



eWiSACWIS PAW/TAW

November 4, 2011

The WICWA and eWiSACWIS –
How Technology can help with Compliance

Best Outcomes for Indian Children Project

Tribally-driven Collaborative Effort between
DCF, MCWIC, and the Wisconsin Tribes to Implement the
Wisconsin Indian Child Welfare Act





Wisconsin Indian Child Welfare Act: Why?

Why was codification of the ICWA necessary?

- Priorities identified by Tribal leaders –
 - **Identification** of Indian Children
 - Adoptions
 - Training on ICWA; tribal codes/ordinances and Cultural Issues
 - Foster home placements and resources
 - 161 Agreements
 - Safety
 - Title IV-E funding
 - Child welfare communication system within DCF

Wisconsin Indian Child Welfare Act: Why?

2004 CFSR documented problems with ICWA compliance by the counties

- ❖ Identification
- ❖ Notice
- ❖ Involving Tribes in child welfare planning
- ❖ Consulting with Tribes in ongoing manner

eWiSACWIS data also indicated problems with ICWA Compliance in regard to Identification and Notice

Wisconsin Indian Child Welfare Act: Why?

WI Children's Court Improvement Program data documented compliance issues

- ❖ 13 of the 82 (16%) CHIPS and involuntary TPR cases contained documentation that notice to the tribes was done correctly
- ❖ 18 of 64 cases (28%) of cases contained documentation that active efforts finding was made either orally or in writing
- ❖ 27 of 64 cases (42%) contained documentation that a qualified expert witness presented testimony

In 33 years since ICWA was passed, the Federal Government and DCF have provided very little direction to the County agencies on the law



Wisconsin Indian Child Welfare Act: How?

Took almost 3 years of blood, sweat, & tears:

- Codification Workgroup formed in May 2006
- Draft completed 2007
- Stakeholder review and comments 2007 through 2008
 - Several Areas of conflict and dispute
- Revised drafts of certain provisions
- Informational Public Hearing on November 13, 2008



Wisconsin Indian Child Welfare Act: How?

Progress in 2009

- January to July: Monthly negotiation meetings held
- September 16: Public Hearing held
- September 30: Assembly Executive Committee moved bill forward
- October 7: Senate Executive Committee moved bill forward
- October 20: Wisconsin Legislature unanimously passed Wisconsin Indian Child Welfare Act
- December 7: Governor Doyle signed bill
- December 22: Effective date of Wisconsin Indian Child Act



Major Requirements in WICWA

- Identification
- Notification
- Placement preference order
- Active efforts to prevent the breakup of the Indian family
- Testimony of qualified expert witnesses



WICWA applies when:

The child is an Indian child,

- a member of an Indian tribe, or
- eligible for membership and the biological child of a member of an Indian tribe

and

The child is the subject of a legal proceeding or action governed by WICWA

Therefore, early identification of “Indian children” is essential for child welfare cases

- eWiSACWIS provides tools to assist with Identification



Indian Child/Juvenile Custody Proceeding

Includes:

- CHIPS proceedings
- A JIPS proceeding based on a petition that the youth is:
 - uncontrollable
 - a school drop-out
 - habitually truant from school
 - habitually truant from home
- A termination of parental rights proceeding

In which any of the following *may occur*:

- an out-of-home care placement
- an adoptive placement
- a preadoptive placement
- a termination of parental rights



Identification of Indian Children

Screening:

- A child may still be a member or eligible for membership in a tribe, even if adopted by a non-Indian person.
- An adult may be a member of a tribe, even if adopted by a non-Indian as a child, and his or her child could also be a member or eligible for membership.

County workers are trained that they must screen for WICWA-eligible children at every step of process

- **Screens/Forms in eWiSACWIS assist with this**
- **Stress importance of active communication with Tribe throughout process**



Tribal Intervention and Jurisdiction

There has been confusion in Wisconsin in some counties who have mistakenly understood ICWA to only apply if the Tribe intervenes.

It is the responsibility of the county agency workers to meet the mandates of the WICWA throughout the case regardless of tribal involvement.

The eWiSACWIS tabs help the workers to meet the requirements of the law.

Notification of Tribes –

Why is this Important

- Cooperate fully with Indian tribes to ensure that [ICWA] is enforced in this state
- Protect the best interests of Indian children and *promote the stability and security of Indian tribes and families* by doing all of the following:
 - Establishing minimum standards for the removal of Indian children
 - Using practices in accordance with [ICWA]
 - When out-of-home placement is necessary, placing an Indian child in a placement that:
 - **Reflects the unique values of the Indian child's tribal culture**
 - **Establishes, develops, and maintains a political, cultural and social relationship with the child's tribe**



Tribal Sovereignty and WICWA

- The tribe must be notified of all Indian child/juvenile custody proceedings.
- The tribe has the right to formally intervene at any point during the proceeding and become a party to the case.

Many county agencies have a poor history of notification – eWiSACWIS pulls together the information needed for Notification and streamlines the process for workers



Notice of First Hearing

The party seeking out-of-home placement or TPR, or initiating proceedings must send Notice

- The notice of the first hearing in an involuntary Indian child/juvenile custody proceeding *must* be sent by **registered mail, return receipt requested**.
- The return receipt must be filed with the court.

Notice must be sent to:

- the Indian child's parent
- the Indian custodian, if any, and
- the tribe in which the Indian child is a member, or
- the tribe or tribes in which the Indian child may be eligible for membership, or
- if the child's tribe is not known, the Bureau of Indian Affairs



Formal Notice

Forms have been created - Notice of Involuntary Child Custody Proceeding Involving an Indian Child Form

- Must be used instead of standard hearing notice.
- Includes the information required under WICWA and the form Notification of Rights Under the Indian Child Welfare Act
- The copy sent to the tribe (or BIA) must include the following forms, unless they have already been sent:
 - Screening
 - Biological Family History
 - Request for Confirmation
- Petition must be included



Active Efforts Standard

The court may not order an Indian child to be removed from the home of the Indian child's parent or Indian custodian and placed in out-of-home care or order an involuntary TPR unless the court or jury finds:

- that *active efforts* have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian child's family, and
- those efforts proved unsuccessful.



Active Efforts Standard

An ongoing, vigorous, and concerted level of case work made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe...



Active Efforts Standard

... that utilizes the available resources of:

- The Indian child's tribe
- Tribal and other Indian child welfare agencies
- Extended family members
- Other individual Indian caregivers
- Other culturally appropriate service providers.



Active Efforts

Important for county to identify Indian children early in the case.

Once a child is identified as an Indian child, notification to the tribe and involving the tribe in the child's case is vital to provide active efforts.

However, if the tribe does not become involved, the county is still responsible for providing active efforts.



Best Interests of an Indian Child

– Out-of-home placement

- When placement is necessary, placing an Indian child in a placement that reflects the unique values of the Indian child's tribal culture, **and**
- That assists the child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe.



Placement of an Indian Child

Indian children *must* be placed according to specific identified preferences, unless good cause exists to depart from the preferences, when they are:

- held in temporary physical custody
- placed in out-of-home care
- placed in a pre-adoptive placement
- placed for adoption

Data

- eWiSACWIS
 - Project will be using data from eWiSACWIS to evaluation the success of implementation
 - Data-sharing agreement finalized between MCWIC and WI DHS
 - Identification & Notice
 - *Important to note that data is only as good as the workers entering it*
 - Difficult at this point to determine whether compliance issues are based on a failure to comply or a failure to record compliance



Current WICWA Compliance

Started reviewing preliminary data to determine if WICWA requirements are being met

- Refer to Handouts



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