, the majority of these were voluntary relinquishments. When a trial was held, the courts made a finding that continued custody of the child by the parent was likely to result in serious emotional or physical damage to the child approximately half of the time. The sample size for this finding was quite small ($n = 6$), and thus should be interpreted with caution.



- Using this Toolkit
- Introduction
- Where to Start?
- Data Collection Approaches
 - Case File Review
 - Court Observation Surveys
 - Focus Groups
- Things to Consider
- How to Use the Data
- Putting this All Together

- Resources

Does the court make an active efforts finding? When and how often?



Percentage of Hearings with an Active Efforts Finding by Hearing Type

The case file review allowed for an exploration of ICWA compliance across the life of the case and provided information on when/where findings were most likely to occur. Reviewing files solves the issue of reliably capturing findings on the record, as the findings had to be in the court orders in the legal file. Therefore, this provides a more accurate portrayal of this question. However, other questions could not be answered from this data. For example the question of whether the child was placed in accordance with ICWA preferences. Placement was not always clearly documented in the files. When documented, it sometimes indicated the name of the caregivers, but not their relationship to the child, making it difficult to determine if placement preferences were followed. Unlike court hearings where there is a mechanism to track if there is discussion of placement preferences, there is no way in the court file to determine this. This issue, however, may not arise in all jurisdictions and ensuring that the social file referenced earlier is available is helpful to provide more placement data.

This report was provided to the Court Improvement Program, shared with the courts, and used to facilitate dialogue regarding ICWA compliance in the state (and in specific jurisdictions). Findings from the assessment drew attention to needed training in the area. At present, this site is working to provide training to judicial officers and attorneys throughout the state, and improve record keeping so that future efforts to measure compliance with ICWA research will be easier.



ICWA
COMPLIANCE
TOOLKIT

Resources to Put this Into Practice

This *Toolkit* has a lot of information meant to help increase understanding of how to think about data collection and begin data collection procedures related to ICWA compliance. It is not meant to be an exhaustive resource, but a summary of things to think about to get started in this process. There are additional resources available that can help put ICWA compliance performance measurement into practice in small scale (one jurisdiction) or on a large scale (state or multi-state). First, as a starting point, the instruments and corresponding codebooks for the court observation and case file review mentioned here are available from the [NCJFCJ](http://www.ncjfcj.org). These can be provided to sites as a basic tool that can help facilitate discussion of research questions or data collection needs. Second, we recognize that not everyone will have the experience or expertise to identify research questions and data elements, create surveys or focus group questions, or modify the current tools to meet their needs. However, there are resources available for those who are interested in doing this type of work. See the NCJFCJ website at www.ncjfcj.org or email the research team at research@ncjfcj.org for more information.

University partnerships, for example, offer courts and Court Improvement Programs an opportunity to work with faculty or students in the field who may have experience doing research. This is a beneficial relationship to both entities, as it provides expertise to those who need it and experience doing field work to students who may not get it elsewhere. More information on creating University partnerships is available in our Technical Assistance Brief [Creating Judicial-Academic Partnerships: An Efficient Way to Leverage Resources for Evaluation](#), which outlines steps in creating these partnerships.

In addition to University partners, there are many national organizations and Resource Centers who are committed to improving compliance with ICWA and have resources available to provide technical assistance to the courts or individuals/agencies working with the courts. Of the forefront of these is the [National Child Welfare Resource Center on Legal and Judicial Issues](#) (RCLJI). The RCLJI provides consultation, training, and technical assistance on all legal and judicial aspects of the child welfare system, including federal law, court improvement, agency and court collaboration, permanency planning, legal representation, and other emerging child welfare issues. The technical assistance they can provide includes helping identify research questions, choosing methodology, developing tools, facilitating cooperative relationships with University or other partners, collecting data on site, analyzing and interpreting data, and reporting. For more information, please visit their website at www.ambar.org/nrclji.

Using this
Toolkit

Introduction

Where to
Start?

Data Collection
Approaches

Case File Review
Court Observation
Surveys
Focus Groups

Things to
Consider

How to Use
the Data

Putting this
All Together

Resources