2014

RESEARCH REPORT: ASSESSING ICWA COMPLIANCE IN SEATTLE, WA

National Council of Juvenile and Family Court Judges

Juvenile Law Programs

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This report is a publication of the National Council of Juvenile and Family Court Judges in collaboration with Casey Family Programs, whose mission is to provide, improve—and ultimately prevent the need for—foster care.

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Executive Summary

In February 2014, a research team from the National Council of Juvenile and Family Court Judges (NCJFCJ) conducted an assessment of the King County Superior Court's practices related to the Indian Child Welfare Act (ICWA). The purpose of the assessment was to identify achievements and challenges associated with ICWA compliance, as well as make recommendations to improve court practice.

Overall, the King County Superior Court is performing well. In regards to jurisdiction, the Court was exercising appropriate authority in ICWA cases, including granting case transfers (when appropriate). The vast majority of cases identified ICWA *applicability* of the child in the petition, as well as in subsequent hearings. In most cases, the child's tribal association was also identified and petition notices were sent to the tribes.

A few recommendations for improving the current court ICWA practices are detailed below. These recommendations highlight the importance of making key findings *on the record at each hearing*, continuing to notify the tribes of subsequent hearings and investigating the availability of Indian foster care homes.

Purpose of the report

Date of Site Visit: February 11-13, 2014

Assessment Team: Alicia Summers, PhD, Director of Research and Evaluation
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This report outlines the activities and subsequent impressions from a site visit to the King County Superior Court conducted by the NCJFCJ on February 11-13, 2014. This report is intended for use by the King County Superior Court judicial officers and staff to examine the current practices related to the Indian Child Welfare Act (ICWA). Other uses of this report or substantial modifications to content should include consultation with the author(s).

Financial support for this assessment was awarded to NCJFCJ through a Cooperative Agreement from the Office of Juvenile Justice and Delinquency Prevention OJJDP. The data was collected and analyzed by Alicia Summers, Ph.D., and Carlene Gonzalez, Ph.D. NCJFCJ staff members have expertise in court observation, program implementation, site evaluation, and social science research methodology and data collection. A systematic case file review tool was created to assess King County's current ICWA practices. Recommendations presented in this report could change with additional site-level information.

Background

Indian Child Welfare Act (ICWA)

In response to the high number of Native American children being removed from their homes, Congress passed the Indian Child Welfare Act (ICWA) in 1978. In 25 U.S. Code § 1902, Congress declared that the best interests of Indian children would be protected by promoting the stability and security of Indian tribes and families through the establishment of minimum standards for removing Indian children from their families and placing them in foster or adoptive care. ICWA requires that state courts pay special attention to a number of factors related to the removal of Indian children, including but not limited to providing remedial services and rehabilitative programs, higher standards of review and notice to tribes.

Disproportionality Rates of Native American Children

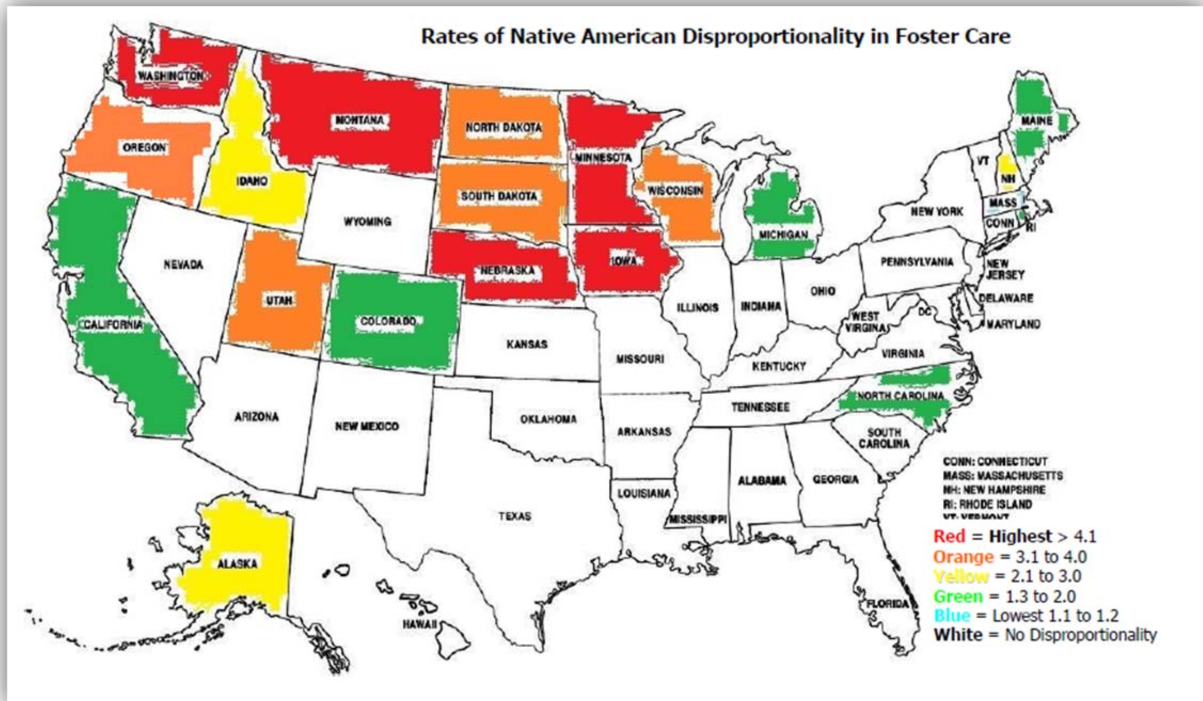
Overall, children of color are disproportionately[1] represented in the United States foster care system. In most states, there are higher proportions of African American/Black and Native American children in foster care than in the general child population. In a Technical Assistance Bulletin (2013), National Council of Juvenile and Family Court Judges (NCJFCJ) researchers present disproportionality rates[2] of children of color in foster care in the U.S. Native American children are *over*-represented in foster care at a rate of 2.1 times their rate in the general population[3]. As indicated in the figure

[1] Disproportionality is the level at which groups of children are present in the child welfare system at higher or lower percentages or rates than in the general population.

[2] Data elements (i.e., child population by race and number of children in, entering or exiting care by race) were retrieved from the U.S. Census Bureau and the National Data Archive on Child Abuse and Neglect's Adoption and Foster Care Analysis and Reporting System (AFCARS), respectively.

[3] Ibid.

below, Washington had one of the *highest* disproportionality rates of Native American children in the child welfare system.

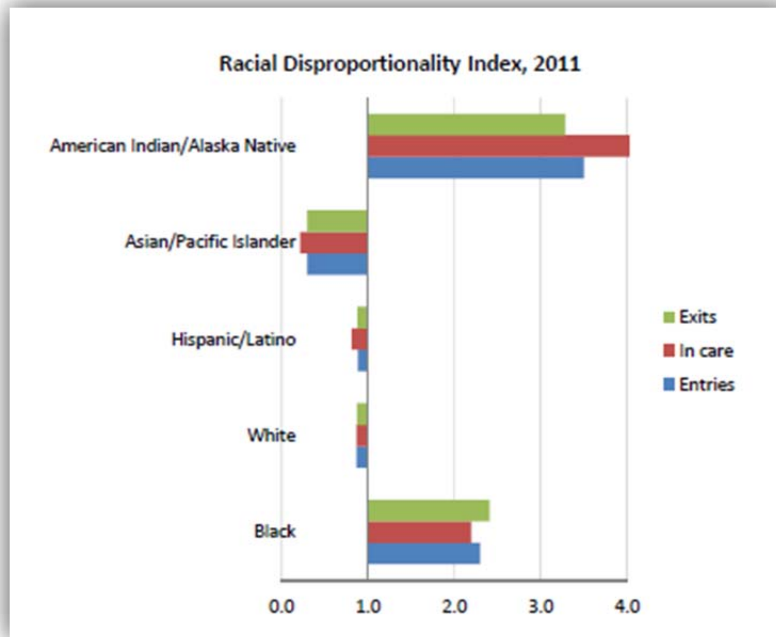


Although Native American children only make up 1.5% of the population in Washington state, data retrieved from the Adoption and Foster Care Analysis and Reporting System (2011) illustrates that these children make up 5.3% of the population who *enter* care and 7.5% of the population of children *in-care* (See table below). Additionally, only 4.9% of this population *exit* care.

Race/ethnicity breakdowns

	Population	Entries	In care	Exits
African American/Black (a)	4.0%	9.1%	8.7%	9.6%
Caucasian/White (b)	60.0%	52.3%	52.1%	52.5%
Hispanic/Latino (c)	16.4%	14.5%	13.4%	14.4%
Asian/Pacific Islander (d)	7.4%	2.2%	1.6%	2.2%
American Indian/Alaska Native (e)	1.5%	5.3%	7.5%	4.9%
More than one race	10.7%	14.3%	15.4%	15.2%
Missing	0.0%	2.3%	1.3%	1.2%
Total	100%	100%	100%	100%

As presented in the figure (below), in 2011, Native American children rated[4] the *highest* on the disproportionality index for in-care, entries and exits. These findings indicate that Native American children in the state of Washington are *over*-represented in foster care at a rate of 5 times their rate in the general population (See *in*-care category). In King County, the disproportionality is even higher, with Native American children in foster care at a rate that is 7 times higher than their representation in the general population.



KING COUNTY SUPERIOR COURT

The Family Court is one of several divisions in the King County Superior Court. Dependency cases are heard in two locations: (1) Youth Services Center in Seattle, WA and (2) the Maleng Regional Justice Center in Kent, WA. The Family Court handles *all* family matters in which children are involved including but not limited to divorce and legal separation with children, paternity issues, adoption, parenting, and domestic violence. The Family Court is equipped to offer various services to its clientele including Family Court Services (FCS), Family Law Facilitators and Dependency Court Appointed Special Advocates (CASA) and Early Resolution Case Management. More information about each of these programs can be found on the Family Court website.

[4] Disproportionality is the level at which groups of children are present in the child welfare system at higher or lower percentages or rates than in the general population. An index of 1.0 reflects *no* disproportionality. An index of greater than 1.0 reflects *over*-representation and an index of less than 1.0 reflects *under*-representation.

In 2013, 52,775 cases were filed with the King County Superior Court.[5] Nearly half of the cases filed were general civil, followed by domestic or probate/ guardianships cases.[6] More than 2,000 of these cases were juvenile dependency cases.

Case Type	2013	Change from 2012
Criminal	6,226	1.5%
General Civil	22,463	-8.6%
Domestic	7,897	2.9%
Probate & Guardianship	6,728	5.6%
Paternity & Adoption	1,414	-15.4%
Mental Illness	3,678	2.4%
Juvenile Dependency	2,541	-0.9%
Juvenile Offender	1,808	-19.6%
Total Filings	52,755	-3.8%

Assessment - Overview

The NCJFCJ research team was interested in assessing King County's Superior Court current level of ICWA compliance. The goals of this assessment were as follows:

1. Identify how often tribes intervene in ICWA cases, as well as how often tribal representatives participate in court hearings
2. Identify whether the following two stages of ICWA compliance are met in current court practice:
    a. Stage 1: Identification of Children as Indian for ICWA Application *on* the record
    b. Stage 2: Identify whether judicial officers make findings on the record related to:
        i. *Active efforts* to provide remedial services and rehabilitative programs
        ii. Use of Qualified Expert Witnesses and Proper Standards of Review
        iii. *Clear and convincing evidence* that custody would likely result in *serious emotional or physical harm* to the child
        iv. Ensuring the child is placed in a home that meets priority placement preferences and
        v. Notice to the tribe(s).

[5] King County Superior Court 2013 Annual Report. Retrieved in October 2014 from http://www.kingcounty.gov/courts/SuperiorCourt/info.aspx
[6] Ibid.

3. Examine similarities and differences between data collected by NCJFCJ researchers and data previously collected by the Minneapolis American Indian Center (2012) as part of the QUICWA Compliance Collaborative Project.

4. Recommend changes for improving court practice.

METHOD

Data Collection Procedures

A coordinator from the King County Superior Court provided NCJFCJ research staff with a list of court identification numbers for cases with petition dates from January 2011 to the present. On this list, cases denoted with an 'I' represented *possible* ICWA cases. Because NCJFCJ researchers also participated in the Trauma Audit of King County Superior Court which was occurring simultaneously, data collection was limited to a total of two days. Over the course of the assessment, NCJFCJ research staff collected data on a sample of 51 case files. Five of case entries were used to assess inter-coder reliability and therefore removed from the analyses. The reliability between coders averaged 85%, indicating good to excellent agreement. The total sample consisted of 46 cases which had petitions dated between June 1, 2011 and April 12, 2013. The selection of cases included a semi-random selection of cases pulled from all identified ICWA cases. As such, there is no reason to suspect that these cases look significantly different from other ICWA cases in King County. The sample size is also relatively close to 10% of ICWA cases in that jurisdiction, which is typically considered a sufficient sample size. Taken together, the findings below should be generalizable, and accurately portray a "snapshot" of current practice.

Instrument

NCJFCJ researchers developed a case file review form based on the NCJFCJ's Indian Child Welfare Act Checklists. The tool provides a systematic measure of assessing whether key court inquiries associated with ICWA compliance are being made in child abuse and neglect court hearings. Variables of interest included but were not limited to:

1. Demographics (e.g., child's date of birth, tribe affiliation)
2. Jurisdiction (e.g., whether child resides or is domiciled on a reservation)
3. Additional Time Request (e.g., an additional 20 days to prepare for court)
4. Tribal Intervention (e.g., whether a tribe requested a case transfer or intervened in a case)
5. Hearing-Specific Information

   a. Parties present
   b. ICWA applicability of the child
   c. Findings *on the record* related to:
      i. *Active efforts* to provide remedial services and rehabilitative programs
      ii. Use of Qualified Expert Witnesses and Proper Standards of Review
      iii. *Clear and convincing evidence* that custody would likely result in *serious emotional or physical harm* to the child
      iv. Ensure child is placed in a home that meets priority placement preferences
         1. Good cause *not* to follow placement preferences
   d. Notice to the tribe(s)
   e. Notice of next hearing
6. Case-Specific Information
   a. Child placement
   b. Case closure and outcome

Because NCJFCJ researchers commonly utilize similar instruments for research visits, NCJFCJ staff members were trained on the case file review instrument in an hour training session. During this session, variables of interest were explained and differences in interpretation were addressed.

RESULTS

Below is a summary of findings from case file review. Results are presented in the following order:

1. Demographics (including case placement and outcomes)
2. Jurisdictional Information and Tribal Intervention
3. Stages of ICWA Compliance (by Hearing Type)
   a. Stage 1: Identify how often ICWA applicability is made on the record at each hearing,
   b. Stage 2: Identify whether judicial officers make findings on the record related to:
      i. *Active efforts* to provide remedial services and rehabilitative programs
      ii. Use of Qualified Expert Witnesses and Proper Standards of Review
      iii. *Clear and convincing evidence* that custody would likely result in *serious emotional or physical harm* to the child
      iv. Ensure child is placed in a home that meets priority placement preferences and
      v. Notice to the tribe(s).
4. Comparison between QUICWA and NCJFCJ data

Part I. Demographics

Table 1 depicts the various tribes identified in the cases reviewed. The two tribes most commonly represented in these cases were the Blackfeet Tribe of Montana and the Tlingit Haida Tribe, respectively. In 17% of the cases, the tribe was not clearly identified on the record.

Table 1. Identified Tribes

Tribe	Number	Percentage
Bad River Band of Chippewa	2	4.3
Blackfeet Tribe of Montana	5	10.9
Cheyenne River Sioux Tribe	1	2.2
Colville Tribe	2	4.3
Curyung Tribe	2	4.3
Kalispel Tribe	2	4.3
Lummi Tribe	1	2.2
Makah Tribe	1	2.2
Metlakatla Indian Community	2	4.3
Northern Arapaho Tribe	1	2.2
Portage Creek Village Council	1	2.2
Payallup Tribe	2	4.3
Qagan Tayagungin	1	2.2
Qawalangin Tribe	1	2.2
Quinalt Indian Nation	1	2.2
Samish Indian Tribe	1	2.2
Sitnasauk (non-Eskimo Community)	1	2.2
Snoqualmie	1	2.2
Standing Rock Sioux Tribe	1	2.2
Table Mountain Rancheria	1	2.2
Tallige Cherokee Nation	1	2.2
Tlingit Haida Indian Tribe	4	8.6
White Earth Band of Chippewa	2	4.3
Wyandotte Nation	1	2.2
Unknown	8	17.4
Total	46	100.0

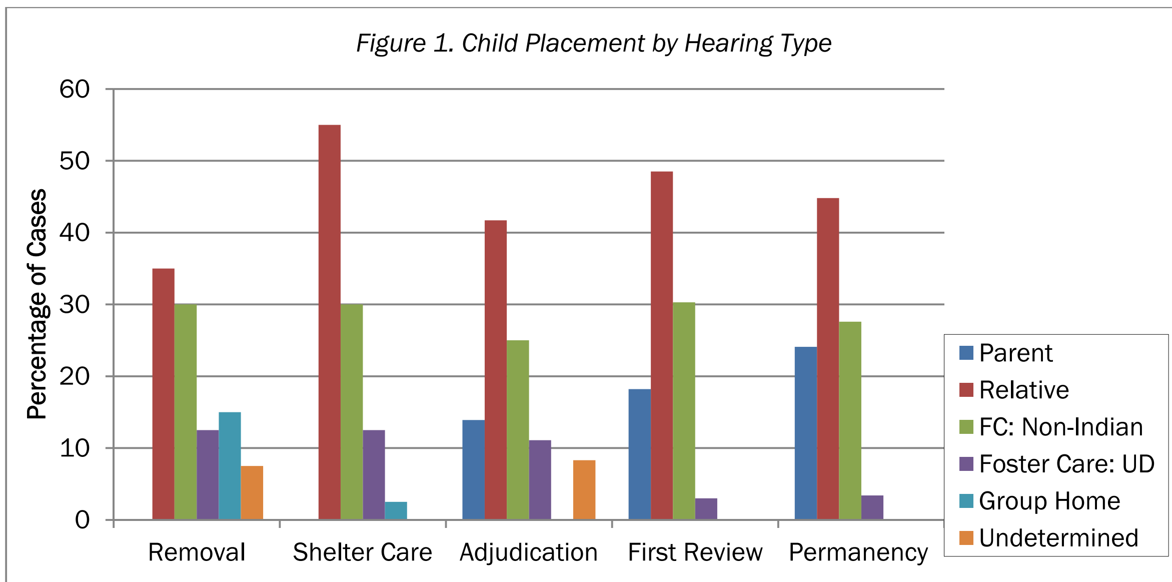
Similar to the preliminary findings reported by the QUICWA Compliance Collaborative Project (2012), the Blackfeet tribe was most commonly identified in case file review, followed by the Tlingit and Haida tribe.

Table 2 indicates the age categories in which children in ICWA cases most commonly fell. About 63% of the children were six years of age or younger. Over 56% of cases identified that the child had at least one sibling who was also in care.

Table 2. Age of Child

Age (in years)	Number	Percentage
Less than 3 years of age	14	31.1
3.1 to 6 years	14	31.1
6.1 to 9 years	4	8.9
9.1 to 12 years	5	10.9
Greater than 12 year of age	8	17.8
Unknown	1	-
Total	**46**	**100.0**

In 40 of the 46 cases (87%), children were removed from their home. Because many ICWA requirements are prompted by removing a child from their parents, subsequent analyses will focus solely on cases in which children were removed from their parent. Figure 1 illustrates that children were *most* often placed in relative care, regardless of hearing type. For example, children in 14 cases (*35%*) were placed with a relative at removal. By the shelter care hearing, children in 22 cases (55%) were placed with a relative. The second most common placement was in non-Indian foster care. Regardless of hearing type, children in 8 to 12 cases were placed in non-Indian foster care (approximately 30%). By adjudication, children in 5 cases (14%) were placed with a parent. Parent placement increased to 24% by the permanency hearing (7 of 29 cases).



Of the 40 cases in which child were removed, 27 cases (68%) were open. Of the closed cases, six cases indicated that children were reunited with a parent (46%), followed by three cases indicated termination of parental rights (TPR)/adoption (23%), two cases were dismissed (15%), and two cases were closed for other reasons (15%). Of the cases which a child was reunified with a parent, four

children were reunified with their mother, one child was reunified with his/her father and one child was reunified with both parents. On average, case length totaled 410 days (*SD* = 190.3) after the petition filing, with cases ranging from 98 to 700 days.

Part II. Jurisdictional Information and Tribal Intervention

Of the 40 cases, 22 cases (56%) identified in the petition whether the child was domiciled or residing on a reservation. There was no indication that the court exercised jurisdiction over an Indian child who was domiciled or residing on the reservation. In only one case did a tribe request additional time to prepare for court proceeding. The tribe was granted this request. Additionally, tribes moved to transfer a case to tribal court in only two cases. In both instances, these transfers were approved. Transfer dates averaged five days from the requests.

In King County, tribes do not file a motion to intervene in cases, they file a notice of intervention. Tribes notified the court of intervention in 12 cases (31%). Of the cases where the tribe notified the court of intervention, it was difficult to determine from the file as to how the court responded. The standard practice is King County is to allow the tribe to intervene on the case. However, without documentation, it is impossible to determine if this was actually occurring as the tribe anticipated. On average, tribes sent notice to intervene 136.7 days (*SD* = 125.5) after the petition date.

On average, tribes were sent notice 42 days (*Mdn* = 34, *SD* = 25.9) *after* the petition was filed and 27[7] days (*Mdn* = 29, *SD* = 16.4) *after* the shelter care[8] hearing (See Figure 2). Notification to tribes in subsequent hearings occurred prior to upcoming hearings. For example, tribes were sent notice an average of 84 days (*Mdn* = 63, *SD* = 103.4) *before* the adjudication[9] hearing, 102 days (*Mdn* = 102, *SD* = 39) *before* the first review hearing and 157 days (*Mdn* = 171, *SD* = 36.8) *before* the permanency hearing. It is important to note that date of notice (across hearing types) was inconsistently recorded in case files. Therefore, it is difficult to determine how timely notice to tribes was provided.

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[7] Length of time for petition (and shelter care) was calculated by subtracting petition (or shelter care) date from the notice date.

[8] In only two cases was notice to tribes sent prior to the shelter care hearing.

[9] Length of time for subsequent hearings was calculated by subtracting the notice date from the hearing date.

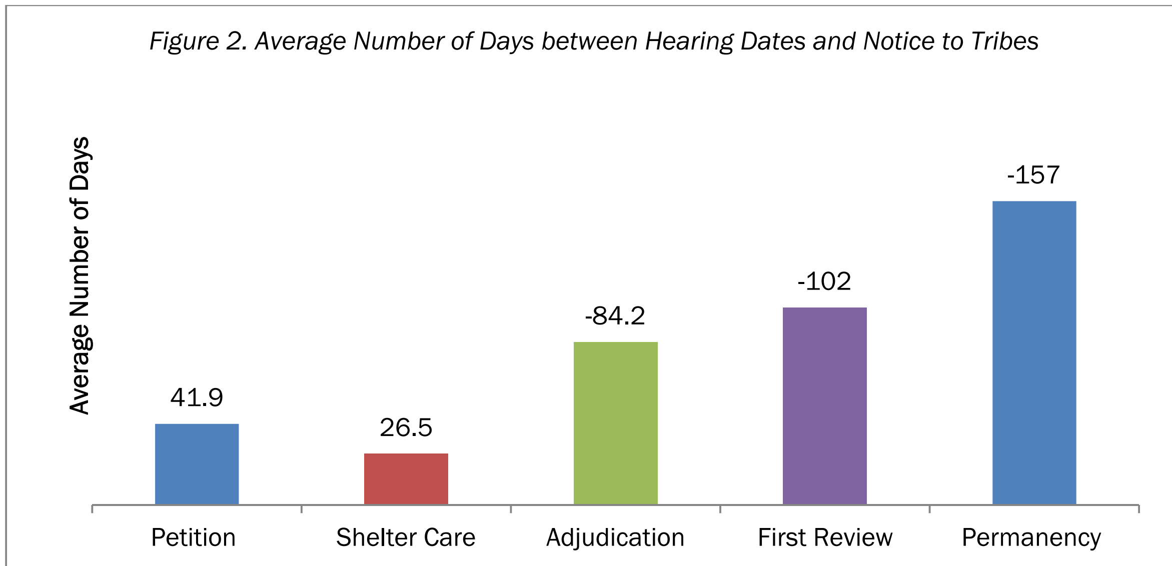
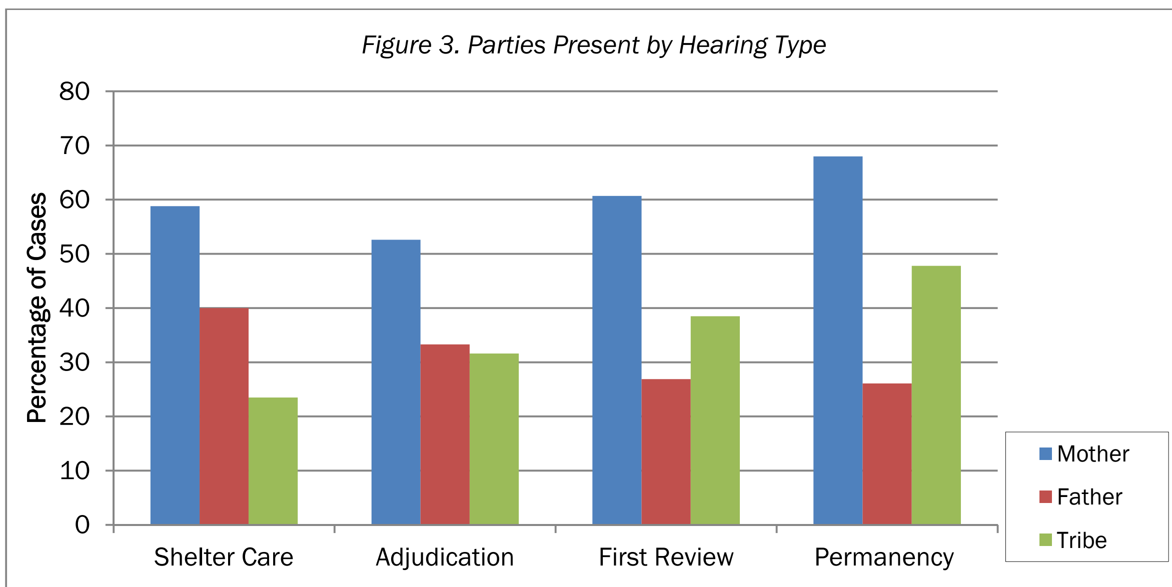


Figure 3 illustrates how often mothers, fathers and tribes were present for hearings across the life of the case[10]. On average, mothers were present for court hearings approximately 60% of the time. In comparison to mothers, findings suggest that fathers' presence at hearings decreases across time. For example, 40% of fathers were present at the shelter care hearing but only 26% of fathers were at the permanency hearing. Unlike fathers, presence of tribal representative increased over time, with a tribal representative present in 24% of shelter care hearings and a tribal representative present in 48% of permanency hearings.



[10] Please note that data was calculated using three separate variables so percentages will exceed 100%.

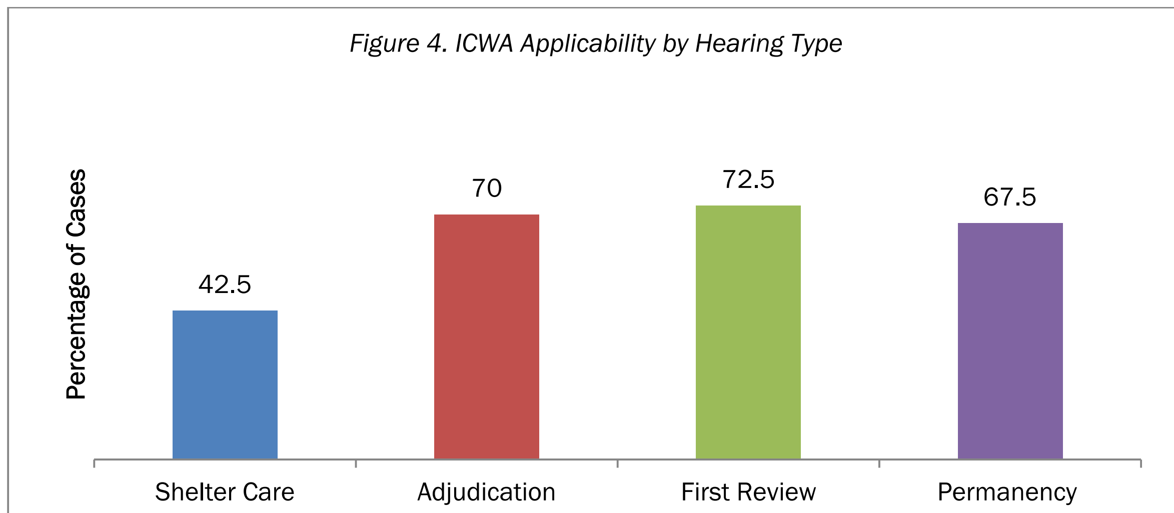
Part III. ICWA Compliance by Hearing Type

Petition Information. Thirty-seven of 40 cases (92.5%) of cases identified ICWA applicability of the child in the petition. Twenty-seven of these cases (68%) also identified the child's tribal association. A petition was filed with the tribe in 28 of 36 cases (78%). On average, tribes received notice in 41.5 days (*Mdn* = 33.5, *SD* = 25.4) after the petition filing, with notices ranging from 15 to 133[11] days.

Stage 1. ICWA Applicability by Hearing Type

Figure 4 illustrates the percentage of cases that identified ICWA applicability at each hearing. Seventeen of 40 cases (42.5%) identified ICWA applicability at shelter care hearings. It is important to note that ICWA applicability increases over the life of the case, such that ICWA applicability is identified in 28 of 30 cases (70%) by adjudication, 29 of 33 cases (72.5%) at the first review hearings and then drops slightly to 27 of 30 cases (67.5%) at the permanency hearing. ICWA applicability was often inconsistently reported in court orders. For example, in one case, the Shelter Care order said that ICWA determination was pending, but made a finding that it was an ICWA case at adjudication, but not an ICWA case at Review, and then an ICWA case again at Permanency. The documentation for this is inconsistent in the orders, making it difficult to determine if these are truly ICWA cases.

Figure 4. ICWA Applicability by Hearing Type



[11] A tribal notice was delayed for 133 days in one case. All other cases ranged from 15 to 85 days.

Stage Two: ICWA Applicability by Hearing Type

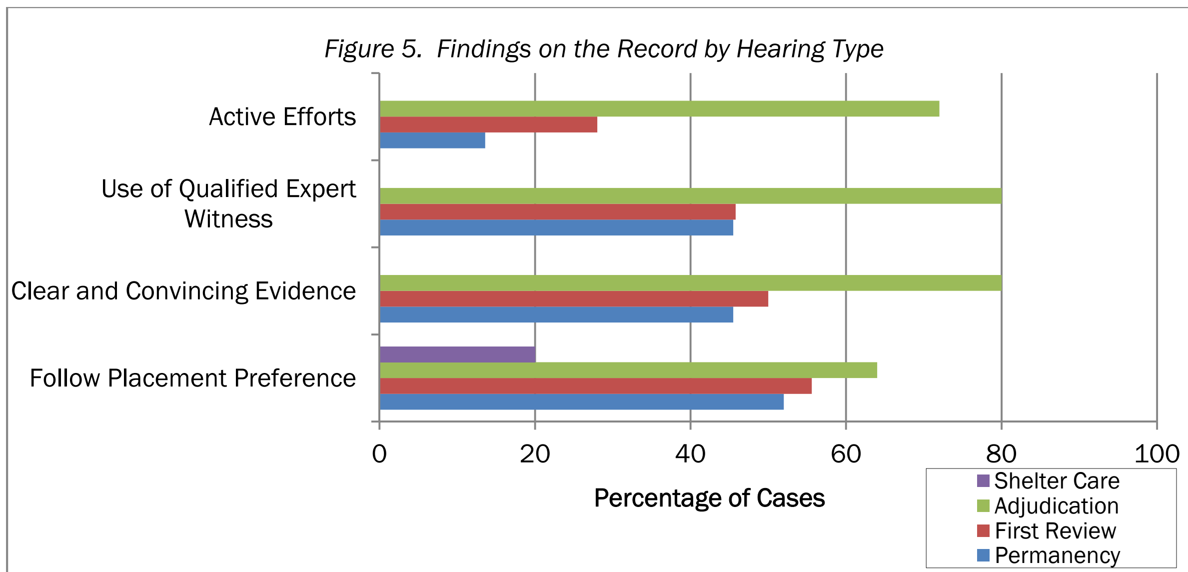
Once ICWA applicability is identified, judicial officers are expected to make several findings on the record. For the purpose of this assessment, NCJFCJ researchers focused on the following four findings:

1. *Active efforts* to provide remedial services and rehabilitative programs,
2. Use of Qualified Expert Witnesses and Proper Standards of Review,
3. *Clear and convincing evidence* that custody would likely result in *serious emotional or physical harm* to the child, and
4. Ensure child is placed in a home that meets priority placement preferences.

Figure 5 indicates the percentage of cases that identified the four findings mentioned above.
With the exception of following placement preferences, none of these findings were recorded on the record at the shelter care hearing. At the adjudication hearing, however, 18 of 25 case files (72%) mentioned active efforts. Additionally, 20 of 25 case files (80%) indicated that that there had been testimony of a qualified expert witness and that there was *clear and convincing evidence* that parental custody would likely result in *serious emotional or physical harm* to the child if left in the home. Sixteen of 25 case files (64%) reported following placement preferences at the adjudication hearing.

By the first review hearing, however, there is *less* mention of many of these findings on record.
For instance, only seven of 25 case files (28%) mentioned active efforts. Additionally, 11 of 24 case files (46%) indicated that that there had been testimony of a qualified expert witness and that there was *clear and convincing evidence* that parental custody would likely result in *serious emotional or physical harm* to the child if left in the home. Over half of case files reported following placement preferences at the review hearing.

A similar trend was seen at permanency hearings, with less mention of these findings on record. Three of 22 case files (14%) mentioned active efforts by the permanency hearing. Like the review hearing, about 45% of case files indicated that that there had been testimony of a qualified expert witness and that there was *clear and convincing evidence* that parental custody would likely result in *serious emotional or physical harm* to the child if left in the home. Approximately 52% of case files reported following placement preferences at the review hearing.

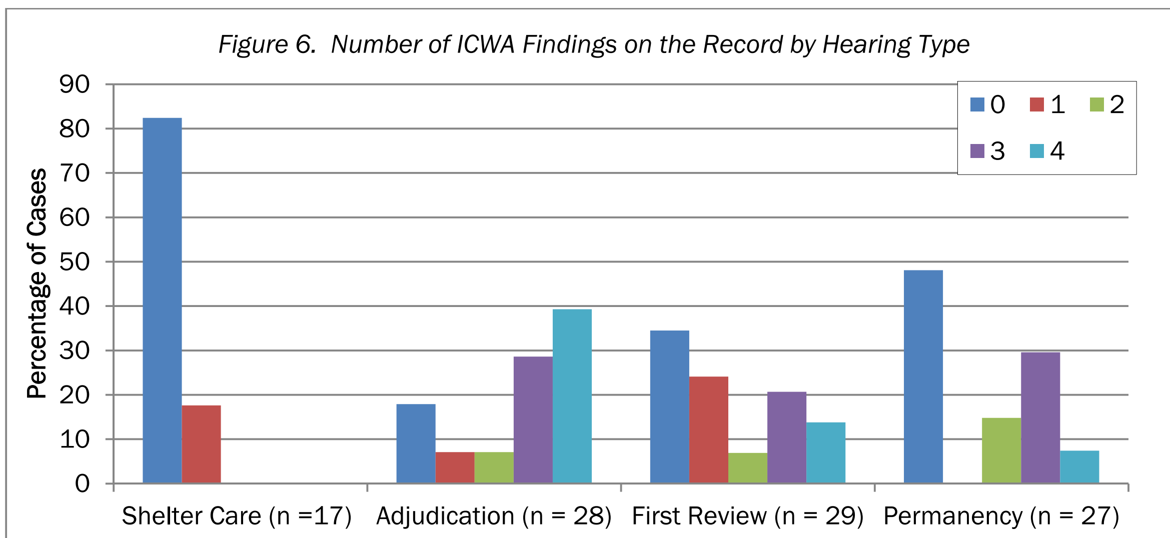


Additionally, NCJFCJ researchers also noted that there was little to no mention of (1) imminent physical damage or harm and (2) Good cause *not* to follow placement preferences on the record.

Often at the review and permanency hearings, the finding on the record was that the "notice and evidentiary requirements of the federal and Washington state Indian Child Welfare Acts were found in *previous* proceedings and are incorporated herein by reference." In at least ¼ of these cases, however, there were no findings made prior to these hearings, indicating non-compliance with ICWA. Further, there were often check boxes on the ICWA hearing orders that were left unchecked. For example, there was a check box on some (but not all) of the review hearing orders where the judicial officer could check to make a finding that placement preferences were followed. However, this box was not always checked, even if it appeared the child was placed appropriately with a relative.

The four crucial findings mentioned above were evaluated further by assessing the total number of findings made *on* the record at each hearing. Figure 6[12] illustrates the summations of these findings. At the shelter care hearing, over 82% of cases failed to mention any findings on the record, while the remaining 18% of cases indicated one finding. At the adjudication hearing, an average of 2.6 findings were reported (range = 0 to 4 findings). At the first review hearing, an average of 1.6 findings were reported (range = 0 to 4 findings). Lastly, at the permanency hearing, an average of 1.3 findings were reported (range = 0 to 4 findings). At the first review hearing, data illustrates that nearly 35% of cases do *not* report *any* ICWA findings. This pattern increases to nearly 50% of cases failing to indicate ICWA findings by the permanency hearings.

[12] Any cases that did *not* indicate ICWA applicability at the hearing were excluded from these analyses.



Part IV: Comparisons between QUICWA and NCJFCJ Data

In 2012, the Minneapolis American Indian Center presented preliminary findings on hearings held in King County, WA between July and August 2012 as part of the QUICWA Compliance Collaborative Project. Below is a comparison between similar items collected in both the QUICWA and NCJFCJ assessment. It is important to note that QUICWA and NCJFCJ researchers collected data using different instruments for these assessments and reviewed different cases. Therefore, findings may differ as a result of varied definitions and/or data collection criteria.

- *Parties Present.* Both QUICWA and NCJFCJ researchers reported that mothers were *more* likely to be present at hearings, in comparison to fathers. The QUICWA assessment reported that approximately 60% of mothers were present for hearings versus 32% of fathers. These results parallel data collected by the NCJFCJ researchers (see Figure 3 for parties present by hearing type). Additionally, NCJFJC researchers reported that presence of tribal representative increased over time, with a tribal representative present in 24% of shelter care hearings and a tribal representative present in 48% of permanency hearings.

- *Tribal Interventions.* Both QUICWA and NCJFCJ researchers reported that approximately 30% of case files indicated that tribe sought intervention. QUICWA researchers, however, were unable to determine tribal intervention in as many as 57% of cases (See Table 3).

- *Placement Orders.* Both QUICWA and NCJFCJ researchers reported that approximately 90% of case files reported out-of-home placement. In both assessments, relative placement was most common (36% in the QUICWA vs. 35-55%[13] in the NCJFCJ assessment), followed by non-Indian foster care (28% in the QUICWA vs. 25-30% in the NCJFCJ assessment). Neither QUICWA nor NCJFCJ researchers reported any children being placed in Indian foster care.

- *ICWA applicability.* Based on the petition record, NCJFCJ researchers found that judicial officers made a finding on the record in 92.5% cases, in comparison to only 57% of the time as per the QUICWA assessment.

Table 3. QUICWA vs. NCJFCJ Data

	QUICWA		NCJFCJ	
Finding	Yes	No	Yes	No
Did the tribe seek to intervene in the case?	31% (24)	12%[14] (9)	31% (12)	69% (28)
Did the judge order the child into out-of- home placement?	89% (87)	11% (11)	91% (40)	9% (4)
Did the judge make an oral finding on the record that ICWA applies?	57% (29)	43% (22)	92.5% (37)	7.5% (3)
Did the court find that the agency made active efforts to prevent removal or to return the child home?	0% (0)	100% (102)	53%[15] (21)	47% (19)
Was a qualified expert witness testimony provided?	0% (0)	100% (91)	53% (21)	47% (19)
Was the child placed within ICWA placement preferences?	5% (4)	95% (82)	58% (23)	42% (17)

- *Active Efforts.* Unlike in the QUICWA assessment where no case files indicated active efforts, NCJFCJ researchers reported that 53% of case files indicated that active efforts were made in at least _one_ of four[16] important hearings. It is unclear what criteria QUICWA researchers

[13] In the NCJFCJ assessment, relative placement ranged from 35% to 55% depending on hearing type (See Figure 1).
[14] QUICWA researchers were unable to determine tribal intervention in approximately 57% of cases (n = 45).
[15] A dummy variable was created calculating whether active efforts were reported at least *once* at either the shelter care, adjudication, first review or permanency hearings.
[16] For the purpose of this report, NCJFCJ researchers focused on the shelter care, adjudication, first review and permanency hearings.

used for this item. For instance, QUICWA researchers may have focused on one specific hearing, while NCJFCJ researchers had a more relaxed coding criterion (e.g., a minimum of one in four hearings). Further, it may be that judges only *write* the finding on the record and are not speaking it aloud in the hearing.

- *Expert Witness Testimony*. The QUICWA assessment reported that no case files mentioned expert witness testimony. NCJFCJ researchers, however, reported that over 50% of case files included expert witness testimony in at least *one* of four hearings. Once again, differences in QUICWA and NCJFCJ findings may be a product of coding criteria. It may also be that all the QEW found in case file review was a written/paper form submitted by a QEW. This may be difficult to identify in court, if an expert is not physically present, verbally talking.

- *Followed Placement Preferences*. Similar to the active efforts and expert witness testimony, the QUICWA assessment reported that few cases (5%) followed ICWA placement preferences. NCJFCJ researchers, however, reported that 58% of case files included ICWA placement preferences in at least *one* of four hearings.

In sum, the QUICWA and NCJFCJ assessment drew similar conclusions regarding tribal intervention and out-of-home placement. The NCJFCJ assessment, however, suggests that King County judicial officers made ICWA applicability findings on the records in the majority of cases, in comparison to QUCIWA researchers who estimated that this finding occurred in 57% of cases. Differences in findings related to (1) active efforts, (2) qualified expert testimony and (3) placement preferences were more difficult to decipher as NCJFCJ researchers may have used a more lenient coding criteria, in comparison to QUICWA researchers.

Discussion

Overall, the King County Superior Juvenile Court is making an effort to comply with ICWA standards. For example, the court did *not* exercise jurisdiction over any Indian child who was domiciled or residing on the reservation. Additionally, if requests were submitted for an additional 20 days to prepare for court proceedings, these requests were granted. In instances where tribes moved to transfer their case, these transfers were approved and took place in a timely manner (i.e., within approximately five days of the requests).

Ninety-two percent of cases (92.5%) identified ICWA applicability of the child in the petition. Over two-thirds of cases also identified a possible tribal association. Additionally, 78% of cases indicated that the petition was filed with the tribe. Discussion of ICWA applicability *increased* over the life of the case. About 43% of cases identified ICWA applicability at the shelter care hearing; however, discussion of ICWA applicability *increased* to 70% by adjudication and remained at this level throughout the life of the case.

Although there are several findings that are expected to be made *on the record*, NCJFCJ researchers focused on four crucial findings: (1) Active efforts to provide remedial services and rehabilitative programs, (2) Use of Qualified Expert Witnesses, (3) Clear and convincing evidence that custody would likely result in serious emotional or physical harm to the child, and (4) Ensure child is placed in a home that meets priority placement preferences for this assessment. When the number of findings made (at each hearing) were calculated, the *greatest* number of findings were made on the record at the adjudication hearing (i.e., average 2.6 findings). Of the four findings, use of qualified expert witnesses and clear and convincing evidence were reported *most* frequently at the adjudication hearing, followed by active efforts and placement preferences (See Figure 4). The number of findings made on the record *decreased* in subsequent hearings. For example, an average of 1.6 and 1.3 findings were reported at the review and permanency hearings, respectively. Of the four findings, active efforts are *least* likely to be reported at the review and permanency hearings (See Figure 5).

RECOMMENDATIONS

A few recommendations for improving current court practices related to ICWA are offered below.

- *Identify Case as an ICWA Case.* One of the primary concerns identified in the files is that it appears that judicial officers may not know that it is an ICWA case, and, subsequently may not appropriate ICWA findings. It would be ideal if there was some way to flag/identify the case as an ICWA case at the onset of each hearing. Identification of an ICWA case begins at the earliest hearings. While the majority of petitions do already include ICWA information, there is still an opportunity for other professionals to play a role in ensuring timely identification of the case. Parents' attorneys can be active in ensuring that their clients have notified the court of Native American heritage and judicial officers can make active inquiries in court to find out more information as needed. The court also needs to find a way to identify cases as ICWA in later hearings. Some suggestions include:
    - *Having the AG identify the case on the record as an ICWA case.* This would allow for identification of the case as ICWA at the onset. The AG can help facilitate ICWA compliance by identifying key ICWA information (from social services), whether (and when) the tribe was notified, whether the tribe has intervened on the case, and what active efforts have been made.
    - *Creating a flag in the court case management system to identify the case as ICWA.*
    - *Having social services include an identifier at the top of the ISSP that identifies the case as an ICWA case.* The agency may also want to ensure that there is a section that outlines the active efforts being made by the agency, particularly if the reports become part of the legal record on the case.
    - *Ensure orders are available to the judicial officer that include an ICWA header and a space to make all necessary findings on the record.* Other jurisdictions often have ICWA specific orders that are used for ICWA cases. These include boxes or spaces available to make appropriate findings with space available to add additional narrative as needed.

- *Making Findings on the Record*.

    - *Best Practices.* The NCJFCJ considers it best practice for judicial officers to inquire about ICWA at early hearings, encourage timely notice, and to make findings on the record at *every* hearing. The findings required by ICWA can be interpreted in several

ways. At a minimum, specific findings have to be made at removal and at termination. ICWA findings must be made whenever a child is placed into care, which can and has been interpreted as every time the child changes placement (other than going home). As such, making all ICWA findings (e.g., active efforts, clear convincing standard, placement preferences followed) at every hearing can serve as a precaution to ensure that both the letter and spirit of ICWA are being followed.

- *Shelter Care Findings.* Shelter care hearings rarely had any ICWA findings. While we recognize that this may be because ICWA applicability has yet to be confirmed by the tribe, it could still be beneficial to make some of these findings. For example, if the case *could be* an ICWA case, best practices would recommend making active efforts for removal, and placing according to the placement preferences (when appropriate). These findings could be made on the record, and could potentially expedite engagement of the tribe and ensure that the ICWA safeguards are in the place for the family for future hearings.

- *Tribal Intervention*. The process in King County is that the tribe provides a notice of intervention and the court allows it. While the notice of intervention was documented in 12 cases, the court accepting or allowing the intervention was only documented in 2 cases. When the tribe intervenes in the case, they become a party to the case. It is critical that this be documented in some way to ensure that the state court is complying and allowing the tribe the opportunity to intervene. Documentation of this should be decided by the court and adopted as policy. It can be as simple as a note in the order of the first hearing following notice of intervention that the court accepts the intervention or a note indicating the status of the tribe as a party to the case. The court could also decide to include a form or other standard order that could be completed to indicate the tribe's intervention.

- *ICWA Findings*. Although ICWA applicability was discussed throughout the life of the case, several crucial findings were *not* made at each hearing. As mentioned previously, crucial findings were most commonly indicated on the record at the adjudication hearing and then decreased at subsequent hearings. Mention pattern decreases to 30% by the first review hearing. This pattern suggests that judicial officers may not feel it necessary to reiterate ICWA findings in later hearings. Judicial

officers must recognize that these findings *must* be made at each hearing in order to comply with ICWA standards and regulations. Judicial officers, as well as court stakeholders, may benefit from additional training on ICWA standards.

- *Tribal Notice*. On average, tribes were sent notice from the court within 27 days *after* the shelter care hearing and approximately 42 days *after* the petition was filed (See Figure 2). Notification to tribes in subsequent hearings averaged 84 days *before* the adjudication to 157 days *before* the permanency hearing. Because date of notice (across hearings) was inconsistently recorded in case files, it is difficult to determine how timely notice to tribes was provided. A policy should be put into effect so that tribes are sent notice within a shorter timeframe following the petition (or even provided telephone or email notice) and to ensure that notice is *appropriately documented* on the record when it is provided. The agency and court should work together to identify barriers in achieving timely notice and brainstorm solutions.

- *Placement*. Although relative care was the most common placement across hearings, non-Indian foster care was the second most common. About one-third of children were placed in non-Indian foster care, regardless of hearing type. An expectation of ICWA is to place Indian children with (1) an extended family member, (2) a foster home licensed by the Indian child's tribe, (3) an Indian foster care, or (4) an institution for children approved by the Indian child's tribe[17]. None of the case reviewed indicated placement with Indian foster care. The King County Superior Court may want to engage the Department of Social Services in a discussion about the availability of Indian foster care for ICWA-applicable cases. There should also be consideration of how to appropriately document placement of Indian children in case this is a documentation issue. Some of the orders reviewed did make a finding that the child was placed according to placement preferences. Consistency of this finding would greatly benefit the court. Perhaps there is a way to ensure that the court orders have this as an option in ICWA cases so that the finding can be made consistently on the record.

[17] National Council of Juvenile and Family Court Judges. (2003). Indian Child Welfare Act Checklists for Juvenile and family Court Judges. Retrieved in March 2014 from http://www.ncjfcj.org/sites/default/files/ICWAChecklistFullDoc.pdf